

# In the Privy Council.

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## ON APPEAL FROM THE COURT OF APPEAL FOR JAMAICA.

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BETWEEN

**CECIL de CORDOVA**

**G. J. de CORDOVA**

**CECIL de CORDOVA & CO. LIMITED** (Defendants) - - *Appellants*

AND

**VICK CHEMICAL COMPANY** (Plaintiffs) - - - *Respondents*

AND

**IN THE MATTER** of an Application by Cecil de Cordova & Co. Limited

AND

**IN THE MATTER** of the Registered Trade Marks Nos. 1852 and 3707 of  
Vick Chemical Company

AND

**IN THE MATTER** of the Trade Marks Law (Chap. 272)

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# RECORD OF PROCEEDINGS

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MCKENNA & CO.,  
12 WHITEHALL, S.W.1,  
*Solicitors for the Appellants.*

NEVE, BECK & CO.,  
21 LIME STREET, E.C.3,  
*Solicitors for the Respondents.*

10,1951

No. 47 of 1948.

In the Privy Council.

UNIVERSITY OF LONDON  
W.C.1

- 4 OCT 1956

INSTITUTE OF ADVANCE  
LEGAL STUDIES

ON APPEAL

FROM THE COURT OF APPEAL FOR JAMAICA

BETWEEN

CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. (Defendants) - - - Appellants

AND

VICK CHEMICAL COMPANY (Plaintiffs) - - - Respondents

AND

IN THE MATTER of an Application by CECIL de CORDOVA & Co. LTD.

AND

IN THE MATTER of the Registered Trade Marks Nos. 1852 and 3707 of VICK  
CHEMICAL COMPANY

AND

IN THE MATTER of the Trade Marks Law (Cap. 272).

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**PART III**  
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**BUT NOT PRINTED**

NO.	DESCRIPTION OF DOCUMENT	DATE
1	Consent order adjourning hearing of the Motion to the date of the trial of the Action .. .. .	14th December 1915
2	Summary of Submissions by Plaintiffs' Counsel at the trial .. .. .	—
3	Summary of Submissions by Defendants' Counsel at the trial .. .. .	—
4	Minute of the Judgment of Mr. Justice Savary .. .. .	14th February 1917
5	Minute of Judgment of Court of Appeal .. .. .	12th January 1948
6	Order allowing appeal .. .. .	12th January 1948
7	Consent order after appeal .. .. .	10th March 1948
8	Minute of Judgment of Court of Appeal on petition for leave to appeal to His Majesty in Council .. .. .	9th April 1948
9	Minute of Order of Court of Appeal granting final leave to appeal to His Majesty in Council .. .. .	5th July 1948



# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR JAMAICA.

BETWEEN

CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. (Defendants) - *Appellants*

AND

10 VICK CHEMICAL COMPANY (Plaintiffs) - - *Respondents*

AND

IN THE MATTER of an Application by CECIL de CORDOVA & Co. LTD.

AND

IN THE MATTER of the Registered Trade Marks Nos. 1852 and 3707 of VICK CHEMICAL COMPANY

AND

IN THE MATTER of the Trade Marks Law (Cap. 272).

# RECORD OF PROCEEDINGS

20

## PLEADINGS IN ACTION.

No. 1.

WRIT OF SUMMONS and Endorsement.

Suit No. E.8 of 1944.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs  
and

CECIL DE CORDOVA  
G. J. DE CORDOVA  
and

30

CECIL DE CORDOVA & CO. LTD. - - - Defendants.

GEORGE VI by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, etc., To Cecil de Cordova, G. J. de Cordova and Cecil de Cordova & Co. Ltd., all of 146 Harbour Street, Kingston.

*In the  
Supreme  
Court of  
Jamaica.*

No. 1.  
Writ of  
Summons  
and  
Endorse-  
ment, 1st  
March 1944.

*In the  
Supreme  
Court of  
Jamaica.*

No. 1.  
Writ of  
Summons  
and  
Endorse-  
ment, 1st  
March 1944,  
*continued.*

WE COMMAND You, That within Fourteen Days after the Service of this Writ upon you exclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Vick Chemical Company

And take notice that in default of your so doing the Plaintiff may proceed herein and Judgment may be given in your absence.

Witness The Honourable JOHN LEWIS HENRY WILLIAM SAVARY, Acting Chief Justice of Jamaica the 1st day of March in the year of our Lord One Thousand Nine Hundred and Forty-Four.

(L.S.) 10

THE PLAINTIFF CLAIMS against the Defendants—

(A) An injunction restraining the Defendants from infringing the registered Trade Marks of the Plaintiff Nos. 1852 and 3707 or either of them.

(B) An injunction restraining the Defendants from selling goods not the manufacture of the Plaintiff under the name "Vapour Rub" or any other name so closely resembling "VapoRub," the name and mark of the Plaintiff's goods, as to be calculated to deceive.

(C) An injunction restraining the Defendants their servants 20 or agents from passing-off goods not of the Plaintiff's manufacture for the goods of the Plaintiff.

(D) An account or damages.

Dated the First day of March 1944.

LIVINGSTON & ALEXANDER,  
Plaintiff's Solicitors.

This Writ was issued by LIVINGSTON & ALEXANDER, Solicitors of Kingston whose address for service is No. 20 Duke Street, Kingston, Solicitors for the said Plaintiff whose registered office is at 900 Market Street in the City of Wilmington, State of Delaware in the United States 30 of America and whose attorneys in this Island are Sir Noel Brooks Livingston who resides at No. 10 West Kings House Road, Half-Way Tree Post Office, Harold Vincent Alexander who resides at No. 18 West King's House Road, Half-Way Tree Post Office and Aston Levy who resides at "Belmont" Stony Hill Post Office and who practise under the style or firm name of Livingston & Alexander at No. 20 Duke Street, Kingston.

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No. 2.

## STATEMENT OF CLAIM.

*In the  
Supreme  
Court of  
Jamaica.*No. 2.  
Statement  
of Claim,  
19th  
September  
1944.

1. The Plaintiff is a Corporation organized and existing under the Laws of the State of Delaware in the United States of America having its registered office at 900 Market Street in the City of Wilmington in the State of Delaware in the United States of America and manufactures and sells in the United States of America and exports to most of the countries of the world including Jamaica medicines and medicated articles and pharmaceutical preparations.

10 2. The first and second Defendants, prior to the 28th day of December, 1943, carried on business in co-partnership under the style or firm name of Cecil de Cordova & Company at 146 Harbour Street, Kingston, Jamaica as General Merchants and Commission Agents. Since the said 28th day of December 1943 the third Defendant has carried on the said business at the aforesaid address and the first and second Defendants have been actively engaged in the conduct and management of such business and the second Defendant is Managing Director thereof.

3. The Plaintiff is the Proprietor of Trade Mark No. 1852.

20 Trade Mark No. 1852 consists of the words "VICKS VapoRub" above the descriptive word "Salve," and added matter. The said Trade Mark was registered on the Seventh day of April 1924 in the Register of Trade Marks by the predecessor in title of the Plaintiff as proprietor thereof in Class 3, inter alia, for a medicinal salve and a liniment. The Plaintiff has since the 9th day of December 1936 been registered in the Register of Trade Marks as the proprietor of the aforesaid Trade Mark.

4. The Plaintiff is also the proprietor of Trade Mark No. 3707.

30 Trade Mark No. 3707 consists of the word "VapoRub." The said Trade Mark was registered on the 13th day of October 1941 in the Register of Trade Marks by the Plaintiff as the proprietor thereof in Class 3 for Chemical substances prepared for use in medicine and pharmacy and is "associated" with Trade Mark No. 1852.

5. The Plaintiff and its predecessors in the business carried on by the Plaintiff as aforesaid have extensively used the said Trade Marks as Trade Marks upon a medicated salve manufactured and sold by them for very many years and for upwards of 25 years in Jamaica and the Plaintiff continues to use the said Trade Marks extensively in its business in the majority of the countries of the world including Jamaica.

40 6. The Plaintiff's distributor in Jamaica is Jamaica Agencies Limited carrying on business as Manufacturers' Representatives and Commission Agents at 175 Harbour Street, Kingston aforesaid, and the latter Company and its predecessors in the business carried on by it have for upwards of 25 years imported and distributed to the trade and the public in Jamaica the aforesaid medicated salve.

7. By reason of the user alleged in paragraphs 5 and 6 hereof and by advertisement and other means the Plaintiff's medicated salve marked with the said Trade Marks has become known to purchasers or intending purchasers as "VapoRub" and amongst Members of the Medical

*In the  
Supreme  
Court of  
Jamaica.*

No. 2.  
Statement  
of Claim,  
19th  
September  
1944,  
*continued.*

Profession and amongst Druggists and Chemists and in the trade of General Dealers, and to the public at large "VapoRub" means a salve made and sold by the Plaintiff.

8. The Plaintiff is accustomed to paste upon the jars containing the said salve manufactured and sold by it labels bearing the said Trade Marks or the essential particulars thereof without any alteration substantially affecting the identity of the same. The said jar is packaged in a cardboard box also prominently displaying the said Trade Marks as does the cap used on the said jars. At the present, and for 25 years past the said label and cardboard container bear and have borne the distinctive word "VapoRub" 10 prominently displayed thereon in red on a turquoise blue background with a red triangle on a white triangular background in the centre of the label and with other words thereon and the said salve sold in the market and bearing the aforesaid label so arranged are known to purchasers or intending purchasers as and is bought by them as and for the goods of the Plaintiff.

9. The Plaintiff has recently discovered, as the fact is, that the first and second Defendants whilst carrying on business in partnership as aforesaid as Cecil de Cordova & Co. and thereafter as parties actively engaged in the management and conduct of the business of the third 20 Defendant and the third Defendant since its incorporation as aforesaid have been and are selling a medicated salve not of the Plaintiff's manufacture bearing the words "Vapour Rub" prominently displayed on the label pasted on the bottle in which it is contained.

10. The Plaintiff has also recently discovered, as the fact is, that the Defendants have advertised and invoiced and sold a medicated salve or ointment not of the Plaintiff's manufacture as "Vapour Rub."

11. The use of the said words "Vapour Rub" as aforementioned is an infringement of the Plaintiff's said Trade Marks No. 1852 and 30 No. 3707.

12. The employment of the said labels by the Defendants is an unlawful imitation of the get-up of the Plaintiff's goods referred to in paragraph 7 hereof.

13. The use of the words "Vapour Rub" as aforesaid is calculated to deceive purchasers of the salve sold by the Defendants into the belief that they are buying salve of the Plaintiff's manufacture and purchasers and/or intending purchasers have in fact been deceived.

14. By reason of the unlawful acts aforesaid the Defendants have sold and passed off and have caused to be sold and passed off large quantities of goods not of the Plaintiff's manufacture as and for the 40 Plaintiff's goods and have thereby gained large profits.

#### THE PLAINTIFF CLAIMS:—

(1) An injunction to restrain the Defendants, their servants and agents, from infringing the Plaintiff's said Trade Marks No. 1852 and No. 3707 respectively and from passing off goods not of the Plaintiff's manufacture as or for the goods of the Plaintiff. And in particular to restrain them from selling,

offering for sale, or disposing of any medicated or pharmaceutical product not of the Plaintiff's manufacture bearing the words "Vapour Rub" or any other words colourably resembling the Plaintiff's said Trade Marks.

*In the  
Supreme  
Court of  
Jamaica.*

(2) An account of the profits made by the Defendants in selling or disposing of any medicated or pharmaceutical preparations not of the Plaintiff's manufacture under the words "Vapour Rub."

No. 2.  
Statement  
of Claim,  
19th  
September  
1944,  
*continued.*

(3) Damages.

10

(4) Delivery up to the Plaintiff by the Defendants upon oath of all medicated or pharmaceutical products not of the Plaintiff's manufacture, in their possession or under their control marked with or bearing the words "Vapour Rub" and of all advertising blocks in their possession or under their control bearing the words "Vapour Rub" for deletion or cancellation of the said words or for destruction.

Settled.

N. W. MANLEY.

20 Filed and delivered this 19th day of September 1944 by Messrs. LIVINGSTON & ALEXANDER of 20 Duke Street, Kingston, Solicitors for and on behalf of the above-named Plaintiff.

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No. 3.  
DEFENCE.

No. 3.  
Defence,  
3rd April  
1945.

1. The Defendants have no knowledge of the matters alleged in paragraph 1 of the Statement of Claim.

2. Paragraph 2 of the Statement of Claim is admitted.

3. Save as is hereinafter specifically admitted, the Defendants deny each and every allegation contained in paragraphs 3 to 8 inclusive of the Statement of Claim.

30 4. The Defendants admit that the Plaintiffs are registered as the proprietors of the alleged Trade Mark No. 1852 which was registered on the 7th day of April 1924, in the Register of Trade Marks by the predecessor in title of the Plaintiffs as proprietors thereof in Class 3, inter alia, for a medicinal salve for external use and a liniment. The said alleged Trade Mark consists of a label at the top of which special prominence is given to the words "VICKS VapoRub Salve" and in the centre of which there appears the thick figure of a triangle with the words "Vick Chemical Company" printed thereon and added matter. At the bottom of the said label there is also printed the words "Vick Chemical Company."  
40 Reference will be made at the trial to the said alleged Trade Mark for a

*In the  
Supreme  
Court of  
Jamaica.*

No. 3.  
Defence,  
3rd April  
1945,  
*continued.*

full description thereof, but the Defendants deny that the said mark is a trade mark, and that the Plaintiffs are properly registered as the proprietors of the same.

5. On the 5th day of November 1936, the Plaintiffs became registered as the Proprietors of Trade Mark No. 3276 which consists of the word "VICKS" in thick block capitals, for all goods included in Class 3. That said Trade Mark is associated with the alleged Trade Mark No. 1852.

6. The Defendants admit that the Plaintiffs are registered as the proprietors of the alleged Trade Mark No. 3707, which was registered on the 13th day of October 1941, in class 3 for chemical substances prepared for use in medicine and pharmacy, and which consists of the word "VapoRub." This said alleged Trade Mark is also associated with the alleged Trade Mark No. 1852, but the Defendants deny that the said mark is a trade mark and that the Plaintiffs are properly registered as the proprietors of the same. 10

7. The Defendants will contend that the word "VapoRub" is descriptive and is disentitled to protection in any Court of Justice, being merely a misspelling of the words "Vapour Rub," which words are common to the trade and have from a date long anterior to the year 1924 been commonly used to describe medicaments of a particular character. 20

8. The Defendants will further contend that prior to the registration of the alleged Trade Marks Nos. 1852 and 3707 referred to in paragraphs 4 and 6 hereof, the Plaintiffs, both in advertisements and otherwise, used and employed the word "VapoRub" as being descriptive of the goods being sold by them and that subsequent to the registration of the said alleged Trade Marks the Plaintiffs have continued and still continue to use the said word "VapoRub" solely in a descriptive sense and not for the purpose of indicating the origin of the said goods.

9. The Defendants deny that the Plaintiffs' medicated salve has become known to purchasers or intending purchasers as "VapoRub" or that amongst members of the Medical Profession or amongst Druggists or chemists or in the trade of General Dealers, or to the public at large the word "VapoRub" means a salve made and sold by the Plaintiffs as is alleged in paragraph 7 of the Statement of Claim or at all. 30

10. The Defendants admit that the Plaintiffs are accustomed to paste upon the jars containing the said salve manufactured and sold by them labels bearing the essential features of the alleged Trade Marks referred to in paragraphs 4, 5 and 6 hereof, as does the cardboard container and the caps used on the said jars. The said jars, the caps used thereon and the cardboard containers bear and have always borne prominently displayed thereon the words "VICKS VapoRub," and the Defendants admit that the said salve, labelled and packaged as hereinbefore described, is known to purchasers or intending purchasers as and is bought by them as and for the goods of the Plaintiffs. 40

11. Save that the Defendants admit that they are the agents and distributors for Messrs. E. Griffiths Hughes Ltd. of Manchester, England, who are the manufacturers of "KARSOTE Vapour Rub" and that as such they sell and supply the wholesalers and retailers in the trade, on their request, but to no one else, cardboard containers each containing twelve jars of "Karsote Vapour Rub" and that the said containers when 50

supplied by them are wrapped in plain brown paper having pasted on each one a white label on which is printed in large green letters the words "KARSOTE VAPOUR RUB," paragraphs 9 and 10 of the Statement of Claim are denied.

*In the  
Supreme  
Court of  
Jamaica.*

12. The said salve has always been sold by the Defendants in the manner described in paragraph 11 hereof, and has always been advertised, sold and invoiced by the Defendants as "KARSOTE VAPOUR RUB" which mark has been extensively and continuously used by the manufacturers thereof upon and in connection with the said goods.

No. 3.  
Defence,  
3rd April  
1945,  
*continued.*

10 13. Paragraphs 11, 12, 13 and 14 of the Statement of Claim are denied.

14. The said salve is and always has been sold by the Defendants in exactly the same condition in which it has been imported from Messrs. E. Griffiths Hughes Ltd. of Manchester, England, the manufacturers thereof.

20 15. The said words "Vapour Rub" are a bona fide description of the character or quality of the goods so sold by the Defendants and have been so used in respect of medicaments of this particular type for many years now past, and the Defendants will rely upon the provisions of Section 44 of the Trade Marks Law (Cap. 272).

16. The individual jars of the salve sold by the Defendants are not packaged in a cardboard box, as is the salve manufactured and sold by the Plaintiffs, but are and always have been much smaller than and also a different colour from the jar in which the Plaintiffs' product is sold, and have prominently displayed on the label thereon the words "KARSOTE VAPOUR RUB," and the Defendants will contend that the get-up of the said salve as hereinbefore described is readily distinguishable from the get-up of the product manufactured and sold by the Plaintiffs.

30 17. The Defendants deny that they have infringed the Plaintiffs' alleged trade marks or imitated the get-up of the Plaintiffs' goods.

18. The Defendants further deny that the use of the words "Vapour Rub" is calculated to deceive purchasers of the salve sold by them into the belief that they are buying salve of the Plaintiffs' manufacture or that purchasers and/or intending purchasers have in fact been deceived.

19. The Defendants still further deny that they have sold or passed-off any goods not of the Plaintiffs' manufacture as or for the Plaintiffs' goods, and that (if they have done so, which they deny) they have made any profits thereby.

40 20. Save and except as is hereinbefore expressly admitted, the Defendants deny each and every allegation in the Statement of Claim contained as if the same were here set out and traversed specifically.

Settled.

V. DUDLEY EVELYN.

Filed and delivered this 3rd day of April 1945 by Messrs. ALBERGA & HART of 119 Tower Street, Kingston, Solicitors for and on behalf of the above-named Defendants.

*In the  
Supreme  
Court of  
Jamaica.*

No. 4.

**NOTICE requiring Further and Better Particulars of Defence.**

No. 4.  
Notice  
requiring  
Further  
and Better  
Particulars  
of Defence,  
22nd June  
1945.

TAKE NOTICE that the Plaintiff requires the Defendants to furnish within seven days from the service hereof the following further and better particulars of the Defence herein :—

1. The date when the Defendants commenced to sell KARSOTE VAPOUR RUB in Jamaica referred to in paragraphs 12 and 14 of the Defence.

2. State by estimation or otherwise the number of years past during which, as is alleged in paragraph 15 of the Defence, the words "VAPOUR RUB" have been used in Jamaica as a description of the character or quality of goods of the type the subject of these proceedings. 10

Dated this Twenty-second day of June One Thousand Nine Hundred and Forty Five.

LIVINGSTON, ALEXANDER & LEVY,  
Plaintiff's Solicitors.

To the above named Defendants or to their Solicitors Messrs. ALBERGA & HART, 119, Tower Street, Kingston.

Filed by Messrs. LIVINGSTON, ALEXANDER & LEVY of 20 Duke Street, Kingston, Solicitors for the above named Plaintiff.

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No. 5.

## FURTHER AND BETTER PARTICULARS OF DEFENCE.

*In the  
Supreme  
Court of  
Jamaica.*

The following are the particulars of the Defence in this Action delivered pursuant to the Plaintiffs' Notice dated the 22nd day of June 1945 :—

No. 5.  
Further  
and Better  
Particulars  
of Defence,  
22nd  
September  
1945.

1. The Defendants commenced to sell Karsote Vapour Rub in the month of January 1943.

2. The words "Vapour Rub" have been used as a description of the character or quality of goods of the type the subject of these proceedings in England, where the Defendants' goods are manufactured and elsewhere for a considerable number of years, but the Defendants are unable to give an estimate of the length of time of the aforesaid user. The said words have been used in Jamaica in the aforesaid sense ever since the Plaintiffs began to market their goods the subject of these proceedings in this Island.

Dated this 22nd day of September One thousand nine hundred and forty-five.

ALBERGA &amp; HART,

Defendants' Solicitors.

20 To the above-named Plaintiffs or to their Solicitors Messrs. LIVINGSTON,  
ALEXANDER & LEVY.

Filed by Messrs. ALBERGA & HART of No. 119 Tower Street, Kingston,  
Solicitors for the above-named Defendants.

## PROCEEDINGS ON MOTION.

No. 6.

## NOTICE OF MOTION.

Suit E.—No. 44 of 1945.

*In the  
Supreme  
Court of  
Jamaica.*

No. 6.  
Notice of  
Motion,  
11th  
October  
1945.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court

In Equity.

IN THE MATTER of an Application by CECIL DE CORDOVA & Co.  
LIMITED

and

10

IN THE MATTER of the Registered Trade Marks Nos. 1852  
and 3707 of VICK CHEMICAL COMPANY

and

IN THE MATTER of the Trade Marks Law (Cap. 272).

TAKE NOTICE that this Honourable Court will be moved on Monday the 17th day of December 1945 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard, by Counsel on behalf of Cecil de Cordova & Co. Ltd. of No. 146 Harbour Street Kingston for an Order that the Register of Trade Marks kept under the authority of the above-mentioned Law may be rectified by the removal of the mark therein registered for Class 3 and numbered 3707 and further by the expunging from the said Register of part of the mark registered therein for Class 3 and numbered 1852 namely the word "VapoRub," or by adding to the entry therein of the said mark No. 1852 a disclaimer of any right on the part of the registered proprietor of the said mark to the exclusive use of part of the said mark, that is to say the word "VapoRub," or that such other Order for the rectification of the said Register may be made as to the Court shall seem fit. 20

AND FURTHER TAKE NOTICE that the following, among others, are the grounds of this Application :— 30

(1) The word "VapoRub" is descriptive and is disentitled to protection in any court of justice, being merely a mis-spelling of the words "Vapour Rub" which words are common to the trade and have from a date long anterior to the registration of the aforesaid alleged trade marks been commonly used to describe medicaments of a particular character.

(2) Prior to the registration of the aforesaid alleged trade marks, the proprietors thereof, both in advertisements and otherwise, used and employed the word "VapoRub" as being descriptive of the goods being sold by them, and subsequent to the aforesaid registration of the said alleged trade marks the proprietors thereof have continued and still continue to use the said word "VapoRub" solely in a descriptive sense and not for the purpose of indicating the origin of the said goods. 40

(3) The said word "VapoRub" was at the date of registration, and still is, wholly descriptive of the goods in respect of which it is registered and registration thereof was effected contrary to the provisions of Section 8 of the Trade Marks Law (Cap. 272).

*In the  
Supreme  
Court of  
Jamaica.*

(4) The said word "VapoRub" is not an "invented word," within the meaning of the provisions of Section 8 of the Trade Marks Law (Cap. 272) as it is merely a mis-spelling of the two ordinary English words "Vapour Rub."

*No. 6.  
Notice of  
Motion,  
11th  
October  
1915,  
continued.*

10 (5) The said word "VapoRub" was not at the date of registration and never has been distinctive, nor is it adapted, either in fact or in law, to distinguish the goods of the registered proprietors from those of other persons.

(6) The said word "VapoRub" was not at the date of registration and never has been a "Trade Mark" within the meaning of the provisions of Section 2 of the Trade Marks Law (Cap. 272).

20 (7) The said word "VapoRub" if used in connection with a chemical substance prepared for use in medicine and pharmacy which was not to be rubbed on and/or did not give off a vapour, would have been at the date of registration, and still would be, "Calculated to deceive" and consequently is disentitled to protection in a Court of Justice having regard to the provisions of Section 10 of the Trade Marks Law (Cap. 272).

(8) The said word "VapoRub" was registered without sufficient cause and wrongly remains on the Register.

Dated the 11th day of October 1945.

ALBERGA & HART,

of 119 Tower Street, Kingston, Solicitors  
for the Applicants Cecil de Cordova & Co.  
Limited whose address for service is  
that of their Solicitors.

30

To :—The Registrar General  
and

To :—The Vick Chemical Company  
in care of  
Messrs. Livingston, Alexander & Levy,  
Solicitors,  
Kingston.

Filed by ALBERGA & HART of No. 119 Tower Street, Kingston, Solicitors  
for and on behalf of the Applicants.

APPLICANTS' (APPELLANTS') EVIDENCE.

*In the  
Supreme  
Court of  
Jamaica.*

No. 7.

AFFIDAVIT of Cecil Bert Green.

No. 7.  
Affidavit of  
Cecil Bert  
Green,  
30th May  
1945.

I, CECIL BERT GREEN, whose true place of abode and postal address is 110 Bury New Road, Prestwich, Manchester, Joint Managing Director of E. Griffiths Hughes Limited of Adelphi, Salford 3, Manchester, make oath and say as follows:—

1. My Company carry on business at Manchester aforesaid as manufacturing Chemists. My Company have a very large and long established business in the manufacture of Pharmaceutical products which are sold in the United Kingdom and in many Countries of the World. 10

2. One of the preparations manufactured and sold by my Company is "Karsote" Vapour Rub which is recommended for respiratory troubles. "Karsote" Vapour Rub has been sold by my Company in the United Kingdom continuously since 1938 and has been exported to various Dominions and Colonies including Jamaica since that date. A specimen of the label used by my Company on their said "Karsote" Vapour Rub is now produced to me marked C.B.G.1.

3. The words "Vapour Rub" are in common use to describe preparations for external use of the character sold by my Company as "Karsote" Vapour Rub. I crave leave to refer to the British Pharmaceutical Codex—1934 edition—p. 640 where under the monograph relating to Menthol the following statement appears: 20

"Vapour Rubs are preparations of menthol with other volatile substances in a base of soft paraffin and are applied to the chest for their local action and on account of their value when inhaled."

4. There are Vapour Rubs put upon the market by various manufacturers and the following are particulars of some of such users. I have obtained information of such users from the manufacturers concerned or from price lists in my Company's possession and which have been issued by such manufacturers. It is probable that in some cases the user of the words "Vapour Rub" goes back to an earlier date than that indicated. 30

The Thermogene Co. Ltd.,  
Haywards Heath

"Thermogene" Vapour Rub. For some time prior to 1938 to date.

Arthur H. Cox & Co. Ltd.,  
Brighton

Chest Vapour Rub. For some time prior to 1939 to date.

Wigglesworth & Co. Ltd.,  
West Houghton, Lancashire

Vapour Rub. From a date prior to 1941 to date. 40

Evans Son Lescher & Webb Ltd.,  
Liverpool

Chest Vapour Rub. Several years prior to 1938 to date.

Burgoyne Burbidges & Co. Ltd.,  
London

Vapour Rub. From 1935 to date.

Ayrton Saunders & Co. Ltd.,  
Liverpool

"Ayrton" Vapour Rub. From 1932 to date.

Lewis & Burrows Ltd.,  
London

Vapour Rub. Prior to 1931 to date.

Potter & Moore Ltd.,  
Manchester

Potters Vapour Rub. 50

	S. Maw Son & Sons Ltd., Barnet	Meritor Vapour Rub.
	Amorvan Ltd., Bradford	Amorvan Vapour Rub.
	A. E. Marlow, Penn Road, Wolverhampton	M.C.W. Vapour Rub.
	Samuel Shelley, Bilston	Cremco Vapour Rub.
10	Hebden, Halifax	Special Vapour Rub.

*In the  
Supreme  
Court of  
Jamaica.*

No. 7.  
Affidavit of  
Cecil Bert  
Green,  
30th May  
1945,  
*continued.*

5. The Vick Chemical Company of Wilmington, U.S.A. as I am informed and believe registered in 1924 in Jamaica in Class 3 of the Trade Mark Classification under No. 1852 a label bearing the words "Vick's Vapo Rub" and added matter in respect of a medicinal salve and ointment and on the 13th October 1941 the said Company registered in Jamaica in Class 3 of the Trade Mark Classification under No. 3707 the word "Vapo Rub" in respect of Chemical substances prepared for use in medicine and pharmacy such registration being associated with registration No. 1852.

20 6. On the 1st day of March 1944, the said Vick Chemical Company commenced an action in the Supreme Court of Judicature of Jamaica which is now pending against Cecil de Cordova, G. J. de Cordova and Cecil de Cordova & Co. Ltd. of Kingston, Jamaica, for an injunction to restrain such Defendants from infringing the said trade marks and from selling goods not the manufacture of the said Vick Chemical Co. under the name "Vapour Rub" or any other name so closely resembling "Vapo Rub" as to be calculated to deceive and for other relief. This action was commenced against the said Defendants by reason of the fact that at the time they were selling my Company's "Karsote Vapour Rub." The  
30 said Defendants, I am also informed and believe, in addition to defending the said action have applied to rectify the Register of Trade Marks in Jamaica by removing the said trade marks therefrom on the ground that the word "Vapo Rub" is disentitled to protection in any Court of Justice being a mis-spelling of the words "Vapour Rub" which words have been and are commonly used to describe medicaments of a particular character.

7. There is now produced to me marked C.B.G.2 a sheet showing specimens of the advertisements issued by the Vick Chemical Co., in Great Britain, Eire, and in various Islands of the West Indies, including Jamaica. It will be observed that in Great Britain and Eire the Vick  
40 Chemical Co., recognising the descriptiveness of the words "Vapo Rub" advertised their said preparation as "Vick brand Vapour-Rub" and in the West Indies as "Vicks Vapo Rub."

Sworn at Manchester in the County of }  
Lancaster this 30th day of May 1945 } CECIL BERT GREEN.

Before me,

GEO. WM. FOX,  
A Commissioner for Oaths.

Filed by ALBERGA & HART of No. 119 Tower Street, Kingston, Solicitors  
for the Applicants herein.

In the  
Supreme  
Court of  
Jamaica.

No. 8.

EXHIBIT "C.B.G.1."

Cecil de Cordova & Co. Ltd.

ats.

Vick Chemical Co.

No. 8.  
Exhibit  
C.B.G.1 to  
Affidavit of  
Cecil Bert  
Green,  
30th May  
1945.

This is the Label referred to in the Affidavit of Cecil Bert Green  
made before me this 30th day of May 1945.

GEORGE WM. FOX,  
A Commissioner for Oaths.

McKenna & Co. 10  
14 Waterloo Place,  
Pall Mall,  
S.W.1.

**KARSOTE VAPOUR RUB**  
PROTECTIVE-COMFORTING  
GERM-KILLING

**KARSOTE VAPOUR RUB**  
can be used freely and often  
and the germ-killing effect  
for nasal cavities, a little  
applied in the nostrils, often  
the required antiseptic effect  
is obtained.

**FORMULA**  
Camphor 1.50; Oil of Clove  
1.50; Eucalypti 1.50; Oil of Citronell  
0.50; Oil of Cedar 0.50; Cedar  
oil 0.50; Menthol 0.50;  
Santal 1.10; Peppermint  
0.50; Oil of Thyme 1.00; Oil  
of Rosemary 0.50; per cent.

**E. SMITH'S RUBBERS LTD**  
London, Liverpool & Manchester  
1945

**KARSOTE VAPOUR RUB**  
is a highly effective germ-  
killing vapour which  
can afford relief from  
in cases of respiratory  
troubles. Coughs, Colds,  
Sore Throat and Bronchial  
Affections. Where rub-  
on chest, neck or throat,  
it can be used in any  
the same time.

(1) Use as indicated  
product is absorbed through  
and confined to the affected  
area.

(2) It relieves the highly-in-  
flamed mucous membrane of  
nasal passages, throat and  
lungs. It is also effective  
against the germ-killing  
body. It is absorbed in  
the same time and is effective  
to every part of the breathing  
system.

No. 9.

EXHIBIT "C.B.G.2."

Cecil de Cordova & Co. Ltd.

ats.

Vick Chemical Co.

This is the sheet referred to in the Affidavit of Cecil Bert Green made before me this 30th day of May 1945.

*In the  
Supreme  
Court of  
Jamaica.*

—  
No. 9.  
Exhibit  
C.B.G.2 to  
Affidavit of  
Cecil Bert  
Green,  
30th May  
1945.

GEORGE WM. FOX,  
A Commissioner for Oaths.

Grenada 26/7/44

# VICKS IS HERE COLDS DISAPPEAR

Vaporub, Vatronol, Cough Drops

2/-

2/-

6d.

GERALD S. W. SMITH.

U.K. 21/1/44

## PUZZLE FOR PARENTS



**WHERE IS  
BABY'S COLD?**

Nose . . . throat . . . chest?  
Usually a baby's cold attacks  
all three. So bring help to all  
three. Rub "Vick" on throat,  
chest, and back at bedtime.

Healing vapours are released  
from "Vick" and breathed in.  
They clear stuffy nose, soothe  
sore throat, relieve coughing.  
Like a poultice, "Vick"  
warms away tightness in chest  
and throat.

While Baby sleeps in com-  
fort, "Vick" goes on easing  
all those miseries—breaks up  
most colds overnight!

Relieve **ALL** these miseries:

STUFFY NOSE  
SORE THROAT  
TIGHT CHEST  
COUGH

JUST  
RUB ON.. **VICK**  
BRAND VAPORUB

Trinidad Guardian 17/10/44

YOUR VAPORUB GOES  
**FURTHER**  
WHEN YOU RELIEVE COLDS  
**FASTER!**



Don't use more VapoRub  
... use it the most effec-  
tive way. To relieve  
severe chest colds, red-  
den the skin with hot,  
moist towels before ap-  
plying VapoRub.

Of course you know the comfort  
that comes when you rub VapoRub  
on throat, chest, and back for a  
chest cold. But do you know how  
to increase that relief?

Strengthen VapoRub's warming  
poultice action by applying hot,  
moist towels to chest and back  
until skin is reddened. Then rub  
VapoRub on throat, chest, and back  
as usual.

This special treatment  
doesn't use more VapoRub,  
but it increases the relief...

helps VapoRub to loosen conges-  
tion, and warm away that tight, achy  
pain in the chest more swiftly.  
And that's not all! VapoRub's heal-  
ing vapours are inhaled and clear  
stuffy nose, soothe sore throat, and  
relieve coughing.

This vapour-and-poultice action  
continues for hours, and by morning,  
often, the worst of the cold is over.



**VICKS  
VAPORUB**



Eiro 1942

# "FLU-COLDS"

... need the treatment that brings relief direct to your ...

**TIGHT, ACHY CHEST... STUFFED-UP NOSE... COUGH and SORE THROAT**

For quick relief from the misery of a "flu-cold", bring relief straight to the sore and congested nose, throat, and chest. How? Simply rub throat, chest, and back with VICK brand Vapour-Rub.

At once, you begin to inhale the soothing "Vick" vapours straight to the place where irritation and phlegm are interfering with your breathing and irritating your cough.

At the same time, "Vick" works on the chest and throat like a poultice, easing tightness and pain. In these two ways, "Vick" goes on working for hours, breaks up most colds overnight.



Trinidad Guardian  
10/10/44

## BABY'S COLDS



... Best-known home remedy for relieving symptoms of children's colds. No drowsiness, no upset stomach. Just rub it on. **VICK'S**

Daily Chronicle  
Demerara 28/9/44

## SORE THROAT



... due to a cold. Let a little time-tested, soothing VapoRub melt on tongue. **VICK'S**

Gleaner, Jamaica  
Nov. 1944

## NIGHT COUGHS



... due to colds. ... eased without drowsiness when you rub throat, chest and back with time-tested **VICK'S**

Eiro 7/2/42



It's really wonderful how much relief your child gets when you simply rub "Vick" on throat, chest and back.

**NOSE CLEAR.** Throat is soothed, coughing is relieved as he inhales the healing vapours that "Vick" gives off. At the same time ...

**CHEST AND THROAT** feel warm and comfortable as "Vick" works on the skin like a poultice, "drawing out" tightness and pain.

While the child sleeps, "Vick" keeps on working in these two direct ways. By morning, almost always, the worst of the cold is over.

Just rub on **VICK'S** BRAND VAPOUR-RUB

Port-of-Spain  
Gazette 27/10/44

Try this for

## Coughing Colds



Melt VapoRub in boiling water - inhale the steaming vapours right to the spot where help is needed.

**VICK'S** VAPOUR-RUB

AFFIDAVIT of Robert A. Peck.

In the  
Supreme  
Court of  
Jamaica.

No. 10.  
Affidavit of  
Robert A.  
Peck, 31st  
May 1945.

I, ROBERT A. PECK, whose true place of abode and postal address is 47 Stamford Hill, London, N.16, England, make oath and say as follows :—

1. I am Director of May Roberts & Co. Ltd. who carry on business at 47 Stamford Hill, London, aforesaid as Wholesalers and Manufacturing Chemists and my Company have branches at Cardiff, Liverpool and Plymouth.

2. My Company are also concerned with the distribution to the 10 retail trade of practically every well known brand of proprietary and pharmaceutical preparation.

3. The words "Vapour Rub" are words which are now and have for years past been in common use in the trade to describe a preparation of menthol and other volatile substances in a base of paraffin which are applied to the chest for local action.

4. My Company have marketed since the year 1943 a Vapour Rub which they sell under the name "VERAX."

5. Very many other manufacturers pack Vapour Rubs under their own trade marks and trade names and in addition to the KARSOTE 20 Vapour Rub marketed by Messrs. E. Griffiths Hughes Ltd., there are Vapour Rubs marketed by Thermogene Co. Ltd. Evans Sons Lescher and Webb, Burgoyne Burbidges Ltd., and Potter & Clarke Ltd., and in fact the number of Vapour Rubs marketed in this country is very numerous.

6. Having regard to the descriptiveness of the expression "Vapour Rub" and its mis-spelling "VapoRub" as exemplified by its use by trade and public alike to indicate a medicament for external use, the expression could not be distinctive of any particular brand of such product.

Sworn at 220 Stamford Hill in the }  
County of London this 31st day of } R. A. PECK. 30  
May 1945.

Before me :

SIMON GARNISKI,

A Commissioner for Oaths.

Filed by ALBERGA & HART of No. 119 Tower Street, Kingston, Solicitors for the Applicants herein.

No. 11.

## AFFIDAVIT of John Stanley Walmsley.

*In the  
Supreme  
Court of  
Jamaica.*

I, JOHN STANLEY WALMSLEY, whose true place of abode and postal address is 43 Gordon Square in the County of London make oath and say as follows :—

No. 11.  
Affidavit of  
John  
Stanley  
Walmsley,  
8th June  
1945.

1. I am Secretary to the Proprietary Association of Great Britain which is an association embracing the principal manufacturers in Great Britain of Household Remedies advertised to the public. I am also a member of the Pharmaceutical Society of Great Britain.

10 2. In the course of my duties I become acquainted with the preparations put upon the market by members of the pharmaceutical trade.

3. I am well acquainted with the preparations sold under the description "Vapour Rub." Many manufacturers put upon the market a vapour rub preparation distinguished by a particular trade name—such as "Karsote" Vapour Rub, "Thermogene" Vapour Rub and such user has existed for many years past. The words "Vapour Rub" are descriptive of the preparation and are in common use in the trade and no one manufacturer in this country can, or in my opinion, would be allowed  
20 to claim any monopoly in the use of the words "Vapour Rub" or "Vaporub."

Sworn at 2 Endsleigh Street, Tavistock  
Square, W.C.1, in the County of  
London this eighth day of June 1945 }

JOHN STANLEY  
WALMSLEY

Before me :

PETER R. B. ARMS,  
A Commissioner for Oaths.

Filed by ALBERGA & HART, of No. 119 Tower Street, Kingston, Solicitors  
for the Applicants herein.

## AFFIDAVIT of G. J. de Cordova.

*In the  
Supreme  
Court of  
Jamaica.*

No. 12.  
Affidavit of  
Gabriel  
Joshua  
de Cordova,  
22nd  
October  
1945.

I, GABRIEL JOSHUA DE CORDOVA, being duly sworn make oath and say :

1. My true place of abode is 95 Old Hope Road in the Parish of Saint Andrew my postal address is No. 146 Harbour Street Kingston and I am the Managing Director of the Applicants Cecil de Cordova & Co. Limited.

2. The Applicants are the Agents in Jamaica of Messrs. E. Griffiths Hughes Limited of Manchester, England the Manufacturers of an ointment 10 sold under the trade name of "Karsote Vapour Rub."

3. The Vick Chemical Company of 900 Market Street, Wilmington, Delaware in the United States of America are the registered proprietors of trade mark No. 1852 in class 3 for inter alia a medicinal salve and liniment consisting of the words "Vicks VapoRub Salve" and added matter registered on 7th April 1924 which registration was renewed on 7th April 1938 and of trade mark No. 3707 in class 3 for chemical substances prepared for use in medicines and pharmacy consisting of the word "VapoRub" registered on 13th October 1941.

4. The word "VapoRub" is a mis-spelling of the ordinary English 20 words "Vapour Rub" which have been used in pharmacy for many years to describe a preparation of menthol with other volatile substances in a base of soft paraffin to be applied to the chest and I crave leave to refer to the British Pharmaceutical Codex—1934 Edition—page 640 where a description of Vapour Rubs appears and to Martindale's Extra Pharmacopœia 21st Edition Volume 11 1938 Edition at page 375 where "Thermogene Brand Vapour Rub" is listed and at page 377 where "Vick Brand Vapour Rub" is listed.

5. The words "Vapour Rub" are merely descriptive of the method whereby when a substance of the kind described above is used the healing 30 ingredients which it contains are brought into operation on the organs to be treated.

6. Vapour Rubs are manufactured and sold as such by several manufacturers and agents in Jamaica and elsewhere and in particular I would refer to :—

(A) Vicks VapoRub manufactured by the Vick Chemical Company of the U.S.A.

(B) Karsote Vapour Rub manufactured by E. Griffiths Hughes Limited of England.

(C) Vapour-Rub manufactured by H. & T. Kirby & Co. 40 Limited of England.

(D) Thermogene Medicated Rub manufactured by Thermogene Co. Limited of England and described as a "vapourising" ointment.

(E) Benjamins VapoRox manufactured by P. A. Benjamin Manufacturing Co. Limited of Jamaica.

*In the  
Supreme  
Court of  
Jamaica.*

7. The word "VapoRub"

(A) is not an invented word, being merely a mis-spelling of the two ordinary English words "Vapour Rub"; and

(B) has a direct reference to the character and quality of the goods for which it is registered;

(C) is not distinctive as it does not distinguish the goods of the Vick Chemical Company from those of other persons.

*No. 12.  
Affidavit of  
Gabriel  
Joshua  
de Cordova,  
22nd  
October  
1945,  
continued.*

10 8. There is now produced and shown to me marked "G. J. de Cordova 1" a sheet showing specimens of the advertisements issued by the Vick Chemical Company in Jamaica and marked "G. J. de Cordova 2" a sheet showing specimens of the advertisements of Karsote Vapour Rub in Jamaica.

9. The Vick Chemical Company recognising the descriptiveness of the words "VapoRub" advertised their preparation at all times with the prefix "Vicks."

20 10. I crave leave to refer to the proceedings in Suit E. No. 8 of 1944 in the Supreme Court of Judicature of Jamaica in which the Vick Chemical Company are the Plaintiffs and Cecil de Cordova, Cecil de Cordova & Co. Limited and myself are the Defendants and respectfully submit that the Applicants herein are persons aggrieved within the meaning of Section 35 of the Trade Marks Law (Cap. 272).

Sworn to at Kingston in the Parish  
of Kingston this 22nd day of October } G. J. DE CORDOVA  
1945

Before me,  
J. JOSEPHS, J.P.

30 Filed by ALBERGA & HART, of No. 119 Tower Street, Kingston, Solicitors  
for the Applicants herein.

EXHIBIT G. J. de Cordova 1.

This is the sheet containing specimens of the advertisements issued by the Vick Chemical Company in Jamaica referred to in my Affidavit.

Sworn the 22nd day of October 1945.

T. JOSEPHS  
J.P.

G. J. de CORDOVA.

In the  
Supreme  
Court of  
Jamaica.  
No. 13.  
Exhibit  
G. J. de  
Cordova 1  
to the  
Affidavit of  
Gabriel  
Joshua  
de Cordova,  
22nd  
October  
1945.

2-way relief for  
**CHEST  
COLDS**

Vapours to ease breathing.  
Poultice action to relieve  
tightness... You get both  
when you rub on ↓



Gleaner—Tues. Dec. 5th 1944.

**BABY'S  
COLDS**



... Best-known  
home remedy for relieving miseries  
of children's colds. No dosing to  
upset stomach. Just rub it on. **VICKS  
VAPORUB**

Gleaner—Thurs. Nov. 30th 1944.

I've learned how to

**EASE CHEST COLDS  
QUICKER -** and make my VapoRub  
go further, too!



Nowadays you may not be able to get all the VapoRub you want just when you want it . . . so be sure to use what you have the most effective way, and so get more relief from every jar.

Since directions folders are not available for VapoRub any more, why not clip and save these hints for making VapoRub more effective in relieving severe chest colds?

Remember, the more effectively you use VapoRub, the fewer applications are needed to break up a cold . . . and you'll have more VapoRub left to relieve other colds.

**More Relief from Chest Colds**

Let stubborn chest colds yield more quickly if you follow these simple suggestions for increasing VapoRub's effectiveness.

1. Redden the skin on chest and back by applying hot, moist towels.
2. Rub VapoRub on the back as well as on the throat and chest.

3. Spread VapoRub thick on the chest and cover with a warmed cloth.

This method of using VapoRub increases the poultice action which "draws out" chest tightness, and prolongs the vapour action which clears stuffy nose, soothes sore throat, and relieves coughing. Try it . . . for quicker relief from severe chest colds.

Gleaner—Monday October 30th 1944.

No. 14.

EXHIBIT G. J. de Cordova 2.

This is the sheet containing specimens of the advertisements of Karsote Vapour Rub in Jamaica referred to in my Affidavit.

Sworn the 22nd day of October 1945.

T. JOSEPHS,  
J.P.

G. J. de CORDOVA.

In the  
Supreme  
Court of  
Jamaica.

No. 14.  
Exhibit  
G. J. de  
Cordova 2  
to the  
Affidavit of  
Gabriel  
Joshua  
de Cordova,  
22nd  
October  
1945.

**RUB AWAY NIGHT COUGHS**



To stop your child coughing at night, rub back and chest with Karsote Vapour Rub. The antiseptic ointment brings healing warmth. Germ-killing vapours penetrate to nose and mouth, loosening hard phlegm. Coughing stops. Your child sleeps peacefully.

**KARSOTE VAPOUR RUB**

**RUB AWAY CHILD'S COUGH!**



Wise parents know it is dangerous to neglect a child's cough. At the first sign of a cough, rub your child's chest, throat and back with Karsote Vapour Rub preferably when going to bed. Karsote Rub works in two ways. The antiseptic ointment brings healing warmth, relieves tightness of the chest, loosens phlegm, ends painful coughing. It also releases germ-killing vapours which are breathed in through nose and mouth, and so penetrate to every part of the breathing passages. Relief is usually obtained within a few hours.

**KARSOTE VAPOUR RUB**

Gleaner—Sat. Jan. 8th 1944.

Gleaner—Wed. Feb. 2nd 1944.

**RUB AWAY CHEST COLDS**



To get rid of a cold, rub chest well with Karsote Vapour Rub. It works in two ways. The antiseptic ointment brings healing warmth. Germ-killing vapours penetrate to nose and mouth, clearing away irritating phlegm. You stop coughing. Tightness in chest is loosened. Breathing becomes easy.

**KARSOTE VAPOUR RUB**

Gleaner—Sat. Feb. 12th 1944.

*In the  
Supreme  
Court of  
Jamaica.*

**RESPONDENTS' (RESPONDENTS') EVIDENCE.**

**No. 15.**

**AFFIDAVIT of Basil Oscar Parks.**

No. 15.  
Affidavit of  
Basil Oscar  
Parks,  
31st May  
1946.

I, **BASIL OSCAR PARKS**, being duly sworn make oath and say as follows :—

1. I reside at 31 Half Way Tree Road in the Parish of St. Andrew and my postal address is King Street Kingston Post Office and I am Managing Director of Jamaica Times Limited proprietor and operator of the Times Store at 8-12 King Street Kingston. The said business has for 16 years included a wholesale and retail drug department. 10

2. I know and am well acquainted with a medicinal salve manufactured and sold by Vick Chemical Company under the mark VapoRub. I have known same upwards of twenty years and have during that period seen it in most of the drug stores and retail shops in Kingston and other parts of Jamaica.

3. Up to 1942 I had never seen or heard of any product marked or described as Vapour Rub and I have not since seen or heard of any save as hereinafter expressly mentioned.

4. Early in 1942 my firm received 1 dozen bottles of a product marked Vapour Rub and manufactured by H. & T. Kirby & Co. Ltd., of 20 London. From my recollection and the records of the Company I verily believe that the said goods were sent on by the London Buyer of the Jamaica Times Limited as a trial shipment, they being in the habit of so acting for my Company. My Company's records show that in September 1942 we ordered another dozen and these arrived in September, 1943. At 15th April 1946 my Company had 5 bottles left in stock. Save as above mentioned my Company has never sold or handled the said product and I have never seen or heard of it elsewhere.

5. Subsequent to the above-mentioned period I saw on sale and advertised in Jamaica a product described as Karsote Vapour Rub and I 30 have sold same in my business.

Sworn to at Kingston in the Parish of }  
Kingston this 31st day of May 1946 } **BASIL PARKS.**

Before me,

**ROBERT B. BARKER,**  
J.P.

This Affidavit is filed by **LIVINGSTON, ALEXANDER & LEVY** of No. 20 Duke Street, Kingston, Solicitors for and on behalf of **VICK CHEMICAL COMPANY.**



No. 16.

AFFIDAVIT of Frederick Charles Fisher.

In the  
Supreme  
Court of  
Jamaica.

No. 16.  
Affidavit of  
Frederick  
Charles  
Fisher,  
31st May  
1946.

I, FREDERICK CHARLES FISHER, being duly sworn make oath and say as follows:—

1. I reside at 19 Hope Road in the Parish of St. Andrew and my postal address is 6 West Queen Street Kingston Post Office and I am Managing Director of Hidalgo's Limited proprietor of Hidalgo's Drug Store 6 West Queen Street aforesaid.

10 2. I acquired the aforesaid Drug Store in 1940 and at that time there was not in stock in the store nor referred to in the records of the business any product described as Vapour Rub nor had I ever heard of or seen any such product. I knew and was well acquainted with a medicinal salve manufactured by Vick Chemical Company and sold under the name VapoRub and same has continuously, so far as supplies have been available, been sold in Hidalgo's Drug Store and is well known and is referred to and identified by that name as the salve manufactured by the Vick Chemical Company.

20 3. In the early part of 1942 a representative of H. & T. Kirby & Co. Ltd., of London England called on me and solicited an order of 1 gross of a product described as Vapour Rub. I gave a trial order and arranged for labels to be printed with my Company's name and address.

4. Some time after the above mentioned time I saw a similar product described as Karsote Vapour Rub on sale and also observed advertisements thereof in the "Gleaner" newspaper. I have sold same in my business.

5. I have never seen or heard of any product described as Vapour Rub save as hereinbefore mentioned.

Sworn to at Kingston in the Parish of }  
Kingston this 31st day of May 1946. } F. C. FISHER.

Before me,

30 E. D. ARSCOTT,  
J.P.

This Affidavit is filed by LIVINGSTON, ALEXANDER & LEVY of No. 20 Duke Street, Kingston, Solicitors for and on behalf of Vick Chemical Company.

No. 17.

*In the  
Supreme  
Court of  
Jamaica.*

## AFFIDAVIT of Robert Cameron Humphries.

I, ROBERT CAMERON HUMPHRIES, being duly sworn make oath and say as follows:—

No. 17.  
Affidavit of  
Robert  
Cameron  
Humphries,  
1st June  
1946.

1. My true place of abode is at No. 4 Marley Road, in the Parish of Saint Andrew and my postal address is at 175 Harbour Street, Kingston Post Office and I am Managing Director of Jamaica Agencies Ltd.

2. In 1919 I became Manager in Jamaica of M. T. Stark Incorporated of New York doing business here. From 1923 that firm represented Vick Chemical Company and from that time I was intimately connected 10 with the sale of VapoRub in Jamaica.

3. Jamaica Agencies Limited have since the year 1929 been the representatives in Jamaica of Vick Chemical Company the registered proprietors of the above mentioned Trade Marks and have sold in Jamaica the products of the said Company and attended to the affairs of the said Company in Jamaica.

4. From prior to the year 1919 Vick Chemical Company have sold in Jamaica a medicinal ointment or salve bearing the trade mark "VapoRub" which was then and is now the registered Trade Mark in the United States of America of the Vick Chemical Company on the bottles and containers. The said ointment or salve has become very well known 20 in the medical profession in the trade (comprising wholesalers, drug stores and retail shops) and amongst the general public and such parties know and identify VapoRub as being the ointment made by the Vick Chemical Company and there has not been known in Jamaica any other product of the like or other type known or designated by the word VapoRub or the words Vapour Rub save as hereinafter expressly mentioned and from my intimate knowledge of the business and association with the classes of persons above mentioned it is within my knowledge that the medical profession the trade and the public associate the name VapoRub solely 30 with the product of the Vick Chemical Company and the use of the words Vapour Rub or any phonetic equivalent of VapoRub by anyone else would cause confusion in the trade and to the public and the passing-off of the latter's goods as the goods of Vick Chemical Company.

5. I have read the affidavits of Cecil Bert Green and the exhibits thereto, of Robert A. Peck, John Stanley Walmsley and G. J. de Cordova and the exhibits thereto respectively filed in this Honourable Court. I have enquired in all the principal shops doing business in goods of the type including Kinkead Ltd., Jamaica Times and Nathan & Co. Ltd., all of King Street, Kingston, Apothecaries Hall, Cross Roads, Bev Drug 40 Store, Half Way Tree and numerous other shops in different parts of Kingston to ascertain whether any products of the type mentioned and manufactured by the Companies mentioned in paragraph 4 of Cecil Bert Green's Affidavit are obtainable and I have ascertained that the only goods of any of such companies so obtainable is the product of Thermogene Co. Ltd. which is described as "Thermogene Medicated Rub" and is not

in any way described as "Vapour Rub" nor do the words "Vapour" and "Rub" in juxtaposition, appear thereon. I found this product in nearly all the establishments I visited and which is well distributed throughout Jamaica.

*In the  
Supreme  
Court of  
Jamaica.*

No. 17.

*Affidavit of  
Robert  
Cameron  
Humphries,  
1st June  
1946,  
continued.*

6. I also enquired for ointments or salves of the same nature and used for the same purposes as the Vick Chemical Company's product sold under the mark VapoRub and found eight other products of a similar nature on sale none of which are described as "Vapour Rub" nor have the words "Vapour" and "Rub" in juxtaposition. Such products  
10 are:—

(1) MENTHOLATUM made by Mentholatum Co. Ltd. of Slough, England, and of Ontario, Canada.

(2) EVAPO-TEX made by Tropical Medicine Co. of Kingston.

(3) MENTHIO VAPO made by Zanel Company of Cincinnati, Ohio. U.S.A.

(4) MILLER'S VAPOURISING SALVE made by Northrop & Lyman Co. Ltd. Toronto, Canada.

(5) BUCKLEY'S STAINLESS WHITE RUB made by W. K. Buckley Ltd. of Toronto, Canada.

20 (6) TURPO VAPOR made by Glessner Co. of Finlay, Ohio. U.S.A.

(7) RAYGLO CHEST BALM made by Cupal Ltd. of Blackburn, England.

(8) TAYLOR'S A.P. SALVE made by W. A. Taylor & Co. of Kingston.

7. I also enquired amongst numerous druggists and business houses and ascertained that the British Pharmaceutical Codex and Martindales Extra Pharmacopœia or either of them were owned and used by only one party amongst all those of whom I enquired, namely Kinkead Ltd., whilst  
30 fifteen others owned and used the British Pharmacopœia.

8. For a short time in 1933 P. A. Benjamin Manufacturing Co. Ltd. put up a product on which they used the words Vapor Rub and I advised my principals of this and the use of the said words by P. A. Benjamin Manufacturing Co. Ltd. ceased and it is now called "Vaporox."

9. I was instructed by Vick Chemical Company to keep careful watch for infringements of their Trade Marks and in 1937 I discovered a medicated ointment manufactured by Cupal Ltd. described as "Cupal Iodised Chest Vapour Rub" on sale in Kingston. It was only in very small quantities and I brought it to the attention of Vick Chemical  
40 Company. I found no further examples of this product and subsequently a medicated ointment was marketed by Cupal Ltd. under the name "Rayglo Chest Balm."

10. In late 1937 similar circumstances arose with "Ayrton Brand Vapour Rub" with similar result as to the disappearance of the product

*In the  
Supreme  
Court of  
Jamaica.*

from the market. In 1940 my firm received a circular from E. Griffiths Hughes Ltd. offering "Karsote Vapour Rub" and I brought same to the attention of Vick Chemical Company. The first time I was aware of "Karsote Vapour Rub" being on sale in Jamaica was early in 1943.

No. 17.  
Affidavit of  
Robert  
Cameron  
Humphries,  
1st June  
1946,  
*continued.*

11. In my investigations to ascertain whether any other products described as Vapour Rub were on sale in Jamaica and also the variety of other salves or ointments obtainable and used for the same purposes as VapoRub I found only one package of the Cupal product described as Vapour Rub. This was located at William's Drug Store, 8 West Queen Street, Kingston and I verily believe it is one of the old lot which I discovered in 1937. I found that the Cupal Ltd. product of the same description under the Trade Mark Rayglo was well distributed. 10

12. In the Times Store I found that there were six bottles in stock of a product made by H. & T. Kirby & Co. Ltd. described as Vapour-Rub. I am informed and verily believe that that product was first received by Jamaica Times Ltd. early in 1942. I also in the course of my enquiries found at Hidalgo's Ltd., a drug store situate at 6 West Queen Street, Kingston, a product described as Vapour Rub and I am informed that Mr. F. C. Fisher the proprietor of Hidalgo's Drug Store acquired the business of Hidalgo's Ltd. in 1940 and there were then no such goods in stock and his recollection is that early in 1942 a representative of H. & T. Kirby & Co. Ltd. called on him and introduced the product to him and he purchased one gross and had had no further dealings therewith and had left in stock only two bottles. I crave leave to refer to the Affidavits of B. O. Parks, the Managing Director of the Jamaica Times Ltd. and the said F. C. Fisher above mentioned. From my investigations and enquiries I verily believe that the above product has not had a large sale in Jamaica. 20

13. According to my record the importation of VapoRub into Jamaica has been as follows :—

1938	..	..	..	..	24552 bottles	30
1939	..	..	..	..	25632	"
1940	..	..	..	..	35568	"
1941	..	..	..	..	10944	"
1942	..	..	..	..	19296	"
1943	..	..	..	..	11232	"
1944	..	..	..	..	30528	"
1945	..	..	..	..	24480	"

Sworn to at Kingston in the parish of }  
Kingston this 1st day of June 1946 } R. C. HUMPHRIES.

Before me,

ROBERT B. BARKER,  
J.P.

40

This Affidavit is filed by LIVINGSTON, ALEXANDER & LEVY of No. 20 Duke Street, Kingston, Solicitors for and on behalf of VICK CHEMICAL COMPANY.

INTERLOCUTORY ORDER.

No. 18.

CONSENT ORDER.

Suit E No. 8 of 1944.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs  
and

10 CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. - - - Defendants.

*In the  
Supreme  
Court of  
Jamaica.*

No. 18.  
Consent  
Order of  
Mr. Justice  
Cluer, 18th  
December  
1945.

R.M.C.  
J.  
18.12.45

The 18th day of December 1945 before Mr. Justice CLUER in Chambers.

UPON the application of Mr. Clinton Hart of Messrs Alberga & Hart Solicitors for and on behalf of the Defendants herein and by and with the consent of the Plaintiff testified by the signature of Messrs. Livingston Alexander & Levy Solicitors for and on behalf of the Plaintiff appearing in the margin hereof AND UPON referring to the Summons taken out on behalf of the said Defendants and dated the 29th day of November 1945 for an Order that the Defendants be at liberty to issue a commission for the examination of witnesses on their behalf at London England IT IS

20 HEREBY ORDERED as follows:—

1. That in lieu of the said Commission the Defendants shall be at liberty on the hearing of this action but without prejudice to any question of relevancy and saving all other just exceptions to give in evidence the affidavits of John Stanley Walmsley sworn the 8th day of June 1945 of Robert A. Peck sworn the 31st day of May 1945 and of Cecil Bert Green with the exhibits thereto attached sworn the 30th day of May 1945 respectively and all filed in this Honourable Court on the 26th day of October 1945 in support of Motion E. No. 44 of 1945.

30 2. That either party shall be at liberty at the hearing of this Action and Motion E. No. 44 of 1945 to give in evidence but without prejudice to any question of relevancy and saving all other just exceptions photoprints of registration certificates or of certified copies thereof of the trade mark registrations granted outside of Jamaica to such party without further proof and photoprints of original letters documents or correspondence in lieu of the originals.

3. That the costs of the said Summons and this Application and Order shall be costs in the cause.

(L.S.)

40 Entered by ALBERGA & HART, of No. 119 Tower Street, Kingston, Solicitors for and on behalf of the above-named Defendants.

We Consent.  
Livingston Alexander & Levy,  
Plaintiff's Solicitors.

*In the  
Supreme  
Court of  
Jamaica.*

**TRIAL.**

**No. 19.**

**JUDGE'S NOTES of Evidence.**

No. 19.  
Notes of  
Evidence of  
Mr. Justice  
Savary,  
3rd June  
1946 to  
31st July  
1946.

Suit E. No. 8 of 1944.

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.**

Between **VICK CHEMICAL COMPANY** - - - Plaintiffs  
and

**CECIL DE CORDOVA**  
**G. J. DE CORDOVA**  
**CECIL DE CORDOVA & CO. LTD.** - - Defendants. 10

Suit E. No. 44 of 1945.

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.**

In the High Court  
In Equity.

**IN THE MATTER of an Application by CECIL de CORDOVA & Co.  
LTD.**

and

**IN THE MATTER of the Registered Trade Marks Nos. 1852  
and 3707 of Vick Chemical Company**

and

**IN THE MATTER of the Trade Marks Law (Cap. 272).**

20

*Plaintiffs'  
Evidence.*

**No. 19 (a).**

**FELIX BOLIVAR FRANCIS said :—**

No. 19 (a)  
Felix  
Bolivar  
Francis,  
4th June  
1946,  
Examina-  
tion.

Buff Bay—Portland—J.P. Licensed druggist. Operate drug and  
pharmaceutical department at Buff Bay—also have grocery, hardware  
and gasolene &c. and manage Drug Department.

Know Vicks VapoRub—about 17 years—dealt in it for same period.

Karsote appeared in 1943.

No other competing material with word VapoRub until Karsote  
appeared. 30

VapoRox was on market made by Benjamin Company of Jamaica  
and so was Thermogene Rub.

Never handled "Mentholatum" or any others but those above.

Very good trade in Vicks VapoRub—people believe in it and use it  
for babies up.

Some people say Vicks, some Vicks with VapoRub, and some VapoRub.

When people ask for Vicks they mean VapoRub and when they ask  
for VapoRub they mean Vicks.

Have at present Vicks and Karsote in store—but if person asks for  
VapoRub I hand bottle of Vicks. 40

At times I have had only Karsote and if people asked for VapoRub  
I would say I have only Karsote and invariably they have refused it—  
but I have tried to get them to take it as I had it in stock.

- Karsote was poor seller.
- I use British Pharmacopia, Materia Medica and The Art of Dispensing as books.
- Never come across a medicine called VapoRub in any book.
- Prior to Karsote's arrival never saw word VapoRub used except by Vicks.
- XXd.* :
- I would say it was around 17 years ago—started business in 1927.
- I see carton No. 3 (1927-1928)—Can't say if it represented carton of that year—did not notice word "salve."
- Know Vicks made by Vicks Co. would say VapoRub means an article you rub that vaporises—and it is made by Vicks.
- It is remedy for respiratory ailments—rubbing stimulates skin and acts on muscles and inhalation acts on air passages.
- Don't say VapoRub is apt description—Yes, it is apt description—You rub it and it volatilises.
- Have noticed prominence given to word "Vicks"—as against VapoRub.
- Ordinary people call it Vicks—better type say Vicks VapoRub.
- I handle "Vicks Vatronal" and "Vicks Cough Drops."
- If people want Vatronal they say Vicks Vatronal.
- Have Thermogene Rub in my store but can't say if I have VapoRox—first came on market 8-9 years ago as VapoRox.
- Don't remember stocking Benjamin's product "Vapour Rub."
- First stocked Thermogene Rub 3-4 years ago.
- Buy Karsote from Chinese Wholesaler in Barry Street by packages of a dozen—can't say if I get them in brown paper parcel or in box containing 12.
- I only had one supply of Karsote about 2 years ago—around 1 dozen —have several lots left—at least 5 left—perhaps more.
- Sell 5 to 6 dozen Vicks VapoRub a year.
- Sell half-dozen a year of Thermogene—had two supplies of half-dozen at a time.
- There is Druggist Association in Jamaica.
- Know Pharmaceutical Society of Great Britain.
- Heard of British Pharmaceutical Codex—I understand it is work of highest reputation.
- Never heard of "Extra Pharmacopœia."
- Can't say under whose authority books I mentioned were printed.
- 40 Re-Xd.* :
- Know what Vicks VapoRub used for—if I heard of word without knowing how it was to be used I would not know what it was—I would think it was liniment.
- Better type say Vicks VapoRub or Vapo Rub.
- I mean people of better education.
- People who are better off are the biggest buyers of VapoRub.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (a).  
Felix  
Bolivar  
Francis,  
4th June  
1946,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion.

Re-  
examina-  
tion.

No. 19 (b).

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (b).  
Dudley  
Arlington  
Haughton,  
4th June  
1946,  
Examina-  
tion.

DUDLEY ARLINGTON HAUGHTON sworn saith :

Licensed druggist at Mandeville—about 20 years—fairly large business.

Owner of “ Manchester Drug Store ”—opposite market.

Known Vicks VapoRub from 1923.

Three years ago first saw other preparations called VapourRub—  
Karsote.

Sell a lot of Vicks VapoRub.

For 5 months of year have sold over a gross.

Some ask for Vicks VapoRub, some VapoRub and some stainless 10  
Vicks.

When I order I say Vicks VapoRub.

Vatronal came on market many years ago—stock it.

If some one asks for “ Vicks ” I would ask if he wanted something to  
rub on for cold in head.

Have Karsote in stock—1s. 3d. a jar—sale is very slow—no comparison  
with Vicks.

Don't think I sold 2 dozen in a year.

If persons ask for VapoRub I give them Vicks and they are satisfied.

If customer asks for VapoRub I understand he wants Vicks. 20

First knew of Karsote through Mr. Levy of de Cordova Agencies.

I bought as I was told Karsote was cheaper and was just as good.

Have British Pharmacopœia and Extra Pharmacopœia—one is 1932  
—can't remember date of other.

Never heard of words “ VapoRub ” or “ VapourRub ” used except in  
connection with Vicks product.

Remember Benjamin's VapoRox and have imported Miller's Vapo-  
rising salve as far back as 1929.

Cross-  
examina-  
tion.

XXd. :

Still sell Miller's. 30

Get 3 dozen at a time and lasts a year or longer.

Stocking Vicks from 1922.

Stock Mentholatum—for chest rub, neuralgia and headache—also for  
after shaving.

Did not know it could be used to put up nostrils, as preventative  
against influenza infection.

Don't sell much Mentholatum.

Got 6 dozen this year and have 4-5 dozen left.

Before that I got some in October.

Get it from Agents, Hopwood's. 40

It was off market for some time on account of war.

Stocked it in 1939.



I would say this carton is Vicks VapoRub—and I would describe it as a salve put up by Vicks Co. to alleviate chest colds and allied ailments.

If man wanted VapoRub and could not afford to pay for it I would offer him Karsote.

If man asked for Vicks and could not afford to pay for it I would offer Karsote or one of the others and would tell him it is someone else's product.

If man asks for Vicks I would give him VapoRub and if he said he wanted for head cold I would give him Vatronal.

10 Before other Vicks products came on market and men asked for Vicks I would give him VapoRub.

Have not looked at Extra Pharmacopœia about this case.

I sell Karsote at 1s. 3d. and Vicks at 2s. 7d.

Formula of Vicks is at bottom of carton.

Vicks is used for stimulation and inhalation.

I would say VapoRub is a true description of article—answers purpose completely.

Difference between formulas of Karsote and Vicks.

Used Thermogene and Vicks myself.

20 Vicks and Karsote have similar smells—no reason to doubt formulæ.

Heard of British Pharmaceutical Codex—word of highest authority.

Don't remember Benjamin's on market as Vapour Rub—8 years ago I first stocked Benjamin's—get one dozen at a time—don't sell much.

*Re-Xd. :*

Vicks Jar is bigger than Karsote—twice as big.

If man told me he had seen thing called VapoRub in U.S.A. I would think it was salve for rubbing.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (b).  
Dudley  
Arlington  
Haughton,  
4th June  
1946,  
Cross-  
examina-  
tion,  
*continued.*

Re-  
examina-  
tion.

No. 19 (c).

ROBERT McKENZIE DUNNING sworn saith :

30 Vice-President of Plaintiff Company and am in charge of all exports of Company—Chairman and Export Manager Chairman of Foreign Trade Section of Proprietary Association of U.S.A. since 1942.

Association is made up of manufacturers of proprietary medicines—about 75 per cent. of them.

Also Chairman of Drug Industry Export Committee of U.S.A.

Committee composed of representatives of Proprietary Association, America Drug Manufacturers Association and American Pharmaceutical Manufacturers Association.

40 Proprietary Association is composed of manufacturers who advertise products and the other two sell by propaganda to Overseas.

These three bodies compose big proportion of manufacturers.

Committee formed so that Government would have body with whom to deal in wartime—formed in 1941 and I was Chairman from then.

No. 19 (c).  
Robert  
McKenzie  
Dunning,  
4th June  
1946,  
Examina-  
tion.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

*No. 19 (c).  
Robert  
McKenzie  
Dunning,  
4th June  
1946,  
Examina-  
tion,  
continued.*

Joined Plaintiff's Company in September 1926 and was in Export Department.

From 1927 Assistant Export Manager—and then Export Manager—and then Vice-President.

My understanding from records of company is that VapoRub was first put out by a Mr. Richardson a druggist, in 1896—known then as "Vicks Croup & Pneumonia Cure."

About 1911 first called VapoRub.

VapoRub registered as Trade Mark in U.S.A. in 1915.

Application in 1913.

10

This is photostat of certificate of registration (C.C.).

Registered mark is still in force in U.S.A. and has been in continuous use to this day.

I see two other certificates of Registration C.C. 1 and 2.

Use of trade mark not challenged in U.S.A.

Never heard of two words VapoRub to mean salve or ointment, by any other company medicated salve or ointment.

United States Pharmacopia and National Formula correspond to British Pharmacopia and Pharmaceutical Codex.

Word VapoRub is not found in either book.

20

Term Chest Rub is used to indicate products of this type.

First time I remember Vicks VapoRub is when I went to look for job (1926).

Also knew then of Mentholatum and Musterole.

100-200 chest rub preparations have been on market within last 20 years.

None of them used one word or two word VapoRub or Vapour Rub.

Our product is manufactured in England, Eire, South Africa, Australia, New Zealand and Canada.

Export business started between 1920 and 1923.

30

Have sold in 106-107 countries but now it is about 70.

Trade Mark registered in 69 or 70 countries—Vicks VapoRub.

Trade Mark VapoRub alone is registered in 50 countries and 20 of them are English speaking countries.

Trade Mark registered in England in 1920 and renewed in 1935.

"VapoRub" alone is registered in England, Canada, New Zealand, South Africa and in Jamaica, Trinidad and Barbados.

Product has never been patented.

Vicks VapoRub exports outside of U.S.A. and Canada, United Kingdom and Eire total 41,000,000 units = \$6,500,000 over 8 years.

40

In U.S.A. unit sales for 8 years are over 200,000,000 units = \$40,000,000.

Canada, United Kingdom and Eire are not in these figures as I have not got those figures—but we have large sales.

Part of my duty is to keep watch on possible competitors.

No country that I know of where word VapoRub or Vapour Rub is used in trade except United Kingdom and Eire where we ourselves used the two words Vapour Rub as others do.

There have been 15-17 products where words Vapour Rub used in various countries but we have been able to get from those manufacturers or sellers except "Karsote" undertaking not to use word.

Case in Holland against Karsote in 1939—Trade Mark was registered in Holland—decision was in our favour—case similar to this one.

10 Advertise extensively—in 8 years in U.S.A. spent \$7,000,000—in newspapers, radios, magazines, store displays.

In Jamaica first Trade Mark registered in 1924—since then steady advertising.

Have personal knowledge of advertising in Jamaica—planned great deal of it and carried out one campaign in Jamaica in 1929.

Familiar with booklet, etc.

Can vouch for history of advertisement in Jamaica.

Basic aim of advertisement campaign was to increase sales and to tie goodwill of article to company's name—so that when we put on other products they would be accepted more easily.

20 When we put out new products we found expectations realised and put that down to campaign to tie Vicks VapoRub to Vicks Company.

Put out folders, counter stands and free distribution of samples in early years.

Samples distributed from house to house and also booklet distribution.

Two types of demonstration in drug stores.

Vaporub lit and inhaled.

Produce list of sales of product in Jamaica. "K."

30 In 1929 I was two weeks in Jamaica—one week in the country—Mandeville, Savanna la Mar, Montego Bay, St. Ann's Bay, Brown's Town and then back to Kingston.

Called on between 10 and 15 drug stores a day and found Mentholatum being sold as competitor and one article in Kingston, a German product, Menthol Vapourous Salve, which had no sale.

I would say public identify Vicks with VapoRub and VapoRub with Vicks.

In 1941 registered Trade Mark "VapoRub"—at that time no product bearing that name or name like it.

40 In 1941 position same as in 1929 save that people used word VapoRub or Vatronal to indicate what they wanted. Between 1926 and 1941 knew of three cases where word Vapour Rub used.

Don't remember Benjamin putting article on market with VaporRub on it but they advertised it.

In 1933 Benjamin advertised a thing as Vaporox or Vapor Rub—we took matter up with them and got undertaking that they would discontinue use of these words.

Two other cases of Cupal & Burgoyne—and when found on market here agents apologised and said it was old stock and withdrew from sale.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiff's  
Evidence.*

No. 19 (c).  
Robert  
McKenzie  
Dunning,  
4th June  
1916,  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (c).  
Robert  
McKenzie  
Dunning,  
4th June  
1946,  
Examina-  
tion,  
*continued.*

Four years before we had had undertaking from them to remove them from their catalogues, this was in British Honduras.

August 1936 got word that Burgoynes were attempting to market similar article, Vapo Rub in Trinidad and we got undertaking from them.

1933 undertaking from Ayrton's—in Jamaica.

Plaintiff Company commenced marketing goods in England from 1918–1923—some by us and some by wholesalers.

Competition then from Mentholatum and Musterole and afterwards other products came in.

First put on market in England as “Vicks VapoRub.”

10

Nov. 1924 marketed then as “Vick Brand Vapour Rub.”

We were first to use word Vapour Rub in England.

Changed name of product in England as a result of advice from solicitors so as to claim exemption under Medicine Act and have sold in United Kingdom and Eire ever since as “Vick Brand Vapour Rub.”

5–6 years after was first time others used words “Vapour Rub.”

What Green says in affidavit is not correct as no one else used words “Vapour Rub” in 1924 when we changed words and we did this entirely on advice of solicitor.

When others began to use words “Vapour Rub” we were then 20 beginning to get satisfactory sales.

After we changed name to Vick Brand position not satisfactory at first as we spent \$100,000 in advertising and got \$20,000 of sales.

Know Pharm. Codex of England and Extra Pharm.

In 1934 word Vapour Rub appeared for first time in Codex and in 1938 in Extra Pharm.

5th June 1946.

*Manley :*

List of documents and exhibits prepared and handed to Court which are to be put in evidence subject to any objections as to relevancy and 30 materiality at any stage.

British Pharmaceutical Codex—1934—marked E.E.

British Pharmacopœia—1932—marked D.D.

Extra Pharmacopœia—1938—marked F.F.

C.C.1 contains picture of tin used in Spanish speaking countries.

Cross-  
examina-  
tion.

*XXd. :*

If I saw label with “Vaporising Ointment” I would say it was descriptive of ointment.

Ointment and Salve mean more or less same thing.

I am layman—not chemist or druggist.

40

“Rubbing Ointment” would be ointment to rub on.

Vapour Rubbing Ointment would be using noun “vapour” as adjective.

[sic]

Adjective is descriptive but *warm* is not.

Chest Rub is not grammatical but it is in use.

Our products are supplied here from Canada since war—We have branch here.

Plaintiff is Company incorporated in U.S.A.—No company incorporated in Canada.

Firm is of repute in U.S.A.—any statements in folders should be true.

In relation to Vicks VapoRub emphasis is on Vicks—in the leaflets. Started using word “VapoRub” in 1911.

Leaflets in F are in use in Jamaica.

10 Accent is on Vicks from 1923 to 1933.

Vicks was discovered in sense that it was improvement on what was then in use—as set out in folder (1923-1928).

It was process for making ointment that affords double indication—stimulation of skin and inhalation—as made by Richardson.

Process is method of making the ointment.

Codex is word of reference of authority.

In No. 4 of folders we refer to Codex—not for U.S.A. but for British Colonies.

20 We treat “VapoRub” as one word—In U.S.A. we spell “Vapour” “Vapor.”

In VapoRub word “R” is capital as it is fanciful word used to combine the two thoughts in words “Vapour” and “Rub.”

Trade Mark registered in England in 1920—it is one word Vaporub all in one script and R. is not capital. I was not in Company when application to register by Chemical Hall Ltd. of “Vicks VapoRub Salve” was opposed. (See T. of List of Documents.)

I think Trade Mark registered on 25th July 1922 is still in force—it was carton in English and Spanish used for export—(See T.) (Certificate of 1935 referring to one of 25th July 1922 is C.C.2.)

30 “VapoRub de Vick” is equal to Vicks VapoRub—discontinued this carton in South America as we found it was wrong approach.

Trade Mark Journal of June 8, 1922 marked G.G.

Trade Mark 1852—“Vicks VapoRub”—in Jamaica. (See M)—that was trade mark in Jamaica.

I have initialled on D(1) the first carton used in Jamaica the panel most closely resembling the Trade Mark. Can't say if enclosing device is part of Trade Mark. “Salve” in Trade Mark is different to “Salve” in D(1). I would say “VapoRub,” is adjective in relation to “Salve”—I mean “adjectival.”

40 In “Vicks VapoRub Ointment” I would say ointment is generic name, VapoRub describes the kind of ointment and Vicks is manufacturer.

Discontinued form of Vicks.

From 1926 did not use quite same type of lettering as subsequently appeared in Trade Mark 3276—deep V—on cartons.

In later cartons we used word “Ointment” and not “salve” as people in England said word “salve” was not correct.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

—  
No. 19 (c).  
Robert  
McKenzie  
Dunning,  
5th June  
1946,  
Cross-  
examina-  
tion,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (c).  
Robert  
McKenzie  
Dunning,  
5th June  
1946,  
Cross-  
examina-  
tion,  
*continued.*

B is present get-up.

We have Trade Marks in Canada—carton in January 1922 and “VapoRub” in March 1917—Federal.

Know English market—over in 1932 and 1933.

From 1926 and prior to that date we marketed products in England—in carton—“Vicks Brand Vapour Rub”—These two words were hyphenated at one time.

I think this is bottle of Vicks sold in England—wartime pattern—no carton and no directions folder—only smaller size sold during war.

Words “Vapour-Rub” is hyphenated. 10

Adopted “Brand” form so as to escape duty under Medicine Stamp Act—advice was that we should put word “Brand” and spell “Vapour-Rub” and not “VapoRub.”

Also advised that there must be at least six products under Vicks Brand so as to claim exemption.

We have never paid stamp duty on Vicks Brand, &c. from 1926.

We kept up comparison between our products and others.

A number of persons put Vapour Rub products on market.

Lewis & Burrows in 1931 had trouble with Revenue.

Authorities—about “Ell and Bee” Vapour Rub. 20

Know “Pharmaceutical Formulæ” compiled by “Chemist and Druggist” in book form.

In Formula there is formula for chest Vapour Rub.

I read judgment in case of Lewis & Burrows.

Lewis & Burrows were prosecuted under Revised Regulations under Medicine Stamp Act—whereby you had to have formula on label and carton—qualitative and quantitative formula and a disclaimer of proprietary rights in product—Alternative was to give reference to book where standards were set out—Book recognised by trade—we had to satisfy Courts of Excise and Customs. 30

Book did not give formula but referred to Pharmaceutical Formula for Chest Vapour Rubs.

We adopted first rule about giving formula and disclaimer.

Since 1924 made no attempt to use word “VapoRub” in England.

Lewis & Burrows lost case.

After case deluge of products with word Vapour Rub on English market and goods sent to Eire and North Ireland.

Manufacturers of Karsote are well known firm of good standing.

(O'Reilly refer to affidavit of Cecil Bert Green.)

As far as we know “Karsote Vapour Rub” exported in large 40 quantities to India, Cyprus, Trinidad, Jamaica, Kenya—large enough quantities for our Agents to take notice of.

Before 1931 there was confusion in England as to stamp duty under Medicine Stamp Act—position obscure.

Before 1931 only know of Lewis & Burrows Vapour Rub.

I would not doubt what Green says in paragraph 4 of affidavit about Vapour Rubs on English market.

Sheet of advertisements of plaintiff company referred to in para. 7 of Green's affidavit is correct.

I have been in charge of advertisements at different times.

*Re-Xd. :*

Can't say in what quantities Karsote was exported to the five countries I named.

In Trinidad notified by agents in 1946 of appearance of Karsote.

10 Agents notified of appearance in Cyprus in 1945.

Agents notified of appearance in India at end of 1945.

Agents notified of appearance in Kenya in September 1945.

Only knew of sale of Karsote outside of England before this action in Holland in 1939.

We put six brands of Vicks Products on market.

Have read Judgment in *Attorney General v. Lewis & Burrows*.

No class of article described as "Vapour Rub."

In U.S.A. "VapoRub" was invented in U.S.A. by Plaintiff Company.

20 Believe "Vapour Rub" was invented for Vick Chemical Co. in England and first used by them in England in 1924.

Product sold in Jamaica is "Vicks VapoRub Ointment."

"VapoRub" distinguishes ointment from "Vatronal," "Cough Drops" and "Inhaler."

*By leave to O'Reilly :*

I see in application for Trade Mark that it includes "Headache" and "tablets"—I can give no explanation—(See V.)

No. 19 (d).

WILLIAM HENRY PIERCE sworn saith :

30 Manager drug store at Port Antonio—not licensed druggist. In that business for 18 years.

Known Vicks VapoRub for 18 years—carried it in stock for that period.

Order "Vicks VapoRub" from Agents—in that name.

Also know "Vicks Vatronal."

Know "Karsote Vapour Rub"—only knew "VapoRub" as Vicks product until Karsote came on market.

Customers ask for "Vicks" or "Vicks VapoRub."

Have had Vicks and Karsote in stock at same time.

People prefer Vicks to Karsote.

40 and People have asked for VapoRub and it comes to my mind it is Vicks and I hand them Vicks and they accept it—no case where not accepted.

In my experience public identify VapoRub with Vick product.

*In the Supreme Court of Jamaica.*

*Plaintiffs' Evidence.*

No. 19 (c).  
Robert McKenzie Dunning,  
5th June 1946,  
Cross-examination,  
*continued.*  
Re-examination.

Re-cross-examination.

No. 19 (d).  
William Henry Pierce,  
5th June 1946,  
Examination.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (d).  
William  
Henry  
Pierce,  
5th June  
1946,  
*continued.*  
Cross-  
examina-  
tion.

*XXd. :*

Stocked Karsote within last 3-4 years—a dozen at a time.

Vicks I got in  $\frac{1}{2}$  or gross lots.

I would say I sell 72 bottles of Vicks to one of Karsote.

Agents sent me first lot of Karsote—have had 4 dozen in all.

To people who can't pay price of Vicks I offer Karsote and say it is other product and not Vicks and sometimes they take it sometimes not.

I sell  $\frac{1}{2}$  gross of Vicks in 6-7 months.

I sell between 1-1 $\frac{1}{2}$  gross of Vicks a year.

No. 19 (e).

10

No. 19 (e).  
Horace  
Henriques,  
5th June  
1946,  
Examina-  
tion.

HORACE HENRIQUES sworn saith :

Registered medical practitioner—M.B.Ch.B. (Glasgow) practising in Mandeville 9 years.

Know Vicks Salve—about 15 years and have used it professionally fairly often.

Sometimes I say "Vicks" and sometimes "VapoRub" and in latter case mean Vicks VapoRub.

Recently—since 1943—heard of Karsote Vapour Rub—first time I heard of other Vapour Rub.

Don't know as Doctor of expression Vapour Rub as medicament. 20

Last night attention called to it in Pharmaceutical Codex and I saw it for first time.

Medicated ointment means ointment with drugs for applying to body.

Heard of other preparations recently.

Thermogene Rub.

Have never heard of Mentholatum.

Heard of liniments—never seen this advertisement of Minard's Liniment.

*XXd. :*

Liniment is liquid ointment is salve. 30

In 1943 went to see Karsote Vapour Rub—not to prescribe it.

Heard of it and went to see it—out of curiosity—to Wharton's Drug Store.

Aston Levy called my attention to it—the solicitor.

(Reads from p. 640 of Pharmaceutical Codex.)

Don't accept definition of Vapour Rubs at p. 640 as some liniments are Vapour Rubs.

I accept formula of Vicks as that of a Vapour Rub.

Formula of Karsote is similar to Vicks.

Liniments are used for inhalations—I prescribe camphorated oil for 40 that purpose.

Cross-  
examina-  
tion.



Recognise Pharmaceutical Codex as word of authority—I might look it up.

Never used Minard's Liniment for colds.

I would understand Vapour Rub to mean something you rub which produces Vapour for inhalation.

Rubbing would stimulate skin.

I would say Vapour Rub is compressed form of conveying meaning describing character and qualities of ointment.

Clearer ways of describing these preparations.

10 *Re-ard.* :

I would say Vapourising ointment is more apt expression for describing these products.

VapoRub ointment is tautologous.

As I know it in Jamaica VapoRub applies to Vicks alone.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (e).  
Horace  
Henriques,  
5th June  
1946,  
Cross-  
examina-  
tion,  
*continued.*  
Re-  
examina-  
tion.

No. 19 (f).

HELEN SPENCE sworn saith :

Qualified nurse—live in Port Antonio now.

Nurse for 17 years —still practise occasionally.

20 Familiar with ointment made by Vicks Chemical Co.—I call it "VapoRub."

Never heard of other ointment of that name.

Frequently used by me in work and by patients.

Vicks has very good reputation.

Know Vatronal also of same Co.—nose drops—also has good reputation.

*XXd.* :

Sometimes call it Vicks and sometimes Vicks VapoRub.

Can't remember time when only one Vicks product on market.

Gave statement to Grossett about 6 weeks ago.

I have always ordered it as VapoRub from druggist for myself.

30 Sometimes I would say Vicks VapoRub if I went for it or VapoRub.

I use it very often for myself and children.

No. 19 (f).  
Helen  
Spence,  
5th June  
1946,  
Examina-  
tion.

Cross-  
examina-  
tion.

No. 19 (g).

DOLLY GLEN-CAMPBELL sworn saith :

Qualified nurse for 5 years in Kingston—work at Nuttall.

Know ointment made by Vicks Co. since I was probationer.

Use it on myself and for patients on Doctors' orders.

I call it Vicks or Vicks VapoRub.

I also know Vicks Vatronal and have used it.

No. 19 (g).  
Dolly Glen-  
Campbell,  
5th June  
1946,  
Examina-  
tion.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (g).  
Dolly Glen-  
Campbell,  
5th June  
1946,  
Examina-  
tion,  
*continued.*

No. 19 (h).  
Dudley  
Ainsworth  
Limonius,  
5th June  
1946,  
Examina-  
tion.

Cross-  
examina-  
tion.

No. 19 (i).  
Charles  
Levy,  
6th June  
1946,  
Examina-  
tion.

Cross-  
examina-  
tion.

Have not used any other ointment but Vicks.

Have not heard of other VapoRubs.

Vicks VapoRub is used for relieving congestion.

If I order by phone I would say Vicks or VapoRub and I would get bottle of Vicks VapoRub.

Not XXd.

No. 19 (h).

DUDLEY AINSWORTH LIMONIUS sworn saith :

Live at Brown's Town, St. Ann, Druggist employed in Segre's Drug Store at Brown's Town until last November. We stocked Vicks VapoRub, 10 Vicks Vatronal, Vicks Cough Drops, Karsote Vapour Rub.

Before stocking Karsote had not heard of any other Vapour Rub.

Customers ask for Vicks or VapoRub and if they ask for latter I give Vicks VapoRub—even if I have Karsote—and they are satisfied.

Don't remember if I have been out of Vicks but had Karsote in stock.

Prior to seeing Karsote I never heard of other Vapour Rub.

*XXd. :*

Employed at Segre for three months. Druggist since April 1945.

Vicks sales are much greater.

Have never sold bottle of Karsote.

Sold about 1 dozen per week.

20

No. 19 (i).

6th June 1946.

CHARLES LEVY sworn saith :

Registered Medical Practitioner for 44 years.

Know ointment made by plaintiff company for 10-15 years.

Have not used any other medicated ointment.

Heard of Thermogene Medicated Rub.

Know Vicks product as "VapoRub"—have not heard until recently of other Vapour Rub.

Recently heard of Karsote Vapour Rub.

Never heard words Vapour Rub used to describe vapourising ointment.

I prescribe Vicks VapoRub for patients—if I say to get jar of VapoRub I mean Vicks Product.

30

*XXd. by Evelyn :*

Know Vicks nose drops—comparatively recently.

In early days I used to say full name "Vicks VapoRub" but within recent years I may say Vicks or VapoRub.

VapoRub is a description of product but I would say it could be better described as "Vaporizing medicament."

If told it was salve I would say VapoRub would well describe it.

I think inhalation effect of VapoRub is more psychological.

I know of no other ointment which claims to act by stimulation in inhalation.

When I prescribe VapoRub I mean nothing else but Vicks.

Samples of others have been put in my office.

10 Have heard of other preparations that claim to act by stimulation and inhalation within 48 hours.

*Re-Xd. :*

Other preparations called to my attention within 48 hours.

Have not opened samples to see what they contain.

"Salve" is less common than word "ointment."

Common way to use ointment is to rub on—you can also put it on.

Vicks ointment generates heat by friction.

Vicks ointment can well be described as vapourising ointment.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (i).  
Charles  
Levy,  
6th June  
1946.  
Cross-  
examina-  
tion,  
*continued.*  
Re-  
examina-  
tion.

No. 19 (j).

No. 19 (j).  
Karl  
Wilson-  
James,  
6th June  
1946,  
Examina-  
tion.

KARL WILSON-JAMES sworn saith :

20 L.R.C.P. (Lond.), M.R.C.S. (Eng.) and F.R.C.S. (Edin.) Registered Medical Practitioner. Practising 15 years.

Know Vicks preparation—VapoRub also Vicks Vatronal.

This is VapoRub—and this is Vatronal.

Use ointment in practice frequently—I tell patients to get either "VapoRub" or "Vicks" meaning in both cases "Vicks VapoRub."

Never heard here or abroad of Vapour Rub except Vicks product.

Have heard of other medicaments that heal by giving off vapour—camphorated oil, friars' balsam, menthol crystals.

Inhalation has beneficial effect.

30 In one form or other it is old medicament.

I would describe vapourising ointment as salve or liniment—usually liniment.

Don't know Benjamin's VapoRox—heard of it—have not used it.

Have heard of Thermogene Rub or ointment—yès, I have seen this (Thermogene Medicated Rub).

Can't think of proprietary preparation using menthol.

I prescribe Vicks VapoRub—don't use the two words Vicks and VapoRub as a rule as I consider they refer to same product.

*XXd. :*

40 Some vapourising preparations can be used without rubbing.

Vicks can be put in bowl of hot water and inhaled.

Cross-  
examina-  
tion.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (j).  
Karl  
Wilson-  
James,  
6th June  
1946,  
Cross-  
examina-  
tion,  
*continued.*

Vaporising ointment would correctly describe VapoRub.

Vapour ointment would not be correct description.

Within last 48 hours I have heard of Vapour Rubs.

Vapour Rub ointment would convey something to me—but it would have idea of mystery to me—I would have to guess what it was.

I have seen this Pharmaceutical Codex before—words at p. 640 “Vapour Rub” would indicate liquid to me—but as it is in base of soft paraffin I would say it was solid—I would understand that it would be something to rub—but Vapour Rub does not mean anything to me as a professional man from point of view of vapour. It might be something 10 which on opening box would give off vapour.

Heard of Thermogene for years—but not of Thermogene Rub.

Have seen Thermogene Medicated Rub in homes I have visited—but paid no attention to it.

No. 19 (k).  
William  
Edward  
McCulloch,  
6th June  
1946,  
Examina-  
tion.

No. 19 (k).

WILLIAM EDWARD McCULLOCH sworn saith :

M.D. & CH.B. Aberdeen. Practising 23 years—12 years in Jamaica.

Know ointment Vicks—prescribe it for patients—have not used it.

I know product as Vicks, Vicks VapoRub or VapoRub and so order it—since I started practising here. 20

When I order VapoRub I mean patients to get Vicks Vapour Rub.

Know of no other medicated ointment used for chest colds sold here.

Vaporising ointments used in Tudor times—medicaments were put in goosefat as melting point lower.

Saw in Codex day before yesterday term Vapour Rub and did not know of its use before then.

Vapour Rub is something you rub that vaporises.

Vaporising ointment is good description of products like VapoRub.

Cross-  
examina-  
tion.

*XXd. :*

I don't see use of melting ointment in water to get inhalations. 30

Vapour Rub Salve is complete description of article like Vicks VapoRub.

No. 19 (l).  
Herbert  
Kong,  
6th June  
1946,  
Examina-  
tion.

No. 19 (l).

HERBERT KONG sworn saith :

Wholesaler at 125 Barry Street for 5 years.

Before that had retail business at Cross Roads—large business—Kong & Co.

Know this—preparation of Vicks Chemical Co. for 15 years at Cross Roads then—sold extensively.

Public ask for VapoRub or Vicks and they want Vicks VapoRub. 40

I was at Cross Roads—2-3 years—and before that with wholesalers.

Sold no other similar preparation.

Sold Mentholatum, Thermogene, not VapoRox.

Sold Tiger Balm—made in China.

In 1943 heard of Karsote Vapour Rub—only time I heard of other Vapour Rub.

There was occasion during war that I had Karsote and not Vicks—  
If some asked for VapoRub I would then show Karsote and they would  
go away saying they wanted Vicks. If it was written order for VapoRub  
I would send Karsote if I had no Vicks—and sometimes I would be phoned  
10 and told Vicks was wanted.

Wholesale I have sold 2 dozen Karsote.

*Ad. :*

Sold Mentholatum at Cross Roads.

Sold Mentholatum and Thermogene at Cross Roads.

Sold about 4 dozen Vicks a month.

Sold about 2-3 boxes Mentholatum a month—this was retail.

Left Cross Roads in 1931, 1932, or 1933.

Sold Mentholatum at Cross Roads and also at Barry Street retail  
and wholesale.

20 Only sold Thermogene wholesale—in 1943—

Sold Tiger Balm around 1943 also—saw it then for first time.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

Herbert  
Kong,  
6th June  
1946,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion.

**No. 19 (m).**

RUPERT HENRY KINKEAD sworn saith :

Managing Director of Kinkead Ltd. Drugstore retail and wholesale—  
successors of partnership—business goes back 60 years. Store is in  
King Street—working there for 40 years—large business.

Know medicated or vaporising ointments—first one I knew was  
Musterole—about 40 years ago—I think Vicks VapoRub was next—know  
Miller's Vaporising Salve made by Northrop & Lyman—25-30 years—  
30 may have been before Vicks.

Stocked Miller's—small quantity—Knew Vicks VapoRub 23 years  
ago.

Have heard it called Vicks VapoRub, Vicks and VapoRub.

Apart from Karsote have not known of Vapour Rub except Vicks  
product.

Except for Musterole, Millers, Karsote and Thermogene Rub have  
stocked no other.

Have not heard of Mentho Vapo. Balm.

Have Mentholatum in stock—for 10-12 years.

40 Know Rayglo chest balm—don't think we stock it.

Have not looked at instructions of Miller's Salve.

Have used Vicks.

No. 19 (m).  
Rupert  
Henry  
Kinkead,  
6th June  
1946,  
Examina-  
tion.

*In the  
Supreme  
Court of  
Jamaica.*

Have stocked Karsote Vapour Rub since 1943—no personal experience of selling it.

*XXd. :*

*Plaintiffs'  
Evidence.*

Vicks is very good seller.

Knew Miller's 25-30 years ago.

No. 19 (m).

Rupert

Henry

Kinkead,

6th June

1946,

*continued.*

Cross-

examina-

tion.

Remember Humphries of Jamaica agencies coming to me about Vicks and also his predecessor.

First stocked Miller's 6-7 years ago.

Up to 15 years ago we sold only Vicks VapoRub.

Always stocked Musterole—not very popular—it is medicated 10 ointment made of oil of mustard—used largely after first war for influenza.

I am large retailer.

I would say I sell 50 Vicks VapoRub to one of Thermogene—Miller's would be less than Thermogene, and Mentholatum would be less than Thermogene but more than Miller's .

No. 19 (n).

Leonard

Burnett,

6th June

1946,

Examina-

tion.

No. 19 (n).

LEONARD BURNETT, sworn saith :

Engaged in retail sales of drugs, &c., at Nelson's, Cross Roads for 4 years and before that at Levy Bros. who are wholesalers—5 years at Levy Bros. 20

Know Vicks ointment both wholesale and retail.

Customers say jar of VapoRub, Vicks VapoRub and sometimes Vicks.

Stock other preparations of Vicks—Vatronal—it is ordered by that name.

We stock Thermogene, Mentholatum and Karsote—only knew Vicks at Levy Bros. have not seen Thermogene or Mentholatum at Levy Bros.

Karsote on sale at Cross Roads since 1943 and also Vicks VapoRub— if customer asks for VapoRub I generally give Vicks.

Have been out of Vicks but had Karsote and if customer asks for 30 VapoRub would say we have no Vicks but have Karsote—occasionally people take it.

Can remember customer asking for jar of small Vapour Rub and pointing to Karsote.

*XXd. :*

Cross-  
examina-  
tion.

Sale of Vicks is very good and Karsote poor.

I would say I sell 2 dozen Vicks to one of Karsote.

Sale of Thermogene Rub is much better.

About 2 dozen Vicks to 10 of Thermogene and about 2 dozen Vicks 40 to 4 of Thermogene.

Only known Thermogene and Mentholatum within last 3 years.

Went to Nelson's in 1942.

Known Karsote Vapour Rub since beginning of 1945—mistaken when I said 1943.

Apart from Thermogene, Mentholatum and Karsote, Vicks is only vaporising ointment I have known.

No. 19 (o).

CYRIL MAXFIELD sworn saith :

Own Drug Store—Bev—Halfway Tree. In Drug business about 20 years—licensed druggist—Know medicated ointment of Vicks Co. and also Vatronal, Cough Drops and inhaler. Deal in ointment.

10 When I didn't I administered Vicks VapoRub.

Sometimes people ask for Vicks or VapoRub but Vicks VapoRub chiefly.

Heard of Karsote Vapour Rub—and before that only knew of Vicks as VapoRub.

Handled other medicated ointments—first was Mentholatum—about 25 years ago. Miller's vaporising salve about 15 years ago.

Knowledge of Benjamin's VapoRox—stocked it 8-9 years ago.

Stocked Thermogene 3-4 years ago.

XX7. :

20 Stocked Musterole and Mentholatum about same time—before Vicks.

First stocked Vicks in 1924 at Morant Bay.

Always have stocked Mentholatum.

Musterole was before Vicks and always stocked it—Stocked it before Vicks but not continuously—went off market at one time.

Can't say definitely when I ceased stocking Musterole.

Vicks knocked Musterole off market.

Vicks sold more quickly.

I would keep  $\frac{1}{2}$  dozen or so of Mentholatum for a few customers—but Vicks sale was larger.

30 Sales of Vicks are much greater than any of the others.

I would sell 1 dozen Vicks to one of the others.

No. 19 (p).

EDGAR JAMES EVANS sworn saith :

Druggist in business 30 years—44 Luke Lane now.

Know Vicks ointment—full name is Vicks VapoRub.

First heard of it 20 years ago, from traveller from U.S.A. who asked for it and praised it.

I then imported it and after I dealt with Agents—first Stark and then Humphries.

40 10 years ago got to know Vatronal, Cough Drops and inhaler.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (o).  
Cyril  
Maxfield,  
6th June  
1946,  
Examina-  
tion.

Cross-  
examina-  
tion.

No. 19 (p).  
Edgar  
James  
Evans,  
6th June  
1946,  
Examina-  
tion.

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (p).  
Edgar  
James  
Evans,  
6th June  
1946,  
Examina-  
tion.  
*continued.*

Vicks preparations enjoy wide reputation in Jamaica. I order as Vicks VapoRub.

Public generally ask for VapoRub and I know what they want.

Never heard of any other Vapour Rub except Vicks before Karsote appeared.

Know of other medicated or vaporising ointments.

First I knew of was Mentholatum—can't remember others.

Miller's and Musterole were used in flu epidemic.

Have stocked Miller's and Musterole—but not now—only carry Vicks now—mostly asked for. 10

Have Thermogene Medicated Rub now.

Have not stocked Benjamin's preparation.

Some time ago I had small quantity of Karsote.

When first introduced—first Vapour Rub I heard of since Vicks.

*XXd. by O'Reilly :*

I think Mentholatum was on market when I heard of Vicks—stocked Mentholatum first—about 20 years ago—had it in stock up to one year ago—small quantities.

Can't say relative stocks but I think I carried more Mentholatum than Vicks but not now. 20

Can't say when Vicks began to overtake Mentholatum.

I would say I sold 6 dozen Vicks to 1 dozen Mentholatum in 5-6 months.

In stock I would have at first 3 dozen Mentholatum to 1 dozen Vicks.

Before I gave up stocking Mentholatum I would say I sold 6 jars of Vicks to 1 of Mentholatum.

Did not give up Mentholatum but could not get it about one year ago and since then have not tried again—asked for it from wholesalers.

Have no Miller's in stock now—stopped about one year ago—first stocked it long time ago—8-10 years ago.

Used to keep 1 dozen bottles or so in stock. 30

*By Court :*

In Jamaica we have importer, wholesaler and retailer.

Re-examina-  
tion.

*Re-Xd. :*

Some of the importers are also wholesalers. Levy Bros. are importers, wholesalers and retailers. C. B. Facey are importers, wholesalers and retailers.

No. 19 (q).  
Robert  
Cameron  
Humphries,  
6th June  
1946,  
Examina-  
tion.

No. 19 (q).

ROBERT CAMERON HUMPHRIES sworn saith :

Managing Director of Jamaica Agencies Ltd., and agent of Vicks Chemical Co. 40

I am deponent of affidavit—sworn to on 1st June 1946.

First agents of plaintiff company were M. T. Stork Co. Incorporated and I was manager from 1919.



Vicks represented from 1923 and by Jamaica Agencies from 1929 when Company formed.

Responsible for local advertising campaigns.

Have seen campaign schedules (k) put in Court—I did them myself.

Have travelled all through Island—four times a year visiting drug stores.

Usually orders are written—sometimes by telephone.

Orders usually for Vicks VapoRub for 20 years.

10 Since 1933 other Vicks products and if only Vicks asked for we would ask if Vatronal or Cough Drops or Inhaler required.

Public ask for “Vicks VapoRub” or “VapoRub.”

I would say that up to 1941 VapoRub was product of plaintiff company and no other.

I paid attention to competing products on instructions.

In the 20's Mentholatum, Musterole were prominent competitors, and in the 30's Vaporex, now Vapo Rox, Cupal's in 1937, Miller's vaporising Salve, Buckley's White Stainless Rub, two locals: Taylor's A. P. salve and EvapRex, and more recently 4 to 5 years' ago, Thermogene, Turpo and Ayrton and Saunders product.

20 First product I saw with name Vapour Rub was Cupal's in 1937—protested and they stopped—and put it on the market subsequently as “Ray Glow Chest Balm.”

In 1933 Benjamin put on market VapoRex and we protested and they stopped putting it on market and it is now VapoRox.

In 1937 Ayrton's put on market Ayrton Brand Vapour Rub and we protested and they withdrew it from market.

After Karsote appeared in market I made detailed tour of drug stores with results appearing in paras. 11 and 12 of affidavit.

I also collected bottles which are in box, “B.C.N. & P.”

30 I found 8 varieties set out in para. 6 of affidavit and there are 2 others to be added.

Thermogene Medicated Rub and VapoRox.

Also searched Kingston and St. Andrew drug stores for work of reference and found as follows:—

British Pharmacopœia in 15-16.

British Pharmaceutical Codex in one place, Kinkead's.

Extra Pharmacopœia in one place—Kinkead's.

Know Kong Bros. at Cross Roads—good trade and good customers.

1943 trouble with Kong's—went there in May 1943—on arrival  
40 Jos. Kong said: “Mr. Humphries you received shipment of Vicks VapoRub in small size and have not offered any to me.”—I denied this and said I had not received any such shipment—he was not satisfied and said he had seen stocks around—he sent his clerk out and clerk arrived with bottle of Karsote and Kong said: “Here you are, Vapour Rub and you said you had no stocks of Vicks”—I then said: “You will observe that bottle is marked ‘Vapour Rub’ and also ‘Karsote’”—he then looked again and said: “This certainly fooled me.”

*In the  
Supreme  
Court of  
Jamaica.*

*Plaintiffs'  
Evidence.*

No. 19 (q).  
Robert  
Cameron  
Humphries,  
6th June  
1946,  
Examina-  
tion.

*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*XXd. :*

*Plaintiffs'  
Evidence.*

No. 19 (q).  
Robert  
Cameron  
Humphries,  
6th June  
1946,  
*continued.*  
Cross-  
examina-  
tion.

Knew of Vicks VapoRub in 1917—brought down by jobbers.  
1923 we began to import substantial quantities—started to advertise  
in May 1923—began to see results in 1924-25.

In 1923 there was Mentholatum and Musterole—they had fair trade.

Don't remember seeing Mentholatum advertised.

In 1945 according to paragraph 13 of affidavit, I gave figures of  
imports as 24,480 and in Ex. 1 of K import figures are 4,200 dozens—  
due to difference of fiscal years—between company and my firm.

Turpo put on market about 8 years ago.

7th June 1946.

10

Conversation took place in Kong's shop, made note of it and consulted  
solicitors.

Consulted solicitors on 4th June or little after.

Conversation was in middle of May.

Re-examin-  
ation.

*Re-Xd. :*

Penetro was mutton salve—very extensive campaign in advertising—  
some years ago.

These are advertisements of Penetro—marked JJ1-4.

Adopted for several years.

This is advertisement by Benjamin's of VapoRox marked JJ.5.

20

Re-cross-  
examina-  
tion.

*O'Reilly by leave :*

I know Benjamin's advertised before 1942—Can't say if other  
advertisements after 1942 by Benjamin.

No. 19 (r).  
Joseph  
Kong,  
7th June  
1946,  
Examina-  
tion.

No. 19 (r).

JOSEPH KONG sworn saith :

Manager of Kong Bros.—large grocery—trading there since 1914.

Stocking Vicks Vapour Rub many years.

During war Vicks Vapour Rub could not be got for long periods at  
time.

One day Humphries came in 1943—told Humphries Vicks come.

I told Humphries that Vicks come as I saw other shops have small  
Vicks—he said no and I sent boy out to buy small bottle of Vicks Vapour  
Rub.

Boy brought it and I showed it to Humphries and said it was marked  
“ Vapour Rub ”—Humphries showed me bottle marked with other name  
on it and was not Vicks.

30

Cross-  
examina-  
tion.

*XXd. : by O'Reilly :*

In 1943 goods difficult to get.

I see this bottle marked “ Vapour Rub ” and I see “ Karsote ” (with 40  
magnifying glass)—

Humphries did say Vicks Vapour Rub did not come.

Have Karsote now in stock—bought it from wholesaler—Fah Hing—  
only bought once from him.

## No. 19 (s).

GEOFFREY CAMPBELL GUNTER sworn saith :

Reside at East King's House Road, Halfway Tree.

Used Vicks Vapour Rub for 15-16 years—on self and on family.

I used to buy it myself at first and I now order it from grocer.

I am never without it.

I think mark on package is " Vicks VapoRub."

When I first began to use it I asked for Vicks Vapo Rub and now  
10 I simply ask for Vicks—within recent years—order Vicks from my grocer  
and I want Vicks Vapour Rub.

Not until recently did I know of other Vapour Rub when shown bottle  
of Karsote.

*X.Xd.* :

If I saw Karsote Vapour Rub I would not think it was made by Vicks.

I saw Karsote Vapour Rub on bottle—did not think it was made by  
Vicks.

I would not use Karsote—as I was—

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No. 19 (s).  
Geoffrey  
Campbell  
Gunter,  
7th June  
1946,  
Examina-  
tion.

Cross-  
examina-  
tion.

## No. 19 (t).

AUDLEY LOUIS EVANS sworn saith :

20 Wholesale merchant—Kingston. At one time Mayor of Kingston  
and St. Andrew Corporation. Alderman Gunter is Mayor now.

Familiar with Vicks products—have used cough drops, Vatronal and  
Vapour Rub.

Using Vicks Vapour Rub about 20 years.

Only recently heard of other Vapour Rub—saw Karsote adopted.

Vapour Rub until then had signified Vicks to me.

This package B appears similar to what I always known—it is same  
colouring.

No. 19 (t).  
Audley  
Louis  
Evans,  
7th June  
1946,  
Examina-  
tion.

## No. 19 (u).

30 ALTAMOND VINCENT ARMOND sworn saith :

Managing Director of Jamaica Turf Club Ltd.

Know Vicks products for 15-16 years.

I knew Vicks Vapour Rub first—ointment.

If I wanted it I would refer to it as Vicks.

Know Vicks nose drops—have used it.

After nose drops came on market if I wanted Vapour Rub order  
Vicks Vapour Rub.

Only recently heard of other product called Vapour Rub and until  
then Vapour Rub meant Vicks.

No. 19 (u).  
Altamond  
Vincent  
Armond,  
7th June  
1946,  
Examina-  
tion.

## No. 19 (v).

In the  
Supreme  
Court of  
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No. 19 (v)  
William  
Walworth  
Dyer,  
7th June  
1946,  
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tion.

Cross-  
examina-  
tion.

WILLIAM WALWORTH DYER sworn saith :

Live at Savanna la Mar. I am 43½ years.

I am clerk to Nation, Solicitor and local Representative of "Gleaner."

Know ointment sold by Vicks since 1925—and have used it continuously and father also used it.

You can get it in nearly any drug store and grocery.

Know Vicks cough drops—don't know nose drops but have not used it.

Sometimes I ask for VapoRub and sometimes for Vicks and expect to get product of Vicks, Vicks Vapour Rub. 10

Don't know of any other ointment with word Vaporub.

*XXd.* :

Use Vicks Vapour Rub for discomfort of chest, apply it to nose and sometimes eat it.

In father's house I would use his Vicks.

Vaporising ointment is ointment which you rub and gives off vapour.

Rubbing ointment is ointment to rub.

Vapour rubbing ointment would be name of substance.

Don't know of any other vapour rubbing ointment.

If you spoke about vapour rubbing ointment I would understand it 20 meant ointment you rubbed which give off vapour.

*Manley* :

Tender affidavits of Basil Oscar Parkes (dated 31st May 1946).

## No. 20 (a).

Defendants'  
Evidence.

No. 20 (a).  
William  
Gilbert  
Thomas,  
4th July  
1946,  
Examina-  
tion.

WILLIAM GILBERT THOMAS sworn saith :

B.Sc. of Bristol University in 1928. Teaching Chemistry at Wolmers School—Organic Chemistry.

Analysed Vicks Vapo Rub and Karsote Vapour Rub—both had in Menthol, Camphor, soft paraffin, oil of Eucalyptus.

In Karsote there is also oil of Wintergreen, used in rubs and liniments 30 which is not in Vicks.

I would say they are similar medicaments.

From examination of Karsote I would say it was quite suitable for rubbing—they would stimulate skin and volatilize.

I would say Vicks would have the same effect.

I see Pharmaceutical Codex (1934) at p. 340 containing definition of Vapour Rubs under heading Menthol.

I also see in Pharmaceutical Formulas, K.K. at p. 940 subnom. "Chest Vapour Rub formula of Vicks is very similar except for O.C. Cajuputi. This O.C. Cajuputi is on formula on bottle of Karsote but I 40 could not extract it as I did not have the means.

I would say description "Vapour Rub" is apt description for both preparations.

I weighed contents of both bottles and Vicks bottle contained 39.05 grammes of contents excluding weight of bottle and Karsote bottle contained 18.61 grammes of contents.

*XXd.* :

Menthol is secondary alcohol—there is also natural source and it is also called oil of peppermint—some of essential oils known to ancients for healing and aromatic qualities.

10 Not much medical knowledge—but Menthol, Eucalyptus and Camphor are oil medicaments.

Eucalyptus and Menthol are oils—camphor is soluble in oil—natural product found in Japan.

I would say that these oils are used in rubbing—evaporation follows stimulation.

Karsote answers to definition of Vapour Rub.

If I was layman I would say Vapour Rub is something which when rubbed gives off vapour.

Ointment is solid and liniment is liquid.

20 Ointment does not usually give off vapour.

I suppose you can get Vapour Rubs for animals.

Fast drying motor car polish would conform to definition of Vapour Rub.

No. 20 (b).

GABRIEL JOSHUA DE CORDOVA sworn saith :

Was partner in de Cordova & Co. and am Managing Director of de Cordova & Co. Ltd.

Firm are distributors for Griffiths Hughes products—of Manchester. Handling Karsote Vapour Rub since 1942.

30 Supply wholesalers and retailers—Karsote is supplied in brown paper package. Ex. B.B. box and 1 dozen bottled.

From book sales of Karsote Vapour Rub are as follows :—

1942—90 dozen bottles.

1943—1,536 dozen bottles.

1944—Nil.

1945—300 dozen bottles.

We are also agents of Northrop & Lyman Ltd. of Canada since early nineteen thirties who sell "Miller's Vapourising Salve"—sales very small—on market since 1932 or 1933—can't say if imported before.

40 Importation of Miller's as follows :—

1938—12 dozen bottles.

1939—19 dozen bottles.

1940—24 dozen bottles.

1941— 7 dozen bottles.

1942—12 dozen bottles.

1943—24 dozen bottles.

1944—12 dozen bottles.

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No. 20 (a).  
William  
Gilbert  
Thomas,  
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tion,  
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No. 20 (b).  
Gabriel  
Joshua  
de Cordova,  
4th July  
1946,  
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No. 20 (b).  
Gabriel  
Joshua  
de Cordova,  
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tion,  
*continued.*  
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examina-  
tion.

Have no figures for 1945.

They also make Canadian Healing Oil and Roberts Cough Syrup and other products.

No advertising in Jamaica press of Miller's Rub before war firm sent out calendars advertising all their products including Miller's.

Firm advertised other products in press send out notices.

For Griffiths Hughes we also sell Krushen Salts, Digestive Rennies and Laxotive and Karsogree Inhaler and Karsote Inhalent.

I see Z which is illustrated on pamphlets that we give to salesmen.

We don't sell these articles retail—only sell liquor retail.

10

*XXd. :*

Sales depend to a large extent on advertising—if they are good.

Canadian Healing Oil has good sale and so does Kellog's Asthma Remedy.

Vicks have maintained large advertising campaign.

Advertisements of Karsote are sent direct to Gleaner.

I put contract through with Gleaner and I check advertisements.

Not struck me that advertising of Vicks and Karsote were very similar—have not studied them closely. I have opened one brown paper package and seen what was inside—inside is carton holding 12 bottles—most prominent part of carton is Vapour Rub and bottle is blue—Vicks bottle is blue. 20

Don't know why Karsote bottle is blue on carton while bottle is not blue.

Predominant colours on carton are blue and orange—Karsote is white on black background. Vapour Rub is blue and background is orange. Words "White-stainless" are on carton.

Did not know that Vicks had white-stainless on bottle—Vicks is white—and Karsote is amber. Can't say why Karsote is described as "White." On carton is face of woman in profile and a boy is beside her. 30

I don't know that Vicks advertising contains a woman and boy with hand across chest.

I see attached to my affidavit exhibits of advertisements of Vicks.

There is similarity between advertisements of Vicks and carton of Karsote—Exs. O. & G.

I see on carton containing Vicks bottle "Acts Two Ways at once" and on Karsote carton "Acts in two ways at the same time."

I might say it does act in two ways at same time and that it is Vapour Rub as defined in books produced—and that woman with hand on chest of boy is good idea. I would say a number of similarities appear between Vicks and Karsote—on the cartons.

It would appear that they copied "White-stainless."

I have seen Kinley's Vapour Rub as I sent clerk out for bottle.

Last month I saw Thermogene Medicated Rub for long time.

Have seen Vapo Rox of Benjamin's—they are old firm in Jamaica and advertise widely.

Karsote have set of products competing with Vicks—they are Vapour Rub, lozenges, Inhaler.

*Re-XXd.:*

I see two bottles of Karsote, N.1 & N.2—one had White Stainless on top but other has not—can't say which is more recent importation.

Definite shortages of medicines during war.

Don't import petroleum jelly.

10 This carton B.B. that was put in may have come from office or outside—I can't say if I had it in stock when it was given to my solicitor.

Adjd. to 29th July, 1946 at 9.45.

No. 20 (c).

29th July, 1946.

AUBREY JOSEPH GRANT sworn saith :

Chief Salesman and director of defendant company.

5th July received information from Clinton Hart defendant's Solicitor and I went to drug store at Cross Roads of E. H. Johnston—asked for bottle of Karsote Vapour Rub and I got this bottle—and got cash receipt.

20 Bottle marked N.3.

Receipt marked N.N.

That was only bottle I saw on shelf of drug store—did not ask for any more—asked further question and was shown 2 cartons of 1 dozen each—cartons were taken from bottom of fixture on wall—opposite to counter and below counter level—and I could see them from where I was in shop—they were still wrapped in paper—brown paper in which they are supplied by my firm.

30 Also went to other drug stores in Kingston; 19th July went to Henderson & Co. Ltd. at King and Harbour Street and they had no Karsote in stock, on same day went to Duncker & Co. and they had no stock of Karsote; and then to Rapid Vulcanising Co. and they had no stock of Karsote, and then to Kinkead who had Karsote in bottles on shelf—saw no carton displayed, from there I went to Jamaica Times and they had bottles on shelves on display—only bottles, not cartons—from there to Nelson's Drug Store and they had only bottles on display and lastly to Community Store where only bottles on display.

40 23rd July went to Parade Drug Store and Miles Bros. in Spanish Town Road and they had no stocks at all, and also sent to Enterprise, Hidalgo's Ltd. in West Queen Street, A. C. McKay in West Queen Street and Williams Drugs Store in West Queen Street and they all had only bottles on display.

24th July went to Edwards drug store in Spanish Town Road and they had only bottles on display.

On no occasion during the 3 days did I see a carton exposed to public.

*XXd.:*

Not first time I went to see how Karsote is sold—now and then I go to inspect different agencies—can't say when last I did so.

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Joshua  
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tion.

No. 20 (c)  
Aubrey  
Joseph  
Grant,  
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1946,  
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tion.

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No. 20 (c)  
Aubrey  
Joseph  
Grant,  
29th July  
1946,  
Cross-  
examina-  
tion.  
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ation.

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I have taken off brown paper wrapper myself at Johnson's on 5th July  
—I also opened package when they first arrived to see what was inside.

Control price of Karsote is 11d. a jar.

Have not done anything to contents of jar—N.3.

We have no Karsote in stock now—none in stock for 3–4 months.

*Re-XXd.:*

When I opened carton at Johnston's there were white bottles inside.

I first opened package when they first arrived.

Case for defendants closed.

No. 21.

10

**REASONS FOR JUDGMENT.**

N. W. Manley, K.C.

L. Chin Yee with him, instructed by Aston Levy for Vick Chemical Co.

Sir Lennox O'Reilly, K.C.

V. Dudley Evelyn with him, instructed by C. Hart for Cecil de Cordova  
et al.

The Plaintiffs have brought an action of infringement in respect of their registered Trade Marks, Nos. 1852 and 3707 respectively and of passing off in respect of their goods. The usual consequential relief is claimed.

Trade Mark No. 1852 consists of the words "Vicks Vapo Rub" above the word "Salve" with added matter and was registered in Jamaica on the 7th April, 1924 as a medicinal salve and liniment. It is described more fully when dealing with the motion. The Plaintiffs have been the proprietors of this Trade Mark since the 9th December, 1936. Trade Mark No. 3707 was registered in Jamaica on the 13th October, 1941, is associated with Trade Mark No. 1852, and consists of the word "VapoRub."

The Plaintiffs' case is that for at least 25 years they have sold in Jamaica a medicated salve which has become known to purchasers as "VapoRub" and that VapoRub means a salve made and sold by the Plaintiffs.

The salve is sold in jars in individual containers or cartons on both of which are prominently displayed the said Trade Marks. The label on the jar and on the container bears the word "Vicks" in large letters in blue, and "VapoRub" under it in red and in smaller letters, both on a blue background. The jar and container will be described in more detail later.

The Plaintiffs allege that recently they have discovered that the Defendants have been selling a medicated salve or ointment not manufactured by the Plaintiffs bearing the words "Vapour Rub" on the label of the jar, and that this constitutes an infringement of its Trade Marks Nos. 1852 and 3707. The Plaintiffs further complain that the use of the



words "Vapour Rub" on the jars sold by the Defendants is calculated to deceive purchasers into the belief that they are buying a salve manufactured by the Plaintiffs and this constitutes a passing-off. The defences raised are numerous and are as follows:—

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(1) That Trade Marks Nos. 1852 and 3707 are not proper Trade Marks.

(2) That the word "VapoRub" is descriptive and does not indicate origin and has been so used by the Plaintiffs in their advertisements and is disentitled to protection in a Court.

10 (3) That the word "VapoRub" is a mis-spelling of the words "Vapour Rub."

(4) The Defendants deny that the Plaintiffs' medicated salve has become known to purchasers as "VapoRub" or that "VapoRub" means a salve sold by the Plaintiffs.

(5) The Defendants admit that the salve labelled as "Vicks VapoRub" is known to purchasers as the product of the Plaintiffs.

20 (6) The Defendants allege that the product sold by them is manufactured by a firm in England and is sold as "Karsote Vapour Rub"; that it is sold in cardboard containers containing 12 jars, and that the containers are wrapped in plain brown paper with a label on which is printed in large green letters the words "Karsote Vapour Rub."

(7) The Defendants deny that they have infringed any Trade Marks of the Plaintiffs or that the labels are an imitation of the Plaintiffs'.

(8) The Defendants deny that they have deceived any purchasers into the belief that they were buying the product of the Plaintiffs.

30 (9) The Defendants deny that they are guilty of passing off their product as that of the Plaintiffs.

(10) The Defendants allege that the words "Vapour Rub" are a *bona fide* description of the character or quality of the goods sold by them and rely on the provisions of section 44 of the Trade Marks Law, Cap. 272.

40 (11) The Defendants allege that the individual jars of the product sold by them are not in individual containers as is the product sold by the Plaintiffs; that the jars are smaller than the Plaintiffs'; that the jars are of a different colour; and that they have the words "Karsote Vapour Rub" prominently displayed on the labels. They allege that they are easily distinguishable from the products of the Plaintiffs.

(12) The Defendants deny that the words "Vapour Rub" are calculated to deceive purchasers of their product into the belief that they are buying a product of the Plaintiffs and that any purchasers have in fact been deceived.

After the statement of defence had been delivered the Defendants filed a notice of motion dated the 11th October, 1945, to rectify the register of Trade Marks (A) by the removal of Trade Mark No. 3707, (B) by expunging a part of Trade Mark No. 1852, namely the word "VapoRub,"

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or (c) by adding a disclaimer of any right to the exclusive use of the word "VapoRub."

At the commencement of the trial it was agreed by Counsel for the respective parties that the motion should be treated as in the nature of a counter-claim in the action so that it could be dealt with at the same time as the action for infringement.

It appears from the evidence that in the year 1911 a Mr. Richardson first used the word "VapoRub" for a product he put on the market in the United States of America. It was a medicated ointment which became partly vapourised after rubbing. 10

The Plaintiffs are the successors of Mr. Richardson in respect of this product, and in 1915 the word "VapoRub" was registered as a Trade Mark in the United States of America and has been in continuous use to this day. The Trade Mark "Vicks VapoRub" is registered in 69 or 70 countries and the word "VapoRub" alone is registered in 30 countries, 20 of which are English speaking, and these include England, Canada, New Zealand, South Africa, Jamaica, Trinidad and Barbados. The first registration in England was in 1920.

The Plaintiffs advertise extensively in the United States of America and other countries and have a large export trade. 20

"Vicks VapoRub" was first registered in Jamaica as a Trade Mark in 1924 and the Plaintiffs and their predecessors have advertised regularly in the Island. In the early years the Plaintiffs distributed folders and free samples from house to house and also gave demonstrations at drug stores. The Plaintiffs' sales have increased in Jamaica from 288 dozen in the period 1923-1924 to 4,200 dozen in the period 1944-1945.

In 1941 the word "VapoRub" was registered in Jamaica as a Trade Mark.

It appears from the evidence of Mr. Dunning, a Vice-President of the Plaintiffs who was in charge of exports, that at that time there was no other product on the market in Jamaica bearing precisely the same name; although there were other products with similar qualities being sold under various names. Between 1926 and 1941 three products were put on the market in Jamaica bearing the words "Vapour Rub" and it was stated and not disputed that the firms responsible for putting them on the market subsequently gave the Plaintiffs undertakings not to use the words "Vapour Rub." 30

The fact that here and elsewhere these undertakings have been given does not carry much weight in favour of the Plaintiffs as the other firms may have preferred not to risk the expense of litigation. As Parker, J., 40 as he was then, said in the *Gramophone Company's* case (1910) 2 Ch., at p. 434: "I am convinced that the risk of an expensive litigation with a wealthy corporation has been no small inducement to dealers to acquiesce in the rights insisted on." And Lord Davey in the case of *Cellular Clothing Company v. Maxton & Murray* (1899) A.C., at p. 346, deals with the position in more detail and stated that he did not attach much importance to evidence of that nature. There is no doubt that for a number of years and up to recently the Plaintiffs enjoyed a virtual monopoly in Jamaica in the sale of their vaporizing ointment.

This position does not apply to England where since 1922 the Plaintiffs have not used the word "Vaporub" and where the Company's product is sold under the name "Vick Brand Vapour Rub." A sample jar of the product sold in England is marked "III."

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Since 1912 "Karsote Vapour Rub" has been sold in Jamaica to wholesale and retail firms through the Defendants and by the retail firms to the public. It is these sales that have brought about this litigation. In 1942 90 dozen bottles of "Karsote Vapour Rub" were sold in Jamaica, and in 1945 300 dozen.

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10 The Plaintiffs admit that "Karsote Vapour Rub" is manufactured in England by a firm of repute. The evidence also establishes that a number of products sold in England contain the words "Vapour Rub." I refer particularly to the affidavit of Cecil Bert Green wherein is given a list of these products with the period that some of them have been on the market.

At the trial it was common ground that the real contest was about the status or position of the word "VapoRub," whether it was registrable under the Trade Marks Law or not, and it seems clear that determination of this question decides to a large extent the case so far as the claim for  
20 infringement is concerned.

In support of the Plaintiffs' case 22 witnesses were called, and apart from Mr. Dunning, a Vice-President of the Plaintiffs whose evidence was concerned mainly with a history of the salve or ointment known as Vicks VapoRub, they can be classified as medical practitioners, druggists, nurses, wholesale dealers, retailers and members of the public. The evidence, which was not contradicted or seriously challenged, established that for a period of 10 years or more, the trade and the public used the expression "Vicks VapoRub" as indicating the salve or ointment made by the Plaintiffs, and that the words "Vicks" alone and "VapoRub" alone are used respectively as synonymous with "Vicks VapoRub." I must confess that but for the unchallenged evidence I would have had difficulty in concluding that the word "VapoRub" as meaning "Vicks VapoRub" was in common use by the public. As to the value of the evidence of this nature it is well to bear in mind what Lord Russell of Killowen said at p. 145 of the report of the *Canadian Shredded Wheat Co., Ltd. v. Kellogg Co. of Canada Ltd., and Bassin*, 55 R.P.C. 125, especially where a virtual monopoly existed. On the application to register the word "VapoRub," Exhibit X, it was expressly stated that registration was not sought under subsection (5) of section 8 of the Trade Marks  
30 Law, Cap. 272. This fact is of importance as at the trial the question whether it was registrable under subsection (5) was argued by Plaintiffs' counsel and it was urged that the Court should give consideration to the point at this stage.

Section 8—or so much of it as is material—of the Trade Marks Law, Cap. 272 is as follows:—

"A registrable trade mark must contain or consist of at least one of the following essential particulars—

(1) the name of a company, individual, or firm represented in a special or particular manner;

50 (2) the signature of the applicant for registration or some predecessor in his business;

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(3) an invented word or invented words ;

(4) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname ;

(5) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2) and (4) shall not, *except by order of the Court*, be deemed a distinctive mark :

For the purposes of this section " distinctive " shall mean adapted to distinguish the goods of the proprietor of the trade mark from 10 those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered."

Our Trade Marks Law is largely a reproduction of the English Trade Marks Act of 1905 (since repealed), and section 8 of our Law corresponds— with an immaterial difference—to section 9 of the English Act. It is conceded that the word " VapoRub " is registrable, if at all, only under 20 subsections (3) (4) or (5) of section 8, and I now proceed to consider the meaning and effect of these subsections in relation to the word " VapoRub."

It is clear that to come within subsection (3) it must be held to be an invented word.

The Plaintiffs submit that the word " VapoRub " is an invented word as it is not to be found in any English dictionary and is unknown to the English language. For the Defendants the argument is that it is merely a combination of two English words Vapour and Rub, the word " Vapour " being spelt in the American way " Vapor." The question whether a word is an invented word has been canvassed in a number of 30 cases in England, and no absolute test has been laid down. The matter to some extent depends on facts including the history of the origin of the word. It appears from the evidence that the word " VapoRub " was first applied to a chest medicament in 1911, an old medicament under a new name. " VapoRub " was registered as a trade mark in the United States of America in 1915. In 1918 " Vicks VapoRub " was put on the market in England, and subsequently, " Vicks VapoRub " and " VapoRub " were registered as trade marks.

In 1924 for reasons given by Mr. Dunning and accepted by the Court the product was put on the market in England as " Vick Brand Vapour 40 Rub " and has been sold since under that name.

This appears to be a tacit admission by the Plaintiffs that " VapoRub " and " Vapour Rub " are for all practical purposes the same word and bear the same meaning. The words " Vapour " and " Rub," in the opinion of some of the witnesses, correctly describe the characteristic quality of the product. I shall discuss them in more detail when considering the next point in the case.

In the " *Solio* " case, *Eastman Photographic Materials Co. v. Comptroller General of Patents, Designs, and Trade Marks* (1898), A.C. 571, in the speech of Lord Herschell appear these words at p. 581 : " It may, no doubt, 50

sometimes be difficult to determine whether a word is an invented word or not. I do not think the combination of two English words is an invented word, even although the combination may not have been in use before; nor do I think that a mere variation of the orthography or termination of a word would be sufficient to constitute an invented word, if to the eye or ear the same idea would be conveyed as by the word in its ordinary form." And in an earlier passage at p. 580 the same learned Law Lord gives what appears to be the basic reason for not according the protection of the Trade Marks Acts to words that are not invented words within the meaning of the Act. This is what he said: "The vocabulary of the English language is common property; it belongs alike to all; and no one ought to be permitted to prevent the other members of the community from using for purposes of description a word which has reference to the character or quality of goods." And in another part of p. 581 he puts it in slightly different language: "An invented word is allowed to be registered as a trade-mark, not as a reward of merit, but because its registration deprives no member of the community of the rights which he possesses to use the existing vocabulary as he pleases." Lord Shand at p. 585 says: "There must be invention, and not the appearance of invention only. It is not possible to define the extent of invention required; but the words, I think, should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a diminutive or a short and meaningless syllable added to it, or a mere combination of two known words, would not be an invented word; and a word would not be "invented" which, with some trifling addition or very trifling variation, still leaves the word one which is well known or in ordinary use, and which would be quite understood as intended to convey the meaning of such a word." In the case of the application to register the word "Uneeda" (1901), 1 Ch. 550, Cozens-Hardy, J., who had to consider whether the word "Uneeda" was an invented word, said at p. 554: "The word, therefore, I take it, was and was intended to be a mis-spelling of the words "You need a" made into one word, the sound remaining identical. Now, is that an invented word within the meaning of the Act? As I read what was said in the House of Lords in the "*Solio*" case, it is impossible for me to hold that it was an invented word." And further on at p. 555, after citing the language of Lord Herschell previously set out, the learned Judge continues: "Now I take that to be a binding guide for me in the interpretation of this statute. If I find, as I do find here, that this is merely a putting together of three of the commonest of common English words and a misspelling of the first of them without change in the sound, I think that I am bound to hold—as Lord Herschell did—that it conveys to the ear precisely the same idea as the three words of the English language properly spelt would convey, and, that being so, it is not an invented word within the meaning of the section. That being so, the main ground upon which the appellant relies, in my judgment disappears." This decision was affirmed on appeal, (1902) 1 Ch. 783, and the Court of Appeal adopted entirely the reasoning of the learned Trial Judge.

In *Christy v. Tipper* (1905), 1 Ch. 1, the Court of Appeal affirmed a decision of Joyce, J., that the word "Absorbine" was not an invented word. At p. 3, Vaughan Williams, L.J., who delivered the judgment of the Court, said: "In my opinion 'Absorbine' is a mere variation of the word 'absorb,' and is used in precisely the same sense, and with the

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intention of indicating that this preparation which the Plaintiffs sell does absorb and effects its cure by absorbing.”

The next case I refer to is the well-known *Crosfield* case, *In re Joseph Crosfield & Sons Ltd.* (1910), 1 Ch. 130, where at p. 142 Cozens-Hardy, M.R., says: “It seems to follow that a word, not being an invented word, ought not to be put on the register if the spelling is phonetic and resembles in sound a word which in its proper spelling could not be put on the register.”

I also cite in support of my view *The S.M.T. Gramophone Co. Ltd. v. Itonia Gramophones Ltd.* (1931), 48 R.P.C. 309, and 47 T.L.R. 324, 10 where Lord Tomlin, sitting as an additional Judge of the Chancery Division, came to the conclusion that the word “Consolette” was not an invented word. In the course of his judgment the learned Judge adopted the description of an invented word given by Parker, J., in *Philippart v. William Whiteley Ltd.* (1908), 2 Ch. 274. “First let me consider whether it was an invented word. To be an invented word, within the meaning of the Act, a word must not only be newly coined, in the sense of not being already current in the English language, but must be such as not to convey any meaning, or at any rate, any obvious meaning, to ordinary Englishmen. It must be a word having no meaning or no 20 obvious meaning until one has been assigned to it. I use the expression ‘obvious meaning’ and refer to ‘ordinary Englishmen’ because to prevent a newly coined word from being an invented word, it is not enough that it might suggest some meaning to a few scholars.” And later on he relies on the observations of Lord Shand in the *Solio* case previously cited in this judgment.

Since the hearing there has been decided in England a case in which Evershed, J., came to the conclusion that the word “Oomphies” in relation to ladies’ shoes was not an invented word. The learned judge makes it clear in his judgment that the fact that a word is new is not 30 conclusive of the fact that it is invented if it has an accepted meaning. He relied on the *Philippart* case and the *Gramophone Company’s* case previously mentioned in this judgment.

I refer to *Re La Marquise Footwear’s* application (1946), 2 A.E.R. 497.

The facts in relation to the use of the word “VapoRub” and the observations of the Judges I have referred to lead me to the conclusion that the word “VapoRub” is not an invented word. It is a combination of the words “Vapour” and “Rub,” “Vapour” being spelt in the American fashion “Vapor.” The combination has no meaning different from the two words “Vapour” and “Rub”, and, as mentioned before, 40 the Plaintiffs have virtually made that admission in England. The Plaintiffs may have been the first to use the combination of the two words but I cannot see that that makes it an invented word.

It was urged on behalf of the Plaintiffs that Rowlatt, J., had decided in *Attorney-General v. Lewis & Burrows Ltd.* (1932), 1 K.B. 538, that it was an invented word. In the first place the words in question in that case, which was not a trade mark case, were “Vapour Rub” and this is what the learned Judge said: “The phrase ‘Vapour Rub’ has been invented to describe this class of article in the United States of America, from which country a particular form of it, called ‘Vick Vapour Rub,’ 50 has been put upon the market.”

It is quite true that the learned Judge uses the word "invented" but in my opinion it was not being used in the sense required by Trade Mark Law but rather in much the same sense as Evershed, J., used the word in the case last referred to, and a more accurate word is that used by Lord Tomlin in the *Gramophone* case where he said the word "Consolette" was "framed" by the managing director of the plaintiffs. The *Burroughs Welcome* case (1914), 1 Ch 736, also relied on by the Plaintiffs, was decided under the Act of 1833, and Byrne, J., and the majority of the Court of Appeal held that the word "Tabloid" was a fancy word, and did not intelligibly describe anything. One ground of the decision was that where a trade mark had been on the register for upwards of twenty years the Court should give the registered proprietor the benefit of the doubt, and the Court took the view that decision of the matter was a question of fact.

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Plaintiffs' Counsel asserted that the *Trakgrip* case, 59 R.P.C. 131, strongly supported his view. But it was not a case where the Court had to consider the question whether the word "Trakgrip" was an invented word. The appeal was argued on the footing that it was a distinctive word or mark under section 9 (1) (e) of the Trade Marks Act 1938 which corresponds to section 8, subsection (5) of our Law. The decision was on the ground that it was a coined word not found in any dictionary, unknown in the use of the English language and that the Court could not say on the evidence that other traders would be likely in the ordinary course of their business to desire to use it in connection with such an article. It was not necessary for the decision to consider if it was an invented word within the subsection and the application to register was not put on that ground. In any event in the instant case there is evidence that other traders have used words somewhat similar and at least one trader has used much the same word. Having come to the conclusion that the word "VapoRub" is not an invented word I pass on to a consideration of the question whether it can be registered under subsection (4) of section 8.

The words of this subsection material to this point are as follows: "A word or words having no direct reference to the character or quality of the goods."

The reason for this is well set out in the *Imperial Tobacco Company's Trade Marks* (1918), 2 Ch. 207, at p. 217, where Astbury, J., says: "For example, names (unless represented in some special manner) and descriptive words have never been recognised as appropriate for use as trade marks. It is true that they became registrable for the first time under the Act of 1905, but only if distinctive, and they cannot be deemed distinctive without an order of the Board of Trade or the Court."

Dr. Charles Levy, a medical practitioner of long standing, stated in cross-examination that "VapoRub" is a description of the product but he would say it could be better described as vaporizing medicament.

He also said: "If told it was a salve I would say VapoRub would well describe it."

Dr. McCulloch, another medical practitioner of long standing, described "VapoRub" as "Something you rub that vaporizes" and stated that "Vaporizing ointment is a good description of products like Vicks VapoRub." In cross-examination he said Vapour Rub salve is a complete description of an article like Vicks VapoRub.

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Mr. Francis, the druggist, described it as "an article you rub that vaporizes."

In addition, there is the authority of books of reference. The British Pharmaceutical Codex of 1934, a work published by direction of the Council of the Pharmaceutical Society of Great Britain, has this to say at p. 640 about vapour rubs under the heading "Menthol." "Vapour Rubs are preparations of menthol with other volatile substances in a basis of soft paraffin, and are applied to the chest for their local action and on account of their value when inhaled." And in another work entitled "Pharmaceutical Formulæ," published in 1929, and containing formulæ from various sources, is to be found at p. 940 a formula with the title "Chest Vapour Rub." A comparison of the formula with that of the Plaintiffs' product shows a strong similarity and the same can be said in relation to the formula of the Defendants' product. 10

The evidence in my opinion justifies the view that the word "VapoRub" has direct reference to the character or quality of the ointment or salve of the Plaintiffs and for that reason is not registrable under subsection (4) of section 8. If I had to form my own opinion unaided by the evidence of witnesses I would have come to the same conclusion. I may here refer to a decision of the Privy Council in the case of the *Canadian Shredded Wheat Co. Ltd. v. Kellogg Co. of Canada Ltd. and Solomon Bassin*, reported in 55 R.P.C. 125. Lord Russell of Killowen at p. 144 said: "A consideration of this carton, which was the form in which the biscuits were at the relevant times being sold throughout Canada, makes it clear in their Lordships' view, that the Plaintiff was in no way using the words 'shredded wheat' as indicative of the origin of the goods contained in the carton, but was using them only as descriptive of those goods . . . The Plaintiff was in fact using the words 'shredded wheat' to indicate the thing, not the manufacturer, to indicate the stuff of which the biscuits were composed, not who made them." 30

There remains for consideration the question whether I can now hold that the word "VapoRub" had become a distinctive mark in Jamaica in 1941, the date of its registration as a trade mark, on account of being adapted to distinguish the goods of the company from those of other persons. Subsection (5) seems to imply that words which have acquired distinctiveness become registrable only by virtue of an order of the Court.

It is admitted that no order of the Court was sought in respect of the registration of the word "VapoRub" and, as previously mentioned, the Plaintiffs in their application for registration of the word "VapoRub" expressly disclaimed any intention of seeking an order of the Court under subsection (5), in other words, were content to rest their application for registration of the word "VapoRub" on subsections (3) or (4). At the trial, however, counsel for the Plaintiffs argued that the Court should assume the duty of deciding the question as if it were an original application under this subsection. If the Court so found it was contended that it should act on the *nunc pro tunc* rule, and make an order accordingly. 40

It is true that the Defendants did not specifically allege this ground for rectifying the register by expunging the mark, but both counsel dealt with the point fully, and I am inclined to think that ground (8) of the motion covers it. 50



The Defendants no doubt did not raise the point specifically on the motion to expunge on account of the fact that the Plaintiffs did not seek registration of "VapoRub" as a Trade Mark under subsection (5). The first point that arises for decision on this branch of the case is whether, no order of the Court having been obtained under the subsection at the time of the application, the Court can now in an action for infringement and on a counter-motion to expunge overlook this defect and deal with the matter on the merits, that is, with the question of distinctiveness.

10 It is admitted that the matter is *res integra* in the sense that no authority directly in point has been found but expressions have been used by the Court in several cases which seem to indicate that an order of the Court is a condition precedent to registration under the subsection. It must be remembered that on the application opponents have a right to be heard, evidence is taken and the Court has a discretion as to whether it will make the order. In a subsequent action for infringement the Defendants have a right to look at the evidence taken on the hearing of the application by the Court. (See the *Shredded Wheat* case, 57 R.P.C. 149.) In other words, the position of the Court hearing an infringement action does not appear to be the same as on an application, the parties

20 before it may be different and other issues may arise.

In the *Crosfield* case reported in (1910), 1 Ch. 118, where three appeals in connection with Trade Marks were heard the Court of Appeal considered for the first time the meaning and effect of section 9 of the Trade Marks Act, 1905. Subsection (5) of section 9 corresponds to our subsection (5) of section 8 but in England the order can be made by the Board of Trade or the Court. The two applications, material on this point, were to register the words "Perfection" as a trade mark for common soap and "California Syrup of Figs" for an aperient medicine. Both applications were made under section 9, subsection (5), and required an order of the

30 Board of Trade or the Court and the Board of Trade referred them to the Court. The following passages from the judgments give the meaning and effect of subsection (5).

At p. 141 Cozens-Hardy, M.R., says: "Wealthy traders are habitually eager to enclose part of the great common of the English language and to exclude the general public of the present day and of the future from access to the inclosure. Some protection against these attempts is furnished by subsection (5), which requires a preliminary order of the Board of Trade or the Court. The duty of the tribunal is not to declare that the mark ought to be registered, but only to give liberty to proceed

40 with the application. Such liberty ought to be given when there is a sufficient *prima facie* case made out. And whenever there has been long-continued and extensive user as a trade mark, that circumstance should, in ordinary cases, suffice to establish a right to proceed. But mere user is not necessarily decisive. The words in the proviso are "may take into consideration," and these words must not be treated as equivalent to a positive command to grant the application. A wide discretion is vested in the tribunal." And Fletcher Moulton, L.J., at p. 148, deals with the question of discretion in this way: "In this connection the provisions of s. 44 afford, in my opinion, useful guidance. The registration

50 is not to affect the use of the words by other traders in any *bona fide* description of the goods. The Court will therefore do well to ask itself

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the question: Will the registration of the trade mark cause substantial difficulty or confusion in view of these rights of user by other traders? If the answer is in the affirmative, the Court will probably hesitate to allow the word to be registered. But if the answer be in the negative, either by reason of the nature of the words, or because past user has limited the possibility of other traders safely or honestly using the words, the Court may well grant the desired permission."

Farwell, L.J., at p. 154 puts the position very clearly: "This case comes before us on the preliminary inquiry. The words are excluded by subsection (5) unless an order is obtained that they are fit candidates to be considered distinctive so as to enable an application to the registrar to register under s. 12." 10

In the special application of *Leopold Cassella & Co.* (1910), 2 Ch. 240, which had been referred by the Board of Trade to the Court Buckley, L.J., on the hearing of the appeal from the Judge who heard the application has this to say about subsection (5): "Neville, J., has directed the registrar to proceed with the registration. This is an appeal from his order. The application is one which does not come in the first instance before the registrar. *He cannot proceed* unless the Board of Trade or the Court, under s. 9, subsection 5, of the Act, direct him to proceed. In this case the matter has been referred to the Court." I next refer to the *Teofani* case reported at (1913), 2 Ch. 545. At p. 551 Cozens-Hardy, M.R., states the position thus: "Teofani & Co. were desirous of registering the name 'Teofani' under the Trade Marks Act, but it is quite clear that they could not proceed at all unless they obtained what I venture to call *a passport from the Board of Trade, or from the Court.*" And at p. 567 the same Judge when referring to the scheme of the Trade Marks Act 1905 says: "It mentions first certain marks which can be registered without any application to the Board of Trade or the Court, and next, certain marks which can *only be registered* if an application is permitted to proceed by order of the Board of Trade or the Court." In the *Gramophone Company's* case (1910), 2 Ch. at p. 434, Parker, J., as he was then, lays stress upon the wide discretion in granting or refusing permission to proceed on an application of this nature, notwithstanding section 44. 20 30

The House of Lords in *A. Bailey & Co. Ltd. v. Clark, Son & Morland Ltd.* (1938), 55 R.P.C., also took a similar view. See the speech of Lord Russell of Killowen at p. 262.

My conclusion from the language of the section and the observations in the cases cited is that as no order of the Court was obtained prior to the registration of the word "VapoRub" in 1941 I cannot now deal with the question of what order the Court would have made on the application if there had been an application before it on the basis of distinctiveness. My view is that an order of the Court is a condition precedent to registration under subsection (5) and that it is not competent for the Court in this case to deal with the matter as if an order had been obtained or at this stage to make an order and consider the sole issue of distinctiveness. The result of my opinion is that the word "VapoRub" was at the commencement of this action not properly on the register as it could not be registered under subsections (3) or (4) of section 8 and it is not competent for the Court to consider whether it could have been put on the register under subsection (5). If my view on the latter point is 40 50

correct the Plaintiffs would not be precluded from making an application now, if so advised, to have the word "VapoRub" put on the register. It seems to me that the Plaintiffs deliberately put themselves in this difficulty by the form of their application and no blame can be attached to the Registrar of Trade Marks.

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In coming to this conclusion I have not overlooked the provisions of section 40 which makes registration *prima facie* evidence of the validity of the original registration. But in my view the section leaves it open to a defendant to question the original registration on any good ground.

10 In this case the condition precedent of an order of the Court, is, in my view, one of the elements constituting valid registration.

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I am also aware that a construction has been put upon section 41 of the Act of 1905 (which corresponds to our section 41) which would have protected the word "VapoRub" if it had been on the register seven years, which it was not, without an order of the Court. But the reason for this is that it has been held that the section gives validity to the original registration after 7 years even if there has been non-compliance with the provisions of subsection (5) as to an order of the Court. See *In re Imperial Tobacco Co.* (1918), 2 Ch. 215. It was conceded by both sides

20 that the main determining factor in the infringement action was the view of the Court as to whether the word "VapoRub" was validly registered as a trade mark in 1941, and the major portion of the trial and of the arguments was directed to this question.

Notwithstanding the conclusions which I have reached with regard to the word "VapoRub" I have still to consider whether the Plaintiffs have made out a case of infringement of Trade Mark No. 1852 "Vicks VapoRub." It is convenient at this stage to refer to the trade mark on the carton and jar. The certificate of registration has a representation of the trade mark affixed thereto, the outstanding feature being the words

30 "Vicks VapoRub Salve" in a special collocation. There is other added matter. A comparison of the carton and jar put in evidence with the registered trade mark shows that with the exception of the words "Vicks VapoRub" there has been a departure from the trade mark on the labels. It is a fair conclusion from this that the Plaintiffs consider those words as the dominant part of the trade mark.

Section 41 makes valid the registration of a trade mark after seven years subject to two conditions. The question for determination therefore is whether the use of the words "Karsote Vapour Rub" by the Defendants is an infringement of the Plaintiffs' Trade Mark No. 1852, so far as the words

40 "Vicks VapoRub" are concerned. The Plaintiffs have marketed their products as "Vicks VapoRub" and the Defendants have called their product "Karsote Vapour Rub," and it seems to me that the words "Vicks" and "Karsote" respectively distinguish the goods of one from the other.

For assistance as to the meaning of the infringement in these circumstances I turn to two cases. In *Edwards v. Dennis*, 30 C.D. 454, an action of infringement, Cotton, L.J., at p. 471, says: "No doubt the intention of the Act is to give a right to what is on the register so as to enable a person who has been registered for five years as the proprietor of

50 a trade mark to maintain an action against any other person taking or infringing that trade mark; but when the alleged infringement consists of

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using, not the exact thing upon the register, but something similar to it, the Court must, in considering whether there has been an infringement or not, proceed upon the old principle, which prevailed both at law and equity before the Act, that a man is not to pass off his goods as the goods of another. At common law the man thus injured might obtain damages, and in equity the more effectual protection of an injunction." I deal with the question of passing-off later. The other case is *Horlick's Malted Milk Co. v. Summerskill* (1916), 86 L.J. Ch. 175, where Lord Loreburn delivering the principal opinion in the House of Lords said at p. 176 that they did not think that the public would be misled by the use of the term Hedley's Malted Milk into buying it as and for Horlick's Malted Milk. 10

The Plaintiffs also fail on this part of their claim.

As a result of my decision with regard to the word "VapoRub" as a trade mark it becomes unnecessary to consider what would have been the position on this part of the Plaintiffs' claim if I had taken an opposite view and held that the word "VapoRub" was registrable under subsection (5) of section 9 as being a word that had acquired distinctiveness. I say this because, if I had so held, the Defendants, in my opinion, would have been entitled to the protection of section 44 of the Trade Marks Law which is as follows: "No registration under this Law shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods." 20

To support my view I refer to the judgment of Fletcher Moulton, L.J., in the *Crosfield* case, at p. 148: "In this connection the provisions of s. 44 afford, in my opinion, useful guidance. The registration is not to affect the use of the words by other traders in any *bona fide* description of the goods." Swinfen Eady, M.R., in the *Imperial Tobacco Company's* case (1918), 2 Ch. at p. 225, explains the effect of section 44 as follows: "Then s. 44 provides that no registration under the Act shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, so that such user may still continue to be taken advantage of notwithstanding this registration." On this point I call attention also to the speech of Lord Atkin in the case of *A. Bailey & Co. Ltd. v. Clark Son & Morland Ltd.*, 55 R.P.C., 253 at p. 260. 30

I now come to the question of passing-off.

In order to succeed in a passing-off action the plaintiff has to prove that the conduct of the defendant is calculated to pass-off the defendants' goods as his. He can do so either by showing (1) that the defendant has actually represented that his goods are those of the plaintiff, or (2) that he has used certain symbols or badges in connection with his goods which are reputed in the market to import that the goods in connection with which they are used are the plaintiff's goods. There is no evidence, and it has not been suggested, that the Defendants have actually represented their goods as those of the Plaintiffs, but the Plaintiffs' case rests on the second of the above propositions. It is claimed that the form of the jar and the design of the labels are similar and that the Defendants used the words "Vapour Rub" on their goods. This branch of the law is old and Farwell, L.J., sets out the principle and its limitations in the *Crosfield* 40 50

case (1910), 1 Ch. at p. 150: "The object of trade mark law, whether before or after the Trade Marks Acts, is to protect honest trading: to restrain a man from passing-off another's goods as his own was an old head of equity, but in exercising that jurisdiction, as in construing the Trade Marks Acts, the Court is careful not to interfere with other persons' rights further than is necessary for the protection of the claimant, and not to allow any claimant to obtain a monopoly further than is consistent with reason and fair dealing." Karsote Vapour Rub is sold in cardboard containers containing 12 jars. The containers are wrapped in plain brown paper on which is a label with the words "Karsote Vapour Rub." The containers have the words "Karsote Vapour Rub" on an orange background the words "Vapour Rub" being larger than the word "Karsote" and under them are the words "White Stainless." There is a picture on the container of a woman rubbing a boy on the chest.

Two different jars of Karsote Vapour Rub were produced in evidence. One jar is made of white transparent glass and the contents are amber coloured. As on the container the words on the label of the jar are "Vapour Rub" in large letters with the word "Karsote" above in smaller letters. On the cap of this jar are the words "Vapour Rub" in large letters with the word "Karsote" above in smaller letters and the words "White Stainless" under. A point was made of the fact that the words "White Stainless" appear on the Vicks jar and correctly represent the colour of the contents. While the contents of the Karsote jar are not white but amber coloured. Various suggestions were made about this but the Defendants are not the manufacturers and could offer no reasonable explanation. It is remarkable, however, that although the jar had been handled frequently during the long trial, it was only at the end of the trial that this attracted the attention of Plaintiffs' counsel. The other jar of Karsote is of brown glass, non-transparent with a similar label to the first as described above but the cap has no writing on it. The Vicks jar is sold in blue individual containers on which the most prominent word is "Vicks." Under it and in smaller letters is the word "VapoRub," and above the word "Vicks" is the word "Stainless." Under "VapoRub" is the word "Ointment." There is also the distinctive red triangular device with a white edge under the word "Ointment." The Vicks jar is of non-transparent blue glass and again on the label the word "Vicks" is the most prominent. This word is in blue on a blue background with the word "VapoRub" under in red. The cap has "Vicks VapoRub" in a semi-circle and the words "White Stainless" in the middle of the cap and "Just rub it On" at the bottom of the circle.

The Karsote jar is appreciably smaller than the Vicks jar and the colouring of the jars, the labels, and the writing on the labels is different to that of the Vicks jar. So far as the Karsote containers are concerned they seem to me to play no important part in the question of deception. The retail customers are not likely to see the containers and there is no evidence that any of them has ever seen one. Vicks is not sold in large containers, but each jar is in an individual container. The wholesalers and the retailers would no doubt see the Karsote containers but not one of them has suggested that he was deceived into thinking that it contained a Vicks product. It seems to me that if the representation on the container was calculated to deceive one would expect to hear that some

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*continued.*

persons had been deceived. In any event I do not feel justified in coming to the conclusion that the representation on the Karsote containers was calculated to deceive. Now what is the position about the jars? I have already pointed out the differences between the respective jars, and there is no evidence that any wholesale or retail dealer—with one exception—or any prospective purchasers has been deceived by the jar put on the market by the Defendants into thinking that he was buying the article manufactured by the Plaintiffs. One witness for the Plaintiffs, Joseph Kong, the Manager of a large grocery store gave evidence to show that he had mistaken a jar of “Karsote Vapour Rub” which he had seen in 10 another shop for a jar of Vicks. He called it “Small Vicks.” It is difficult to appreciate the story of this witness as what is prominently displayed on the Vicks container and jar is the word “Vicks” and not the word “VapoRub.”

The explanation may be that his sight is bad and this would appear to be so from an incident in Court when he could not read what was on the Karsote jar without a magnifying glass. But there is the evidence of several other witnesses which leads to the conclusion that the buying public are well aware of the fact that Karsote and Vicks are different products, and that they were not deceived. Messrs. Francis, Pierce, 20 Herbert Kong and Burnett gave instances where persons were offered Karsote Vapour Rub when no Vicks VapoRub was in stock. Some of these took Karsote Vapour Rub in substitution for the Vicks product, well knowing it was a different article, others refused it. Mr. Pierce gave it as his opinion that the majority of people preferred Vicks VapoRub to Karsote Vapour Rub, and some persons bought the latter because it was cheaper. Mr. Gunter said that if he saw a bottle of Karsote Vapour Rub he would not think it was made by the Vicks Co. In the face of this evidence I find it difficult to hold that the Defendants had put on the market a product with characteristics calculated to deceive the public 30 into believing it was that of the Plaintiffs.

The Defendants sold their product as “Karsote Vapour Rub” and wholesale and retail dealers and druggists knew the Defendants’ article by that name, and no witness, purchaser or otherwise, has made the least suggestion of having been deceived.

There are no doubt some points of resemblance in the respective jars and the advertisements, but they are not in my opinion such as would be calculated to deceive. The force of the point about a similarity in advertisements is not apparent as one would have thought that the persons who read them would know that they referred to either a Karsote or a 40 Vicks product. And it should be borne in mind that the Privy Council considered that there should be some proof of likelihood of deception.

In the *Shredded Wheat* case at p. 148 in 55 R.P.C. these words occur: “Such likelihood of deception requires to be proved and it is noticeable that no witness was shown a Kelloggs’ biscuit and asked whether he would have taken that to be a biscuit of the plaintiffs’ manufacture.”

Before ending this portion of my judgment I refer again to the *Horlicks’ Malted Milk* case, 86 L.J. Ch. 175, in which the plaintiffs who who had for many years sold a preparation under the name of “Horlicks Malted Milk” and had built up a very large trade in it sought to obtain 50 an injunction to restrain the defendant from selling a similar preparation

under the name of "Hedley's Malted Milk." The ground of the action was that the words "malted milk" had become so completely identified with the plaintiffs' manufacture that the conduct of the defendant was calculated to deceive and had in fact deceived purchasers into believing that his manufacture was the manufacture of the plaintiffs. Joyce, J., dismissed the action and the Court of Appeal and the House of Lords confirmed his judgment.

Earl Loreburn at p. 176 says: "Now, in my opinion, in accordance with the opinion of Mr. Justice Joyce, which was confirmed by the Court of Appeal, that expression is merely descriptive of milk which is combined or prepared with malt or with extract of malt. The claim really is to the use of a part of a designation which the plaintiffs have been in the habit of using. They have been in the habit of using the term 'Horlick's Malted Milk.' They eliminated the word 'Horlick's' and ask that the remainder of that description shall be prohibited to the defendant. I do not think, on the ground that these are descriptive words, that this can be done. Of course the question with which I have been dealing is a question which lies at the bottom of the right of the plaintiffs and the defendant; but the real point in issue is this—ought the House to say that we should expect the public to be misled by the use of the term 'Hedley's Malted Milk' into buying it as and for Horlick's Malted Milk."

In my opinion the Plaintiffs have not established that the Defendants have passed off their goods as those of the Plaintiffs.

For the reasons given with regard to the various issues raised in the Statement of Claim, the Plaintiffs fail in their action.

There still remains the matter of the Defendants' motion to rectify the register of Trade Marks (1) by the removal of Trade Mark 3707, which consists of the word "VapoRub," (2) by expunging from the said register part of the trade mark registered as No. 1852, namely, the word "VapoRub," or by adding to the entry a disclaimer of any right on the part of the registered proprietor to the exclusive use of the word "VapoRub," (3) such other order for the rectification of the said register as to the Court shall seem fit.

It is under section 35 that the Defendants are applying for rectification.

As was mentioned early in this judgment, the parties agreed that the motion should be treated as in the nature of a counter-claim so that I could deal with the whole matter in controversy.

So far as the motion relates to Trade Mark 3707 it follows from the conclusions I have reached that the Defendants succeed on this part of their motion.

For the reasons which I am about to give the second part of the motion fails.

The part of Trade Mark 1852 that is material for this purpose consists of the words "Vicks VapoRub." This is a combination of two words which are protected on the register by virtue of the provisions of section 41 of the Trade Marks Law. The material portion of the section is as follows: "In all legal proceedings relating to a registered trade mark (including applications under section 35 of this Law) the original registration of such trade mark shall after the expiration of seven years from the date of such

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original registration be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 10 of this Law."

No question of fraud arises and there remains the second condition to consider, whether the trade mark offends against the provisions of section 10. I set out the portion of section 10 that is material: "It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice." It was not argued and I can see no reason for holding that the words "Vicks VapoRub" are calculated to deceive or are otherwise disentitled to protection in a Court of Justice and it follows that their registration is valid. See judgment of Swinfen Eady, M.R., at p. 223 in the *Imperial Tobacco Company's* case (1918), 2 Ch. 10

But the Defendants ask in the alternative that the Plaintiffs should disclaim the exclusive use of the word "VapoRub." This prayer of the motion was contingent on the Court finding that the single word "VapoRub" was not registrable as a trade mark which in the event is what has happened.

As I understand the law on the subject, a combination of words may be registered as a trade mark although the separate words may not be registrable individually, if the combination is identified by long user with the goods of the Plaintiffs. I do not think it can be disputed that the words "Vicks VapoRub" have been identified by long user with the Plaintiffs' goods. In the *Crosfield* case (1910), 1 Ch., Fletcher Moulton, L.J., in dealing with the appeal relating to the application of the California Fig Syrup Company to register the words "California Syrup of Figs" under subsection (5) of section 9, which was refused by Warrington, J., says this at p. 150: "These words collectively form the commercial name of a well-known aperient medicine. The evidence is ample to establish a *prima facie* case of these words being identified by long user with the goods of the applicant. There is no inherent difficulty in accepting such a conclusion in the case of a compound appellation such as this, nor is there, in my opinion, any likelihood of other traders being placed in difficulties by having to avoid it. They can easily find adequate descriptions of any goods they may wish to sell without adopting this compound name, even if they could honestly make use of it at all. I am therefore of opinion that the evidence before us justifies us in allowing the registration to proceed." And Farwell, L.J., makes the position even more clear at p. 154: "The right claimed is to the four words as heretofore used: such a mark would give no exclusive right to 'California,' and although I agree with Mr. Sargent that the tribunal has to consider the future as well as the present on these applications, I see no reason to apprehend that the use of those four words to denote only the particular laxative drug manufactured by the applicants will unduly interfere with any honest trade mark of any other person.' I agree with Warrington, J.'s opinion that the Legislature has not said that if it has in fact become distinctive, then it is in all cases to be regarded as adapted to distinguish. It is a question for the judge in each case having regard to the extent of user, but I do not follow his conclusion that he would be giving a monopoly in 'California': The only monopoly is in the four words 30 40 50



actually used, and nothing that would not be a colourable imitation of that mark in a passing-off action would be such in an action on the trade mark."

The *Crosfield* case is one of the leading cases in the law of Trade Marks and was cited by both Counsel.

In the result the order of the Court is

- (1) that the action of the Plaintiffs is dismissed ;
- (2) that Trade Mark 3707, the word " VapoRub," be expunged from the register of trade marks ;
- 10 (3) that no order be made on the motion in relation to Trade Mark No. 1852, the words " Vicks VapoRub " ;
- (4) that the Plaintiffs enter a disclaimer on the register in respect of Trade Mark 1852 to the effect that no claim is made on behalf of Vicks VapoRub as a liver pill or a headache tablet.

Finally I have to deal with the matter of costs, not unimportant in a case of this length.

The Plaintiffs have failed except in regard to the second part of the motion and in accordance with the practice laid down in *Cinema Press Ltd. v. Pictures and Pleasures Ltd.* (1945), 1 K.B. 356, I direct that the Plaintiffs  
20 pay the Defendants four-fifths of their taxed bill of costs.

(Sgd.) W. SAVARY, J.

14th February, 1947.

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Court of  
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No. 22.  
JUDGMENT.

Suit E. No. 8 of 1944.

No. 22.  
Judgment,  
14th  
February  
1947.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. - - Defendants.

Suit E. No. 44 of 1945. 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court  
In Equity.

IN THE MATTER of an Application by CECIL de CORDOVA & Co.  
LTD.

AND

IN THE MATTER of the Registered Trade Marks Nos. 1852  
and 3707 of VICK CHEMICAL COMPANY

AND

IN THE MATTER of the Trade Marks Law (Cap. 272). 20

The 14th day of February 1947.

This Action and Motion coming on for trial on the 3rd 4th 5th 6th and 7th days of June and 4th 5th 29th 30th and 31st days of July 1946 before the Honourable Mr. Justice Savary in the presence of Counsel for the Plaintiff and the Defendants and upon hearing the evidence of witnesses taken on their oral examination at the trial this Court having ordered and declared as in the written Judgment delivered this day doth appear: THEREFORE IT IS THIS DAY ADJUDGED—

- (1) that the Action of the Plaintiff be dismissed ;
- (2) that Trade Mark 3707, the word " VapoRub," be expunged 30  
from the register of trade marks ;
- (3) that no order be made on the Motion in relation to Trade  
Mark No. 1852, the words " Vicks VapoRub " ;
- (4) that the Plaintiff enter a disclaimer on the register in  
respect of Trade Mark 1852 to the effect that no claim is made  
on behalf of Vicks VapoRub as a liver pill or a headache tablet ;
- (5) that the Plaintiff pay to the Defendants four-fifths of their  
taxed costs.

Entered this 28th day of February 1947.

ALBERGA & HART, 40  
Defendants' Solicitors.

Entered by ALBERGA & HART, of 119 Tower Street, Kingston, Solicitors  
for the above-named Defendants.

No. 23.

## NOTICE AND GROUNDS OF APPEAL IN ACTION.

IN THE SUPREME COURT OF JAMAICA.  
The Court of Appeal.

Between VICK CHEMICAL COMPANY - - - Plaintiffs  
and  
CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. - - Defendants.

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Appeal for  
Jamaica.*

No. 23.  
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in Action,  
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1917.

- 10 TAKE NOTICE that the Court of Appeal will be moved on Monday the 24th day of March 1917 at 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff, the Appellant herein, for an order setting aside the Judgment of His Honour Mr. Justice Savary in favour of the Defendants in respect of the Plaintiff's claims in the above-named action delivered on the 14th day of February 1917 and entered on the 28th day of February 1917 AND for an Order that Judgment be entered for the Appellant on the claims in the action with such relief as to the Court shall seem fit AND THAT the Respondents do pay to the Appellant the costs of the said action and this Appeal
- 20 AND TAKE NOTICE that the Appellant will rely on the following Grounds in support of this Motion :—

1. The facts hereafter set out were *inter alia* established at the Trial and accepted by the Judge :—

(A) That for upwards of 25 years before action brought the Appellant Company or its predecessors in title had marketed in Jamaica a medicated ointment and sold the same under the trade mark "Vicks VapoRub."

30 (B) That the medicated ointment was and is an old and well known type of remedy and the term "VapoRub" was merely a new name given to an old remedy. The said word "VapoRub" had never been applied to that type of medicated ointment or any form of ointment prior to the year 1911 when it was coined by one Richardson and applied to the Appellant's product.

40 (C) That from the year 1915 the mark "VapoRub" was registered by the Appellant's predecessors in title as a Trade Mark in the United States of America and has been in continuous use to this day and that "VapoRub" alone is registered as a Trade Mark in thirty countries twenty of which are English speaking and that these countries include England, Canada, New Zealand, South Africa, Jamaica, Trinidad, and Barbados.

(D) That on the 7th day of April 1924 the Appellant's Trade Mark No. 1852 was registered in Jamaica consisting of the trade name "Vicks VapoRub" above the descriptive word "salve" and added matter.

(E) That "Vicks VapoRub" constituted the outstanding feature of the said Trade Mark and that the Appellant considered

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those terms to be and used them as the dominant part or feature of the Mark and sold its product in jars with labels the distinctive feature of which was the said "Vicks VapoRub" prominently displayed thereon and used as a trade mark.

(F) That at the time when the Appellant commenced to market its product in Jamaica there were other products with similar qualities, that is to say, other medicated ointments, on the market in Jamaica.

(G) That the trade and the public used the expression "Vicks VapoRub" as indicating the salve or ointment made by the Appellant and that for a period of ten years or more (prior to 1941) the terms "Vicks" alone and "VapoRub" alone were used synonymously with "Vicks VapoRub" and were and are each used in Jamaica to mean and indicate the salve or ointment made by the Appellant. 10

(H) That except for the special position referred to hereafter which exists in England all attempts prior to 1943 made by any other person to use the term "Vapour Rub" or any term or word which closely resembled "VapoRub" have been successfully objected to by the Appellant. 20

(I) That on the 13th of October 1941 the Appellant's Trade Mark No. 3707 was registered in Jamaica consisting of the term "VapoRub" alone.

(J) That since the year 1943 the Respondents have imported into and marketed in Jamaica a medicated ointment similar to that sold by the Appellant bearing the trade name "Karsote Vapour Rub," the said ointment being the manufacture of a firm in England.

2. It was further established at the trial:—

(A) That for the whole period during which the Appellant has been selling its product in Jamaica it has competed with other similar products some of which were on the market in Jamaica before the Appellant commenced to market their product here. 30

(B) That the only English speaking country in the world where the words "Vapour Rub" are used descriptively as meaning a class of medicated ointment similar to that of the Plaintiff is England and Eire.

(C) That the words "Vapour Rub" were not used descriptively in England until they were introduced into that country and used in a descriptive sense by the Appellant in order to claim the benefit of exemption from duty under the Medicine Stamp Duty Act of England. 40

(D) That in November 1924 the Appellant first used the term "Vapour Rub" in England and acting under legal advice advertised and sold its product as "Vick Brand Vapour Rub" and that it was not until five or six years after that date that other manufacturers in England began to change the name of their medicated ointment and market them using the words "Vapour Rub" and finally that it was not until the year 1934 that the term "Vapour

Rub" first appeared in any standard work in England dealing with Medicines in which year it appeared in Martindale's Pharmacopœia as a term applicable to vapourising ointments used as a chest medicament.

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3. The Learned Judge erred in his Judgment in stating that the Appellant had a virtual monopoly in the sale of its product in Jamaica and that finding is inconsistent with his own finding that other products with similar qualities were sold under various marks and names in the year 1941 and with the finding that other traders used words somewhat similar to distinguish their own products. In fact the Appellant has at all material times marketed its goods in Jamaica in competition with similar goods sold by other manufacturers. The Appellant has enjoyed an admittedly large proportion of the trade in Jamaica because of the superiority of its product and its advertising and selling methods and its greater activity in that connection.

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4. In any event the Learned Judge misapplied the reasoning of the cases which deal with a monopoly situation enjoyed by the manufacturer of an article.

Where a manufacturer makes an old and familiar article of trade such as a medicated ointment and applies to it a fancy name which is intended to and in fact comes to designate his particular manufacture and to distinguish the product as manufactured by him from the products of other manufacturers it is irrelevant to enquire whether he has succeeded in obtaining a very large proportion of the trade in that well-known type of article. In fact the greater his success in selling in the name which distinguishes his product from that of other persons the greater his right to resist the use by others of names similar to that under which the reputation of his goods has been built up.

5. The Learned Judge erred in the statement that it was conceded by both sides that the main determining factor in the case was whether "VapoRub" was validly registered as a Trade Mark in 1941. From first to last it was contended that the Appellant was entitled to succeed in the action for infringement and in the Passing-off action irrespective of the question whether "VapoRub" alone had been properly registered or not.

6. On the facts accepted by the Judge or established at the hearing "VapoRub" as an essential part of the mark VICKS VAPORUB was proved to signify in Jamaica the vapourising ointment manufactured by the Appellant. The term was wholly unknown in Jamaica as a generic term applicable to or descriptive of vapourising ointments. It was not common to the trade and was in no sense *publici juris*. The Appellant was entitled to Judgment on the ground that its goods had become known to the public by the name "VapoRub" which was a part of and taken from the Appellant's Trade Mark No. 1852 and was used to signify in the trade the ointment manufactured by the Appellant and that the use of "Vapour Rub" as the name under which an ointment not of the Appellant's manufacture was sold was an infringement of the Appellant's Trade Mark rights.

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7. The Learned Judge was wrong in holding that the word "Karsote" before "Vapour Rub" sufficiently distinguished that product from the product manufactured by the Appellant because:—

(A) Such a finding ignored the accepted fact testified without challenge or contradiction by wholesalers retailers and consumers alike that the term "VapoRub" was in common use by the public as meaning only the goods manufactured by the Appellant.

(B) Such a finding ignored the consideration that evidence as to what the term "Vapour Rub" signified in England was not relevant to the issue of infringement in Jamaica where the term "VapoRub" is not known or used descriptively and where no person save the Appellant is entitled to use it or any other term so closely resembling it as to be calculated to deceive or to lead to confusion or error. 10

(C) The use of the words "Vapour Rub" as a trade mark or otherwise by other traders involves a use of words which to the eye and to the ear so closely resemble "VapoRub" as to be calculated to cause confusion and to deceive. Moreover, the get-up of the article complained of and the Respondents advertising taken in conjunction with the use of "Karsote Vapour Rub" were calculated to deceive the public into buying the said article for the article manufactured by the Appellant and sold under its Trade Mark No. 1852. 20

(D) This finding ignored the rule that in an infringement action where there is proved to be a use of an essential part of one party's registered trade mark by a rival trader as a trade mark or brand name the fact that the manufacturer makes it clear that the commercial origin of the goods complained of is other than that of the party complaining avails him nothing since infringement consists in using the mark as a trade mark that is as indicating 30 origin.

In fact the Respondents used "Vapour Rub" as a Trade Mark or brand name.

(E) The use of the word "Karsote" before "Vapour Rub" can in no event sufficiently distinguish that product from the Appellant's product having regard to the manner in which goods are ordered and other relevant factors affecting the trade in question. Moreover, "Karsote" itself is not a name but a fancy word and might well be thought, if noted at all, to indicate a special grade or type of "VapoRub" with special ingredients (for example 40 Creosote) manufactured by the Appellant.

8. (A) The Learned Judge was wrong in holding that the Respondents were entitled to market their goods under the name "Vapour Rub" in virtue of Section 44 of the Trade Mark Law, Chapter 272, as being a *bona fide* description of the character or quality of their goods.

(B) This finding ignored the established rule that Section 44 has no reference to the *bona fides* of the person using the description but raises the question whether having regard to all the circumstances the alleged description is one which it is fair for the party using it to adopt having regard to the rights of other traders. 50

(c) Since the words "Vapour Rub" are not the name in Jamaica of that class of ointment and are wholly unknown in that sense and since "VapoRub" is identified with goods of the Appellant's manufacture and since there are other and better descriptions of the character and quality of vapourising ointments available to persons trading therein it cannot be said that "Vapour Rub" is a fair description in Jamaica of the medicated ointments in question.

(d) The phrase "Karsote Vapour Rub" was not used descriptively by the Respondents but was used as a Trade Mark or trade name.

10 (e) In any event the term "Vapour Rub" has no primary descriptive meaning in Jamaica.

9. As to Trade Mark 3707 the Learned Judge was wrong in refusing to recognise and uphold the Registration thereof and ought to have held that the Mark was validly on the Register. On such a finding it is conceded that the Appellant would have been entitled to Judgment unless the Respondents were protected by Section 44 of the Trade Marks Law Chapter 272.

10. The said Mark No. 3707 was properly registered under subsections (3) and (4) of Section 8 of the Trade Mark Law Chapter 272.

20 11. Alternatively to paragraph 10 above, if the said Mark "VapoRub" was not properly registered under Subsections (3) or (4) of Section 8 of the Law the proved and accepted facts established that it could have been registered under Section 8 (5) of the Trade Mark Law since in the year 1941 it was as a fact (as the Learned Judge has in effect found) distinctive of the Appellant's goods and was not a word used descriptively in Jamaica.

30 12. In any event the entry of the said Trade Mark on the Register was not made without sufficient cause and it was not an entry wrongly remaining on the Register within the meaning of Section 35 of the Trade Mark Law because the Appellant was entitled to have registered the Mark under Section 18 it being a Trade Mark registered in England under the Trade Marks Act 1905. There are no conditions precedent to the registration of a Mark in Jamaica which is registered in England and it is not necessary to do more than establish the fact by a certified copy that the Mark is registered in England.

40 13. The Learned Judge erred in holding that failure to apply to the Court for leave to proceed under Section 8 (5) of the Trade Mark Law was necessarily a fatal bar to the validity of a Mark in cases where such an application ought to have been made and that an Order of the Court was in the sense intended by the Judge a condition precedent to registration.

14. In making that finding the Learned Judge was influenced by the mistaken belief that it was conceded by the Appellant that this matter was *res integra*. On the contrary attention was directed to several cases directly or indirectly affecting the matter but the Learned Judge ignored the cases in his Judgment.

15. The Learned Judge ought to have exercised the discretion vested in him by Section 35 of the Trade Mark Law on an application to rectify

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the Register. He ought to have decided as a fact under Section 35 (2) that there was sufficient cause for the Mark to have been registered in 1941. He had and if necessary ought to have exercised the power to make at the Trial the appropriate order that would have been made in 1941 under Section 9 (5) if an application had been then made to the Court.

16. The Learned Judge was wrong in holding that even if "VapoRub" was properly registered the Respondents were protected by Section 44 for the reasons already stated in paragraph 8 hereof.

17. The Learned Judge was wrong in holding that the Passing-off action failed—

10

(A) He misconstrued the evidence and wrongly held that there was no evidence of actual deception:

(B) He wrongly held that there was no likelihood of deception. There was decisive evidence that deception was likely and indeed inevitable.

(C) He wrongly held that "Karsote" used before "Vapour Rub" sufficiently distinguished the goods of the Respondents from those of the Appellants.

(D) He failed to give proper weight to the resemblances in the get-up of the goods to the similarities in the advertising matter to the conditions and circumstances under which the goods were sold to the similarities to eye and ear that were proved to exist and to most of the other relevant considerations.

20

(E) He failed to give weight to the submission that the evidence as a whole established or tended to establish that the Manufacturers of the goods were deliberately attempting to imitate the Appellant's get-up and advertising matter as closely as they hoped or thought it was safe to do.

18. The Learned Judge's decision on this and other issues in the case was largely based on a misconstruction of the decision in the *Horlick's Malted Milk* Case. That decision (a decision in a Passing-off action—no action for infringement of a registered trade mark being alleged) was based on special circumstances (none of which exist in the instant case) and largely on the grounds that "Malted Milk" was a purely descriptive term in common English use. The decision has no application to a fancy mark like "VapoRub" which was proved to have no descriptive use or meaning in Jamaica and to be identified and legitimately identified in the minds of the public and commonly used as a mark distinctive of and designating the goods of the Appellant.

30

19. The decision on the Respondents' Motion to expunge Trade Mark No. 3707 (treated by consent as a Counter-claim in the action) was wrong for reasons already set out in paragraphs 9 to 15 hereof (inclusive).

40

20. The Judgment as a whole is contrary to the proved and accepted facts and is based on the erroneous application of principles that do not apply to the facts of this case and ignores or rejects well-established



principles governing the real issues that arose having regard to the facts of the case.

*In the Court of Appeal for Jamaica.*

Dated the 12th day of March 1947.

LIVINGSTON, ALEXANDER & LEVY,

Appellant's Solicitors.

No. 23.  
Notice and Grounds of Appeal in Action, 12th March 1947, continued.

To The above-named Respondents,  
c/o Messrs. Alberga & Hart,  
Solicitors,  
119 Tower Street,  
Kingston.

10

The Registrar General,  
Trade Marks Branch,  
General Register Office,  
Spanish Town.

And

The Registrar of the Supreme Court,  
Kingston.

Filed by LIVINGSTON, ALEXANDER & LEVY of No. 20 Duke Street,  
Kingston, Solicitors for the Appellants whose address for service is  
that of their Solicitors.

20

No. 24.

NOTICE AND GROUNDS OF APPEAL IN MOTION.

IN THE SUPREME COURT OF JAMAICA.  
The Court of Appeal.

No. 24.  
Notice and Grounds of Appeal in Motion, 12th March 1947.

IN THE MATTER of an Application by CECIL de CORDOVA

AND

IN THE MATTER of Registered Trade Marks Nos. 1852 and  
3707 of VICK CHEMICAL COMPANY

AND

IN THE MATTER of the Trade Marks Law (Chap. 272).

30

TAKE NOTICE that the Court of Appeal will be Moved on Monday the 24th day of March 1947 at 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff, the Appellant herein, for an Order setting aside the order made in favour

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Appeal for  
Jamaica.*

No. 24.  
Notice and  
Grounds of  
Appeal  
in Motion,  
12th March  
1947,  
*continued.*

of the Defendants, the Respondents herein, on the Respondents' Motion to expunge Trade Mark No. 3707 from the Register of Trade Marks which Order was made by His Honour Mr. Justice Savary on the 14th day of February 1947 and entered on the 28th day of February 1947 and for an Order that the Motion to expunge be dismissed and that the Respondents do pay to the Appellants the costs of the said Motion and of this Appeal AND TAKE NOTICE that the Appellant will rely on the following Grounds in support of this Motion :—

1. Having regard to the facts established at the trial and to all the general circumstances of the case which are more particularly dealt with in the Grounds of Appeal in the Action, Suit E. No. 8 of 1944 between Vick Chemical Company, Plaintiff and Cecil de Cordova, G. J. de Cordova, Cecil de Cordova & Co. Ltd., Defendants, which was by consent heard at the same time as the Motion above referred to the said Motion being treated as a counter-claim in the action and to which Plaintiff refers the Learned Judge was wrong in refusing to recognise and uphold the Registration of Trade Mark 3707. The Learned Judge ought to have held that the Mark was validly on the Register. 10

2. The said Mark No. 3707 was properly registered under Sub-sections 3 and 4 of Section 8 of the Trade Marks Law Chapter 272. 20

3. Alternatively to paragraph 2 above, if the said Mark " VapoRub " was not properly registered under Sub-sections 3 or 4 of Section 8 of the Law the proved and accepted facts established that it could have been registered under Section 8 (5) of the Trade Marks Law since in the year 1941 it was as a fact (as the Learned Judge has in effect found) distinctive of the Appellant's goods and was not a word used descriptively in Jamaica.

4. In any event the entry of the said Trade Mark on the Register was not made without sufficient cause and it was not an entry wrongly remaining on the Register within the meaning of Section 35 of the Trade Marks Law because the Appellant was entitled to have registered the Mark under Section 18 it being a Trade Mark registered in England under the Trade Marks Act 1905. There are no conditions precedent to the registration of a Mark in Jamaica which is registered in England and it is not necessary to do more than establish the fact by a certified copy that the Mark is registered in England. 30

5. The Learned Judge erred in holding that failure to apply to the Court for leave to proceed under Section 8 (5) of the Trade Marks Law was necessarily a fatal bar to the validity of a Mark in cases where such an application ought to have been made and that an Order of the Court was in the sense intended by the Judge a condition precedent to registration. 40

6. In making that finding the Learned Judge was influenced by the mistaken belief that it was conceded by the Appellant that this matter was *res integra*. On the contrary attention was directed to several cases directly or indirectly affecting the matter but the Learned Judge ignored the cases in his judgment.

7. The Learned Judge ought to have exercised the discretion vested in him by Section 35 of the Trade Marks Law on an application to rectify the Register. He ought to have decided as a fact under Section 35 (2) that there was sufficient cause for the Mark to have been registered in 1941.

He had and if necessary ought to have exercised the power to make at the Trial the appropriate order that would have been made in 1941 under Section 9 (5) if an application had been then made to the Court.

*In the  
Court of  
Appeal for  
Jamaica.*

Dated the 12th day of March 1947.

LIVINGSTON, ALEXANDER & LEVY,  
Appellant's Solicitors.

No. 24.  
Notice and  
Grounds of  
Appeal  
in Motion,  
12th March  
1947,  
*continued.*

10 To The above-named Respondents,  
e/o Messrs. Alberga & Hart,  
Solicitors,  
119 Tower Street,  
Kingston.

The Registrar General,  
Trade Marks Branch,  
General Register Office,  
Spanish Town.

And

To the Registrar of the Supreme Court,  
Kingston.

20 Filed by LIVINGSTON, ALEXANDER & LEVY, of No. 20 Duke Street, Kingston,  
Solicitors for the Appellants whose address for service is that of their  
Solicitors.

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*In the  
Court of  
Appeal for  
Jamaica.*

No. 25.

**REASONS FOR JUDGMENT.**

IN THE SUPREME COURT OF JAMAICA.

In the Court of Appeal.

Suit E. No. 8 of 1944.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA

G. J. DE CORDOVA

CECIL DE CORDOVA & CO. LTD. - - - Defendants. 10

Suit E. No. 44 of 1945.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court

In Equity.

IN THE MATTER of an Application by CECIL de CORDOVA & Co.  
LTD.

and

IN THE MATTER of the Registered Trade Marks Nos. 1852  
and 3707 of Vick Chemical Company 20

and

IN THE MATTER of the Trade Marks Law (Cap. 272).

N. W. Manley, K.C.

B. A. Rowe with him, instructed by Aston Levy for Vick Chemical Co.  
Sir Lennox O'Reilly, K.C.

V. D. Evelyn with him, instructed by C. Hart for Cecil de Cordova et al.

The Judgment of the Court (Hearne C.J., Carberry and MacGregor JJ.)  
was delivered by the C.J. on 12th January 1948.

The plaintiffs, Appellants, Vick Chemical Coy., are a corporation  
created under the laws of the State of Delaware, U.S.A. The first and 30  
second defendants were two members of a defunct partnership, and the  
third defendant is a limited liability company which succeeded the  
partnership in December 1943.

The Appellants brought an action against the Respondents for an  
infringement of their Trade Marks, Nos. 1852 and 3707 and for passing-  
off in respect of their goods.

The Respondents filed a Notice of Motion "to rectify the Register  
of Trade Marks—

(A) by removal of Trade Mark 3707 ; and

(B) by expunging a part of Trade Mark 1852, namely, the word 40  
'VAPORUB' or by adding a disclaimer of any right to the  
exclusive use of the word."

The motion was treated as a counter-claim in the action.

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The Appellants are the manufacturers of a medicated ointment or salve known as "Vicks VapoRub." Trade Mark 1852 consists of the words "Vicks VapoRub" above the word "Salve," and beneath this is a triangular device bearing the words "Vick Chemical Coy." with added matter, all on a rectangle with triangles at the corners. This Trade Mark was registered in Jamaica on 7th April, 1924, in respect of a medicinal salve for external use, liver pills, headache tablets and a liniment.

Trade Mark 3707, which was associated with Trade Mark 1852, consists of the word "VAPORUB" and was registered on 13th October, 1941.

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When the Appellants applied for the registration of Trade Mark 3707 they expressly disclaimed any intention of seeking an order of the Court under subsection (5) and rested their application on subsections (3) and (4) of Section 8 of the Trade Marks Law, Cap. 272.

Section 8, or so much of it as is material, is as follows:—

"A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) the name of a company, individual, or firm represented in a special or particular manner;

(2) the signature of the applicant for registration or some predecessor in his business;

(3) an invented word or invented words;

(4) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3) and (4) shall not, except by order of the Court, be deemed a distinctive mark."

The Appellants' medicated ointment is manufactured abroad and has been imported into Jamaica for the past 25 years. The ointment is sold in blue jars, each packed in a small carton, and the jar, as well as the carton, bear the word "VICKS" in large letters in blue, and in smaller letters in red the word "VAPORUB." A comparison of the carton and jar, which were put in evidence at the trial, with the registered trade mark 1852 shows that, with the exception of the words "Vicks VapoRub" there has been a departure from the registered trade mark indicating that the Appellants consider that these words are the dominating part of their trade mark.

The word "VAPORUB" appears to have been first used by a Mr. Richardson in 1911 in connection with a medicated ointment which he had previously named "Vicks Croup and Pneumonia Cure." This ointment was put on the market in the U.S.A. and it was claimed that it became partly vaporised when it was rubbed on the skin. The Appellants are the successors of Mr. Richardson in respect of this product. In 1915 the word "VAPORUB" was registered as a trade mark in the U.S.A. and has since been in continuous use. The trade mark "VICKS VAPORUB" is registered in about 70 countries and the word "VAPORUB" alone in 50 countries, 20 of which are English-speaking and these include England.

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Canada, New Zealand, South Africa, Trinidad, Barbados and Jamaica. The first registration in England was in 1920 and it was renewed in 1935.

The Appellants advertise extensively in the U.S.A. and other countries and have a large export trade, and they and their predecessors in title have advertised regularly in Jamaica. In the early years they distributed folders and free samples from house to house and also gave demonstrations at drug stores. The Appellants' sales have increased in Jamaica from 288 dozen jars in 1923-24 to 4,200 dozen jars in 1944-45.

In 1941 when the word "VAPORUB" was registered there was no other product in Jamaica bearing the name "Vapour Rub" although 10 there were other medicated ointments with qualities similar to the Appellants' product sold under various names. Between 1926 and 1941 three other products were put on the market in Jamaica bearing the words "Vapour Rub" and the firms responsible for so doing at the request of the Appellants withdrew them and gave the Appellants undertakings not to use the words "Vapour Rub."

In England the Appellants have not used the word "VapoRub" after 1924, since when the product has been sold as "Vick Brand Vapour Rub," so as to avoid taxation under the Medicines Stamp Act.

The Respondents from 1942 have been the distributing agents in 20 Jamaica for E. Griffiths Hughes of Manchester, England, the manufacturers of a medicated ointment known as "Karsote Vapour Rub" and this product has been sold in Jamaica by the Respondents to wholesale and retail dealers who have retailed it to the public. In 1942, 90 dozen jars were put on the local market and by 1945 the sale had risen to 300 dozen jars. The Appellants admit that "Karsote Vapour Rub" is manufactured in England by a reputable firm and it would appear that several other similar medicaments are put out by various houses in England and sold there under the name "Vapour Rub."

At the trial evidence was given by medical practitioners, nurses, whole- 30 sale and retail dealers and members of the public to the effect that for a period of upwards of 10 years the trade and the public have used the words "Vicks VapoRub" as indicating the salve or ointment made by the Appellants, and that the word "Vicks" alone or "VapoRub" alone is used synonymously with "Vicks VapoRub." There was a tacit admission by the Appellants that "VapoRub" and "Vapour Rub" are, for practical purposes, the same. "Vapour" is spelt "V-a-p-o-u-r" in the U.S.A. The words "Vapour" and "Rub" in the opinion of some witnesses correctly describe the characteristic quality of the product. One medical witness thought that "vapourising medicant" was a better 40 description, and another preferred "vapourising ointment," but agreed that "Vapour rub salve" was a complete description of products like "Vicks VapoRub."

At page 640 of the 1934 edition of the *British Pharmaceutical Codex*, a work published by the Council of the Pharmaceutical Society of Great Britain, there appears for the first time in this publication under the heading "Menthol" the following monograph :

" 'Vapour rubs' are preparations of menthol with other volatile substances in a basis of soft paraffin and are applied to the chest through local action and on account of their value when inhaled." 50

The *Pharmaceutical Formulæ* published in Great Britain contains formulæ from various sources, and in the 1929 edition at page 940 is to be found for the first time a formula with the title "Ointment Vapour Rub." The formula used by the Respondents and that used by the Appellants are very similar and they both bear a strong resemblance to the formulæ given in this book of reference.

Two different jars of "Karsote Vapour Rub" were put in evidence, one of white transparent glass contained amber-coloured ointment, the other was of brown opaque glass. Both jars were labelled "KARSOTE" and below this in larger letters "VAPOUR RUB." On the cap of the former jar appear, in addition to "KARSOTE VAPOUR RUB" the words "White Stainless."

The Appellants' jar is made of blue glass and is labelled in large letters "VICKS," and under this in smaller letters "VAPORUB." Above the word "VICKS" is the word "Stainless" and under "VAPORUB" appears the word "ointment" with the red triangular device. The cap on the jar has "white stainless" and "Just rub it on" in the centre, and in a semi-circle around the cap are the words "VICKS VAPORUB."

The "Karsote" jars are appreciably smaller than the "Vicks" jars and the colouring of the jars and the labels are different. Witnesses who testified for the Appellants, in particular druggists and chemists who come into contact with members of the public, were not cross-examined with a view to ascertaining whether the buying public were aware of the fact that "KARSOTE" and "VICKS" are different products and that they were not deceived. The only evidence on this point was given by Mr. Gunter who said in examination-in-chief that he would personally not be deceived—it is what we would expect of a person occupying the position of a Mayor—and by Herbert Kong, who said, also in examination-in-chief, that "there was occasion during the war that I had Karsote and not Vicks—if some asked for VapoRub I would then show Karsote and they would go away saying they wanted 'Vicks'." As this occasion was during the war and as Mr. Kong was a wholesale dealer for five years before 1946 when he gave his evidence, it is possible, if not probable, that he was referring to retailers and not to members of the public. Evidence in the opposite sense was given by Joseph Kong who said that he mistook a jar of "KARSOTE VAPOUR RUB" for what he described as "a jar of small Vicks" but his sight appears to have been defective, as he needed the aid of a magnifying glass to read the large print on a "KARSOTE" jar.

The learned Judge held that the word "VapoRub" was at the commencement of the action not properly on the Register as it could not be registered under subsections (3) or (4) of Section 8 and that it was not competent for the Court to consider whether it could have been put on the Register under subsection (5).

For these reasons he ordered that Trade Mark 3707 be expunged from the Register but, after considering the provisions of Section 41, he made no order on the motion relative to Trade Mark 1852. The Appellants were, however, ordered to enter a disclaimer on the Register in respect of this Trade Mark to the effect that "no claim is made on behalf of Vicks VapoRub as a liver pill or a headache tablet."

In particular he held that even if he had taken the view that the word "VapoRub" was registrable, the Respondents would have been entitled to the protection of Section 44.

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Dealing with the action of the Appellants he came to the conclusion that the use of the words "Karsote Vapour Rub" by the Respondents was not an infringement of the Appellants' Trade Mark 1852 so far as the word "VapoRub" was concerned, as the words "Vicks" and "Karsote" distinguished the goods of one from the other. He also found that the Respondents had not passed off their goods as those of the Appellants and in the result he dismissed the Appellants' action. The Appellants were ordered to pay the Respondents four-fifths of their taxed bill of costs.

In our opinion the learned Judge was right when, for the reasons 10 he gave, he made no order on the motion relative to Trade Mark 1852 and as to this the Respondents have not cross-appealed. Was he right in holding that there was no infringement of this Trade Mark and that Trade Mark 3707 should be expunged from the Register?

Much of the contest centred around what has been called "the status or position" of the word "VapoRub." Was it the name of a new substance? Is it *publici juris* in Jamaica? Is it an invented word?

It was not pleaded and there is no evidence to support a finding—the Judge certainly made no such finding—that "VapoRub" when it was first put on the market was a new substance to which a new name 20 had been given. The evidence is to the contrary. Vapourising ointments are old remedies which were used according to one of the medical witnesses in Tudor times and "Vicks VapoRub" salve was put on the market not only of Jamaica but of the world as a salve or ointment belonging to a particular known class of ointments.

It was, however, pleaded by the Respondents "that 'Vapour Rub' or its misspelling 'VapoRub' were words that were common to the trade" and they denied that "the plaintiff's medicated salve has become known to purchasers or intending purchasers as 'VapoRub' or that amongst 30 members of the Medical Profession or amongst Druggists or Chemists or in the trade of general dealers, or to the public at large the word 'VapoRub' means a salve made and sold by the Plaintiffs as is alleged in paragraph 7 of the Statement of Claim or at all." In effect it was pleaded that "VapoRub" was *publici juris* and that it had not become distinctive of the product of the Appellants.

It appears from the evidence of Mr. Dunning that "Vaporub" (the "r" was not a capital "R") was registered in England in 1920 but that from November 1924, six months after the registration of "Vicks VapoRub" salve in Jamaica, the name of the product was changed to "Vick Brand Vapour Rub" in order to claim exemption from the pro- 40 visions of the Medicines Stamp Act. The consequence of the change was that the market in England was flooded with the products of other manufacturers which were marked "Vapour Rub" and thereafter "VapoRub" ceased to be distinctive of the product of the Vick Chemical Company. In Jamaica, however, it was otherwise. "Vicks VapoRub," as was found by the learned Judge, was identified both by the trade and the public with the salve or ointment made by the Appellants and was referred to as "Vicks" alone or "VapoRub" alone. VapoRub was not *publici juris*, it was distinctive of the Appellants' product. The word was not used to describe all medicaments of a particular character but 50 only the particular medicaments put on the Jamaica market by the



Appellants. On these points the evidence of reputable witnesses is overwhelming.

The learned Judge also found that "VapoRub" had not lost this distinctiveness. "The evidence," he said, "which was not contradicted or seriously challenged, established that for a period of ten years or more, (he meant ten years or more before the action) the trade and the public used the expression 'Vicks VapoRub' as indicating the salve or ointment made by the Plaintiffs and that the words 'Vicks' alone and 'VapoRub' alone are used respectively as synonymous with 'Vicks VapoRub'."

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- 10 The position of "VapoRub" in Jamaica is analogous to that of "Lysol" in the South African Union. Lysol Ltd. to whom Shulke and Mayr had assigned their trade mark (Lysol) and goodwill in England applied for registration of the word "Lysol" as a trade mark in South Africa. The application was opposed by the Drug Company and others but was allowed. The latter appealed and at the hearing of the appeal it was found not only that as the result of "the voidance by the Board of Trade of the registered trade mark, manufacturers in England who had not previously used the word 'Lysol' for their manufacture began to use the word 'Lysol,' but also that 'Marshall, the Director of the
- 20 respondent company (Lysol Ltd.) had put on the market in England a Lysol known as 'Marshall's Lysol L Brand'." It was, however, held that as the word "Lysol" had acquired a distinctive meaning in South Africa and was used to distinguish the disinfectant manufactured by Shulke and Mayr and as it was *not shown that it had lost its distinctiveness*, "the Registrar was right in dismissing the opposition." (*The Drug Coy. vs. Lysol Limited* T.P.D. 1924 August 18th : page 618.)

- 30 "Distinctiveness may be lost through the action of the proprietor or by reason of successful piracy" (Kerly) but "VapoRub" did not for either of these reasons lose its distinctiveness in Jamaica. It is in evidence that between 1926 and 1941 three products were put on the market bearing the words "Vapour Rub" but the firms responsible as the result of pressure by the Appellants, gave undertakings not to use the words "Vapour Rub." For all practical purposes the Appellants and the Appellants alone used the word "VapoRub" in Jamaica on goods sold to the public. (An argument by Counsel for the Respondents was founded in part on this circumstance to which we shall later refer.)

- 40 We agree with the learned Judge that "VapoRub" is not an invented word. The question as to whether it has a direct reference to "the character and quality of the goods" is a more difficult one. We are inclined to the view that it has. It indicates with reference to the salve that cures are effected by the inhalation of vapours when it is rubbed on the skin and that that is the essence of its curative quality. In *Christy v. Tipper* (1905), 1 Ch. 1, Vaughan Williams, L.J., though he was there dealing with the question of whether "Absorbine" was an invented word, said that it was used for the purpose of indicating that "the preparation which the plaintiffs sell does absorb and effects its cure by absorbing." But, although "VapoRub" is descriptive in the narrow sense we have mentioned, is it also distinctive in the sense of being adapted to distinguish as a descriptive word might be?

- 50 In the application by *J. & P. Coats Ltd.*, 53 R.P.C. 355, Romer, L.J., in considering the test that should be applied to words falling outside the

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specified classes (section 8 subsections (1) to (4) applied the test that was laid down by Lord Parker in *W. & G. Du Cross, Ltd.*, L.R. (1913), Appeal Cases, page 635, where he said "the applicant's chance of success"—he is here speaking of his chance of success in obtaining registration—"must, I think, largely depend upon whether other traders are likely in the ordinary course of their business, and without any improper motive, to desire to use the same mark, or some mark nearly resembling it, upon or in connection with their own goods." We are of the opinion that it would have been unlikely, in the year 1924, for other traders to have desired to use a word like "VapoRub," unknown in the use of the English language generally, and consisting of two words, Vapour and Rub, which are not ordinarily used in combination or associated with each other. We think that if soon after the registration of "Vicks VapoRub" another trader in Jamaica had used the words "Vapour Rub" on his goods, it would at once have raised the suspicion of an improper motive. 10

In *Crosfield's* case (1910), 1 C.D. 118, Fletcher Moulton, L.J., said, "The registration is not to affect the use of the words by other traders in any *bona fide* description of the goods. The Court will therefore do well to ask itself the question, will the registration of the trade mark cause substantial difficulty or confusion in view of these rights of user by other traders? If the answer is in the affirmative, the Court will probably hesitate to allow the word to be registered. But if the answer is in the negative either by reason of the nature of the words, or because past user has limited the possibility of other traders safely or honestly using the words, the Court may well grant the desired permission. 20

We think that "VapoRub" would have survived this test in Jamaica on the first ground in 1924—it would appear to have done so in England in 1920—and that it would have survived it in Jamaica on the second ground in 1941, when it had come to denote exclusively the product of the Appellants. In that year the Appellants could well have said, to employ once again the language of Fletcher Moulton, L.J., "if it is said that the word is descriptive of the goods"—that is of a particular class of goods—"I will show that it can become distinctive of my make of those goods by showing that it has actually become so either generally or in a particular market." "VapoRub" has become distinctive of the Appellants' goods, if not generally and in particular not in England, certainly in Jamaica. 30

We shall now deal with Trade Mark 3707. The learned Judge, as we have said, held that it was not competent for him to decide whether the word "VapoRub" could have been registered under Section 8, subsection (5) and as he had already decided that it was not registrable under Section 8, subsections (3) and (4), he ordered that Trade Mark 3707 be expunged from the Register. Counsel for the Appellants argued that he should have found that it was registrable under Section 8, subsection (5) and then addressed himself to the question of whether he should in the exercise of his discretion have allowed it to remain on the Register although an application had not been made under the last mentioned subsection. Counsel for the Respondents pointed out that the Registrar of Trade Marks would have been precluded at the date of registration from exercising any discretion. That is undoubtedly so. On an application to the Registrar for registration of a particular mark under Section 8, subsection (5) an order of the Court is a condition precedent, but it would 40 50

appear that if the mark is already on the Register and an application to expunge it is made, the Court may in the exercise of its discretion refuse to do so.

In *Paine & Co. v. Daniells & Sons' Breweries* (1893) 2 Ch. 567 Bowen L.J. said: "the purity of the Register of Trade Marks—if one may use the expression—is of much importance to trade in general, quite apart from the merits or demerits of particular litigants. If on a motion like the present the attention of the Court is called to an entry on the register of a trade mark which cannot in law be justified as a trade mark, it seems to me that the Court's duty may well be, whatever the demerits of the applicant, to purify the register and to expunge the illegal entry in the interests of trade, as was done in the *Stone Ale* case . . . But the matter is wholly different when the trade mark complained of is one which is not in itself illegal or improper although at the date of registration its registration might have been, perhaps, successfully opposed by some third party who did not in fact oppose it. In such a case the defect in the register is not a defect of which the law is bound to take cognizance at the instance of every complainant . . ."

The facts were not on all fours with the facts in the present case, but the grounds on which discretion is exercisable are clearly stated. The decision involved a construction of Section 90 of the Act of 1883 which empowered the making of "such order . . . as the Court thinks fit." Similar words occur in Section 35 of the Trades Marks Act 1905 as well as Section 35 of our Law (Cap. 272).

In *Magneta Time Co.'s Trade Mark* (1927), 44 R.P.C. 169, Tomlin, J., exercising his discretion, refused to remove a trade mark where a technical objection to a renewal had been remedied and in *W. N. Sharpe Ltd. v. Solomon Brothers Ltd.*, 31 R.P.C. 441, Warrington, J., in dealing with an application to rectify the Register refused to do so. The order stated that the Court was of the opinion that the mark ought to be deemed a distinctive mark.

We have come to the conclusion that as the word "VapoRub" could by itself have been registered in 1924 on the ground that it was inherently distinctive or adapted to distinguish and as in 1941 it had in addition become distinctive of the Appellants' goods, Trade Mark 3707 which consists of the one word "VapoRub" should not have been expunged from the Register, although the application for registration in the latter year had not been made under Section 8 (5) but under Section 8 (3) and (4). We are confident that if the learned Judge had found, as we have found, that "VapoRub" was registrable under Section 8 (5) and if he had addressed his mind to the cases we have cited dealing with the discretion that was vested in him, he would have exercised that discretion in favour of the Appellants by refusing to expunge Trade Mark 3707 from the Register.

Counsel for the Respondents conceded that if Trade Mark 3707 was allowed by us to remain on the Register, and an order which has this effect must follow the view we take, the Respondents had no defence to the action of infringement founded upon this Trade Mark other than that they are protected by the provisions of Section 44. But he has put forward an interpretation of that section with which we find ourselves quite unable to agree.

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It was argued that upon a proper construction of Section 44 the test that was required to be applied was subjective and not objective, in other words that if the Respondents were *bona fide*, by which was presumably meant not fraudulent, in using the words "Vapour Rub," such use could not be made the foundation of an infringement action. It would follow from this argument that if the Respondents were advised and *bona fide* believed that by the use of the words "Vapour Rub" they were not infringing the rights of the Appellants, then in law they would not be infringing those rights. If any authority were needed to show that this is not what Section 44 enacts we would refer to a passage in the judgment of Farwell, J., in *Harris v. Harris*, 51 R.P.C. at page 109. "I agree with the argument that has been addressed to me on behalf of the plaintiffs to this extent that by using the words '*bona fide*' in that section"—reference was being made to Section 44 of the English Act—"it was not intended that the use should merely not be fraudulent, or deliberate with an intention to deceive, or anything of that kind, by the person whose name is being used. If in fact the use of the word leads to the result that that person's goods are being passed off as the goods of another, although that may not have been the intention of the person so using the name, and although he may have a perfectly honest reason for using it, yet if in fact the use of the name which the defendant makes is such that it leads, or must lead, to a misrepresentation that the goods of the defendant are the goods of the plaintiff, then in my judgment the defendant is not entitled to use his name, although it is his own name and although he has not, and may never have had any fraudulent intention." Section 44 is clearly declaratory of the common law. 10

In the *Gramophone Coy's* application (1910), 2 C.D., at page 436, Parker, J. put the idea underlying the section very succinctly when he said: "If Section 44 were relied on as a defence, the question would at once arise whether the use of a word known to be on the register as a trade mark could be *bona fide* within the meaning of the section." 30

In his judgment the learned Judge said: "As a result of my decision with regard to the word 'VapoRub' as a trade mark it becomes unnecessary to consider what would have been the position on this part of the Plaintiff's claim if I had taken an opposite view and held that the word 'VapoRub' was registrable under subsection (5) of Section 8 as being a word that had acquired distinctiveness. I say this because, if I had so held, the defendants, in my opinion, would have been entitled to the protection of Section 44 of the Trade Marks Law."

We are unable to agree with this conclusion. We think that with the knowledge that "VapoRub" was on the Register the use of the words "Vapour Rub" by the Respondents could not be said to be *bona fide* within the meaning of Section 44.

We shall now consider whether the Respondents have infringed Trade Mark 1852 so far as the word "VapoRub" is concerned. "VapoRub" is in our view a substantial and material part of Trade Mark 1852 used in connection with the Appellants' product which has acquired in the market of Jamaica a name derived from that part of their Trade Mark: and the Respondents could use it only if they had taken "such precautions as to avoid the reasonable probability of error and deception," the onus being on them to show that "purchasers of the 50

- goods will not be deceived." There is ample authority for this and we would refer only to *Orr Ewing vs. Johnston*, 13 Ch. 424, from which we have quoted (*supra*), to *Ford v. Foster*, 7 Ch. 611, in which James, L.J., said: "The Plaintiff makes this *prima facie* case—that he has a plain trade mark, a material and substantial part of which has been taken by the defendants. Then the onus is, under these circumstances, cast upon the defendants to relieve themselves from that *prima facie* liability," and to *Singer Machine Manufacturers v. Wilson*, 3 A.C. 376, in which Lord O'Hagan said: "If one man will use a name the use of which has been validly
- 10 appropriated by another, he ought to use it under such circumstances and with such sufficient precautions that the reasonable probability of error should be avoided . . ." The Respondents made no attempt to discharge this onus that was cast on them. It would appear that they relied, not on evidence, but merely on the argument that the use of the word "Karsote" in connection with the words "Vapour Rub" avoided the reasonable probability of error. The Judge has in effect so found when he said: "it seems to me that the words 'Vicks' and 'Karsote' respectively distinguish the goods of one from the other." With all respect to the
- 20 view we should require the clearest evidence, adduced by the Respondents, that in point of fact the public of Jamaica including the less educated and the uneducated members of the public, are not and would not be likely to be deceived into thinking that "Karsote Vapour Rub" is of different manufacture from the "VapoRub" manufactured and sold by the Appellants uninterruptedly since 1924. No such evidence was called by them. On the contrary their principal witness de Cordova, the Managing Director of the Company which distributes "Karsote Vapour Rub," and one of the defendants to the action, admitted that "a number of similarities appeared between 'Vicks' and 'Karsote' on the cartons."
- 30 Were these similarities calculated to avoid the reasonable probability of error or of deception? Obviously not, they were calculated to mislead. We have already referred to the almost negligible evidence given on this point by witnesses called by the Appellants. There was practically nothing in their evidence on which the Respondents could rely.

- We now turn to examine the argument of Counsel for the Respondents which he claimed to be conclusive of the case against the Appellants. He submitted (1) that "VapoRub" or "Vapour Rub" is a generic term; (2) that it was used by the Appellants themselves as a generic term; (3) that it was not used by the Appellants to indicate origin; (4) that,
- 40 as the Judge had found, "the Appellants had enjoyed a virtual monopoly in Jamaica in the sale of their vaporising ointments"; and (5) that by reason of these facts and on the authority of *Shredded Wheat* cases reported in 55 and 57 R.P.C. the action of the Appellants was properly dismissed.

We have already indicated our views in regard to (1). "VapoRub," as the evidence established, never had a generic significance in Jamaica. It has always been used by the public and the trade as being synonymous with "Vicks VapoRub" salve and not as the scientific or technical name of a particular class of medicament.

- The contention that the Appellants themselves had used the word
- 50 "VapoRub" generically is not in our opinion justified. It is true that on their folders and in advertisements reference is made in the course of

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Reasons for  
Judgment,  
12th  
January  
1918,  
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Jamaica.*

No. 25.

Reasons for  
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12th  
January  
1948,  
*continued.*

instructions for use and of "commercial puffing" to Vicks VapoRub as "VapoRub," but it does not follow from the mere fact that the Appellants referred to their product by a part of the Trade Mark 1852 with which their product had become completely identified, that they were using it as a generic term.

In regard to (3) and (4) what the learned Judge no doubt meant was that the Appellants alone sold medical preparations which were labelled "VapoRub." That is true. They successfully objected on three previous occasions, as they are objecting now, to the use by any other trader of a word in which they claim validly to have property: and when they marked their cartons "Vicks VapoRub" specifying that it was a registered Trade Mark and in addition, as Counsel for the Respondents has pointed out, referred to it shortly as "VapoRub," the name by which their product was known, they were indicating as clearly as they could that by "VapoRub" was meant "Vicks VapoRub," their product and the product of no other. How can it be said that it was used in any other sense? 10

The facts in the present case are distinguishable from the facts in the *Shredded Wheat* cases. *Shredded Wheat* which began by being the name of a patented article are ordinary English words and are "descriptive of the substance which was being sold to the public." The word "VapoRub," on the other hand, while it indicates the way in which the preparation of the Appellants acts as a cure and is in that sense descriptive, does not describe the substance of the preparation as "Shredded Wheat" describes wheat that is shredded and "Flaked Oatmeal" describes oatmeal in flakes. In Jamaica, unlike England, it is not the generic term of a thing, nor does it describe the substance of which that thing is composed. It is hardly necessary to repeat that it means, as it has consistently meant, and the Respondents cannot escape from this finding of fact, only one thing—the salve or ointment manufactured by the Appellants. We fail to see, as Counsel for the Respondents claimed, that the *Shredded Wheat* cases are conclusive of the right of the Respondents to use the words "Vapour Rub" in connection with a medicinal ointment sold in Jamaica. 20 30

We have had a helpful review of various cases by Counsel for the Appellants as well as Counsel for the Respondents and we would express our appreciation to both of them for the full arguments that they addressed to us.

For the reasons we have given we allow the appeal and direct that Judgment be entered in favour of the Appellants in terms of (1) and (4) of their prayer.

The order of the trial Judge expunging Trade Mark 3707 from the Register of Trade Marks is rescinded, the order he made relative to Trade Mark 1852 will stand and the Respondents will pay the Appellants their taxed costs both in this Court and the Court below. The Appellants in (2) of their prayer claimed "an account of the profits made by the defendants in selling or disposing of any medicated or pharmaceutical preparations not of the plaintiffs' manufacture under the words 'Vapour Rub'" and in (3) of their prayer "damages." It will be necessary for the Appellants to make their choice of either an account and payment to them of the profits which the Respondents have gained by their wrongful conduct, namely infringement and passing-off, which we are satisfied have been established, or an enquiry as to, and payment of, the damages 40 50

occasioned to the Appellants by reason of such conduct. After the Appellants have made their choice and in the absence of any agreement being reached between the Appellants and the Respondents as to the amount of either, the case will be listed for final disposal before a Judge.

*In the  
Court of  
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Jamaica.*

H. H. HEARNE,  
Chief Justice.  
J. E. D. CARBERRY,  
Puisne Judge.  
C. M. MACGREGOR,  
Puisne Judge.

No. 25.  
Reasons for  
Judgment,  
12th  
January  
1948,  
*continued.*

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No. 26.

## ENTRY OF JUDGMENT.

Suit E. No. 8 of 1944.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. - - Defendants.

Suit E. No. 44 of 1945.

20

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court

In Equity.

IN THE MATTER of an Application by CECIL de CORDOVA & Co.  
LTD.

and

IN THE MATTER of the Registered Trade Marks Nos. 1852  
and 3707 of Vick Chemical Company

and

30 IN THE MATTER of the Trade Marks Law (Cap. 272).

PURSUANT to the Order of the Court of Appeal made on Monday the 12th day of January 1948 whereby it was ordered upon the Plaintiff's appeal from the judgment of the Honourable Mr. Justice Savary dated the 14th day of February 1947 that the said appeal be allowed and that the said Judgment of the Honourable Mr. Justice Savary dated the 14th day of February 1947 be set aside save as to the order of the Trial Judge relative to Trade Mark No. 1852 which will stand AND PURSUANT to the Order of this Honourable Court made on Wednesday the 10th day of March 1948 herein IT IS THIS DAY ADJUDGED that the Judgment  
40 of the Honourable Mr. Justice Savary dated the 14th day of February

No. 26.  
Entry of  
Judgment,  
12th  
January  
1948.

*In the  
Court of  
Appeal for  
Jamaica.*

1947 be and the same is hereby set aside save as to the order of the Trial Judge relative to Trade Mark No. 1852 which will stand and that the order of the Trial Judge that Trade Mark No. 3707 be expunged from the Register of Trade Marks be rescinded AND IT IS FURTHER ADJUDGED as follows :—

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1948,  
*continued.*

(1) That the Defendants, their servants and agents be perpetually restrained from selling, offering for sale, or disposing of any medicated or pharmaceutical product not of the Plaintiff's manufacture bearing the words "Vapour Rub" or any other words colourably resembling the Plaintiff's registered Trade Marks Nos. 1852 or 3707 and from doing any act or thing intended to pass off or to enable others to pass off such goods as or for the goods of the Plaintiff. 10

(2) That the Defendants do pay to the Plaintiff the sum of £67 4s. 3d. in respect of the profits made by the Defendants in selling or disposing of any medicated or pharmaceutical preparations not of the Plaintiff's manufacture under the words "Vapour Rub."

(3) That the Defendants do deliver up to the Plaintiff upon oath all medicated or pharmaceutical products not of the Plaintiff's manufacture in their possession or under their control marked with or bearing the words "Vapour Rub" and all advertising blocks in their possession or under their control bearing the words "Vapour Rub" for deletion or cancellation of the said words or for destruction. 20

(4) That the Defendants do pay to the Plaintiff the taxed costs of the Plaintiff of the Trial of the above Suit and the hearing of the above Motion in the High Court and in the Court of Appeal.

LIVINGSTON, ALEXANDER & LEVY,  
Plaintiff's Solicitors.

Entered by LIVINGSTON, ALEXANDER & LEVY, of 20 Duke Street, Kingston, 30  
Solicitors for and on behalf of the above-named Plaintiff.

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No. 27.

REASONS for Judgment of Court of Appeal granting Leave to Appeal to His Majesty in Council.

Suit E. No. 8 of 1944.

*In the Court of Appeal for Jamaica.*

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA

G. J. DE CORDOVA

10 CECIL DE CORDOVA & CO. LTD. - - Defendants.

No. 27.  
Reasons for Judgment on Petitions for Leave to Appeal, 9th April 1948.

Suit E. No. 44 of 1945.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court

In Equity.

IN THE MATTER of an Application by CECIL de CORDOVA & Co. LTD.

and

IN THE MATTER of the Registered Trade Marks Nos. 1852 and 3707 of Vick Chemical Company

20 and

IN THE MATTER of the Trade Marks Law (Cap. 272).

N. W. Manley K.C. instructed by Aston Levy for Vick Chemical Co. Sir Lennox O'Reilly K.C.

V. D. Evelyn with him instructed by C. Hart for Cecil de Cordova et al.

The Judgment of the Court (Savary J. (President), Carberry and MacGregor, JJ.) was delivered by Mr. Justice MacGregor on the 9th day of April, 1948.

30 These are applications by the Defendants for leave to appeal to the Privy Council (A) from the order of the Court of Appeal ordering in the action that judgment be entered for the Plaintiffs for an injunction, for an account of profits, and for delivery up to the Plaintiffs of medicated products in the Defendants' possession bearing the words "Vapour Rub" on the labels; and (B) from an order on the Defendants' motion refusing to expunge Trade Mark No. 3707 from the register of Trade Marks.

To succeed, the applicants must bring themselves within the terms of Rule 2 of the Rules made by Order in Council dated 15th February 1909 which reads as follows:—

Subject to the provisions of these Rules, an Appeal shall lie—

40 (A) as of right, from any final judgment of the Court, where the matter in dispute on the Appeal amounts to or is of the value of £300 sterling or upwards, or where the Appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of £300 sterling or upwards; and

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(B) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory if, in the opinion of the Court, the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

The applicants submit that they are entitled to leave, as of right, as (1) the matter in dispute in the appeal amounts to the value of £300 or upwards and (2) the appeal involves directly or indirectly some claim respecting property amounting to £300, and as a matter of grace as (3) questions are involved in the appeal of great general or public importance or (4) as being otherwise fit to be submitted to His Majesty in Privy Council. 10

The affidavit filed for the applicant discloses that the trading profits of the Defendants amounted to £67 4s. 3d. and judgment has been entered for the Plaintiffs for that amount. In addition the Defendants have to hand over to the Plaintiffs, under the terms of the order of the Court of Appeal, goods in their possession to the value of £22 19s. 10d. The amount directly in dispute is therefore £90 4s. 1d. But the affidavit also discloses that the Defendants have sold to retailers throughout Jamaica, and that these retailers still have in their possession, unsold, over one thousand dozen jars of Karsote Vapour Rub, the wholesale value of which is about £400, and the retail value about £590. It is submitted that as a result of the order of the Court which has in effect pronounced these goods to be spurious by a judgment *in rem*, these traders cannot now sell Karsote Vapour Rub and it would appear to be clear that the Defendants will be liable to refund them the purchase price of the goods, an amount of about £400 as the Defendants will have no ground on which to resist these claims. Can it in these circumstances, therefore, be said either (1) that the matter in dispute in the appeal amounts to the value of £300 or (2) that the appeal involves, directly or indirectly a claim respecting property amounting to £300 sterling or upwards? 20 30

In assessing the amount in dispute in the Appeal the Defendants asked the Court to take into account the value of Trade Mark No. 3707 to place some value on the property right to this Trade Mark and to add that value to the figure of £90 4s. 1d. But the property in the Trade Mark is the Plaintiffs', and the Defendants have heretofore contended that the words Vapour Rub were generic and incapable of being registered as a Trade Mark and although the property in the Trade Mark may be of great value to the Plaintiffs, it can be of no value to the Defendants.

In *Allan v. Pratt* 13 A.C. at p. 781 the Earl of Selbourne said this:—

“The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *MacFarlane v. Leclaire*, 15, Moore, P.C.C. 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal.” 40

But the Defendants are under another difficulty. There is nothing disclosed in the affidavit filed in support of the motion from which the 50

Court could assess the value to the Defendants of the property in the Trade Marks. In *The Coco-Cola Co. v. The Pepsi-Cola Co.*, 3 J.L.R. 250, it was held by this Court that the right of appeal is limited to cases when it is shown that the value of the right involved is ascertainable and has been ascertained to be of the value of £300 and upwards. The Defendants have therefore failed to show that the amount in dispute in the Appeal amounts to the value of £300 sterling and upwards.

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10 It was submitted for the Plaintiffs that the question of any possible liability of the Defendants to merchants who still are in possession of stocks of Karsote Vapour Rub should not be taken into account when assessing the value of the judgment against the Defendants and that if it is to be taken into account then the only possible value could be the cost of supplying new labels to the goods, labels omitting the words "Vapour Rub." We cannot believe that this was intended as a serious argument. Has Plaintiffs' counsel considered what is likely to be the reaction of holders of stock of Karsote Vapour Rub to an attempt to label with another name a product which they bought as Karsote Vapour Rub and which has been on sale in this Island for some time and has been widely advertised under its present name? It appears to us, that the Defendants would be  
20 liable to the various retailers to refund them the purchase price of the jars of Vapour Rub sold to them, and will then under the order of the Court have to surrender to the Plaintiffs these jars so received by them from the retailers. In our opinion, therefore, the Appeal involves indirectly a claim respecting property amounting to £300 sterling and upwards and the Defendants are entitled as of right to petition His Majesty in Council.

This disposes of the application, but as considerable argument took place on the question whether in any event this Court should have granted leave to appeal under Rule 2 (b) on the ground that the question involved in the Appeal is one which by reason of its great general importance or  
30 otherwise, ought to be submitted to His Majesty in Council for decision, we think we should express our view of the matter. The principles which should guide the Court have been set out in a number of cases the latest of which is *Khan Chinna v. Markanda Kothan and Another* (1921), W.N. 353. Lord Buckmaster delivering the judgment of the Board said:—

"It was not enough that a difficult question of law arose, it must be an important question of law. Further, the question must be one not merely affecting the rights of the particular litigants, but one the decision of which would guide and bind others in their commercial and domestic relations."

40 In *Prince v. Gagnon*, 8 A.C. at p. 105, Lord Fitzgerald said:—

"There is no grave question of law or of public interest involved in its decision that carries with it any after-consequences, nor is it clear that beyond the litigants there are any parties interested in it."

In the *Sun Fire Office v. Hart and Others*, 14 A.C. at p. 105, Lord Watson said:—

"Seeing that this Appeal was brought by special leave, being below the appealable value, on the ground that its decision was of general importance to Insurance Offices."

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The facts given in evidence disclose that the Plaintiffs have registered Trade Mark "Vicks VapoRub" in 69 or 70 countries of the World, and Trade Mark "VapoRub" in 50 countries, 20 of them being English speaking. The position in England is peculiar, as after the registration of VapoRub in England the Plaintiffs did not seek to enforce their rights to the Trade Mark and Vapour Rub has become the generic name of the particular type of medicated ointment. There are now 18 manufacturers in England, of which the Defendants' principals are one, each manufacturing his particular brand of Vapour Rub. And since 1929, a formula for Vapour Rub, and a description of its qualities have appeared in the Pharmaceutical Formulæ and Codex. 10

It seems clear to us, in the words of Lord Fitzgerald, that, "beyond the litigants there are parties interested in" the decision, and in the words of Lord Buckmaster that the question is one "not merely affecting the rights of the particular litigants," but is also one "the decision of which will guide and direct others in their commercial and domestic relations."

"Vapour Rub" is registered in Canada, New Zealand, South Africa, Trinidad and Barbados, all of which countries probably have Trade Mark legislation similar to the legislation in Jamaica. As Lord Atkin said in the *Shredded Wheat Co. Ltd. v. Kellogg Co. of Great Britain Ltd.*, 57 R.P.C. 20 at p. 149 :—

"It is of the highest importance that in such an important branch of commercial law as that relating to trade marks there should be uniformity as far as possible in all countries administering the same system of law."

Our view is that the applicants would have been entitled to an order granting leave to appeal under Rule 2 (b) also.

The Defendants consent to an order that they provide security to the satisfaction of the Court in the sum of £500 in respect of each Appeal, and that security be entered into within three months from this date. 30

This Court being of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned directs that the Appeals shall be consolidated and grants leave to appeal by a single order.

The costs of this application will be costs in the cause.

W. SAVARY, J.

J. E. D. CARBERRY, J.

C. M. MACGREGOR, J.

No. 28.

ORDER granting Leave to Appeal to His Majesty in Council.

Suit E. No. 8 of 1944.

*In the Court of Appeal for Jamaica.*

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA

G. J. DE CORDOVA

CECIL DE CORDOVA & CO. LTD. - - Defendants.

No. 28.  
Order granting Leave to Appeal to His Majesty in Council, 9th April 1948.

Suit E. No. 44 of 1945.

10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court

In Equity.

IN THE MATTER of an Application by CECIL de CORDOVA & Co. LTD.

and

IN THE MATTER of the Registered Trade Marks Nos. 1852 and 3707 of Vick Chemical Company

and

20

IN THE MATTER of the Trade Marks Law (Cap. 272).

The 11th and 12th days of March and the 9th day of April 1948.

UPON motion by Sir Lennox O'Reilly K.C. of Counsel on behalf of the Defendants and UPON HEARING Mr. N. W. Manley K.C. of Counsel for the Plaintiff and UPON READING the petitions by the Defendants for leave to appeal to His Majesty in Privy Council both dated the 2nd day of February 1948 and UPON REFERRING to the records and proceedings herein and it appearing to this Court that the matter in dispute on the appeals herein involves indirectly a claim respecting property amounting to Three Hundred Pounds sterling and upwards

30 IT IS HEREBY ORDERED :—

(1) That leave is hereby granted to the Defendants to appeal to His Majesty in Council from the Judgment and Order of this Honourable Court in favour of the Plaintiffs dated the 12th day of January 1948.

(2) That the Defendants do within a period of three months from the date of this order enter into good and sufficient security to the satisfaction of this Court for the due prosecution of the appeals and the payment of all such costs as may become payable to the Plaintiff in the event of the Defendants not obtaining an order granting them final leave to appeal or of the appeals being dismissed for non-prosecution or of His Majesty in Council ordering the Defendants to pay the Plaintiff's costs of the appeals which said security is, by and with the consent of the parties hereto, fixed at the sum of Five Hundred Pounds in respect of each appeal.

40

(3) That for the convenience of the Lords of the Judicial Committee and of all parties concerned the appeals herein shall be consolidated and that the Defendants shall pass a single Order.

*In the Court of Appeal for Jamaica.*

(4) That the costs of and incident to this application be costs in the cause.

By the Court.

No. 28.  
Order granting Leave to Appeal to His Majesty in Council, 9th April 1948, continued.

(Seal)

TREVOR L. LYONS,  
Registrar.

Entered by ALBERGA & HART of No. 119 Tower Street, Kingston, Solicitors for and on behalf of the above-named Defendants.

No. 29.

ORDER granting Final Leave to Appeal to His Majesty in His Privy Council.

Suit E. No. 8 of 1944. 10

No. 29.  
Order granting Final Leave to Appeal to His Majesty in Council, 5th July 1948.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

Between VICK CHEMICAL COMPANY - - - Plaintiffs

and

CECIL DE CORDOVA  
G. J. DE CORDOVA  
CECIL DE CORDOVA & CO. LTD. - - Defendants.

Suit E. No. 44 of 1945.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the High Court  
In Equity.

20

IN THE MATTER of an Application by CECIL de CORDOVA & Co. LTD.

and

IN THE MATTER of the Registered Trade Marks Nos. 1852 and 3707 of Vick Chemical Company

and

IN THE MATTER of the Trade Marks Law (Cap. 272).

The 5th day of July 1948.

UPON motion by Mr. V. Dudley Evelyn of Counsel on behalf of the Defendants and Mr. N. W. Manley K.C. of Counsel for the Plaintiff not opposing and UPON READING the Notice of Motion dated the 15th day of June 1948, the Affidavit of Clinton Hart sworn to the 15th day of June 1948, the Certificate of the Registrar of the Supreme Court dated the 15th day of June 1948 IT IS HEREBY ORDERED :

That final leave be and the same is hereby granted to the Defendants to appeal to His Majesty in his Privy Council against the Judgment of the Court of Appeal dated the 12th day of January 1948.

By the Court.

(Seal)

TREVOR L. LYONS, 40  
Registrar.

Entered by ALBERGA & HART of 119 Tower Street, Kingston, Solicitors for and on behalf of the above-named Defendants.

**PART II**  
**EXHIBITS.**

EXHIBIT "A" (Correspondence).

No. 1.

LETTER from Livingston & Alexander (Solicitors for the Plaintiffs) to Messrs. Cecil de Cordova & Co., dated 8th June 1943.

Dear Sir,

It has come to the knowledge of our Clients, Vick Chemical Company, of the United States of America, that you are distributing in Jamaica an ointment under the name of KARSOTE VAPOUR RUB, manufactured by Messrs. Griffiths Hughes Ltd. of Great Britain, and imported by you.

It must be well known to you that the word VAPORUB is, and has been for many years, one of the principal Trade Marks of the Vick Chemical Company, used throughout most of the world, including this Island, upon or in connection with a salve or ointment.

Our Clients are entitled to the exclusive right to the use of the word VAPORUB as a Trade Mark, acquired by many years sole and extensive use thereof in Jamaica, and in addition are Registered Proprietors of Trade Mark Registrations under the Trade Marks Law in Jamaica one of which embodies the chief features of the carton in which the goods are sold and which includes the word VAPORUB and the other of which is the registration of the word VAPORUB itself.

In dealing with the product above mentioned, KARSOTE VAPOUR RUB, you are accordingly infringing our Client's Trade Mark rights.

We are instructed to call upon you to cease immediately the sale or distribution of Karsote Vapour Rub, to withdraw immediately all packages of the product and all printed matter bearing the words Vapour Rub from all Chemists and other parties to whom such matter may have been distributed, and to destroy or make such disposal otherwise as shall be satisfactory to our Clients of such packages and printed matter in existence in Jamaica, and to give an undertaking that you will not in the future import, sell, or distribute or otherwise deal in any medicinal product in connection with which there are used the words Vapour Rub or any other words confusingly similar to our Clients' Trade Mark VapoRub.

Failing compliance with these requirements promptly we are instructed to institute proceedings against you and those parties receiving the product through you to protect our Client's rights. We trust you will see fit to make this action unnecessary.

Yours faithfully,

LIVINGSTON & ALEXANDER.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit A.  
Corres-  
pondence.  
No. 1.  
Letter from  
Livingston  
&  
Alexander  
(Solicitors  
for the  
Plaintiffs)  
to Messrs.  
Cecil de  
Cordova  
& Co.,  
8th June  
1943.

In the  
Supreme  
Court of  
Jamaica.

No. 2.

**LETTER from Alberga & Hart (Defendants' Solicitors) to Livingston & Alexander (Plaintiffs' Solicitors), dated 20th July 1943.**

Exhibits.

Dear Sirs,

Exhibit A.  
Corres-  
pondence.

No. 2.

Letter from  
Alberga  
& Hart  
(Defen-  
dants'  
Solicitors)  
to  
Livingstone  
&  
Alexander  
(Plaintiffs'  
Solicitors),  
20th July  
1943.

Messrs. Cecil de Cordova & Co. have handed us your letter to them of 8th ultimo, written on behalf of the Vick Chemical Company, with instructions to reply thereto.

We note that your clients are the Registered Proprietors of a Trade Mark which includes the word "VAPORUB" but would point out that the goods imported by our clients and complained of by you are described as being a vapour rub, which words are merely the ordinary, normal and bona fide manner of describing the character, quality and method of use of the ointment. 10

We would further point out that the vapour rub manufactured by Messrs. Griffith Hughes Ltd. of Great Britain is not the only vapour rub, described as such, which is on sale in Jamaica apart from the ointment manufactured by your clients.

Our clients therefore cannot agree that your demand is reasonable and decline to comply therewith.

Yours faithfully,

20

ALBERGA & HART.

No. 3.

Letter from  
Livingston  
&  
Alexander  
(Plaintiffs'  
Solicitors)  
to Alberga  
& Hart  
(Defen-  
dants'  
Solicitors),  
21st  
February  
1944.

No. 3.

**LETTER from Livingston & Alexander (Plaintiffs' Solicitors) to Alberga & Hart (Defendants' Solicitors), dated 21st February 1944.**

Dear Sirs,

*Re* Vick Chemical Company, Trade Mark VapoRub  
infringement by Cecil de Cordova & Co. and Cecil  
de Cordova & Co. Ltd.

We duly received your letter of the 20th July 1943 contents of which we communicated to our clients the Vick Chemical Company. 30

We observe in to-day's issue of the *Daily Gleaner* newspaper the advertisement of an antiseptic ointment for the treatment of colds advertising such product under the name of KARSOTE VAPOUR RUB, which product your clients are selling in Jamaica and we assume that your clients are also responsible for this advertisement, which is further evidence of your clients infringing acts.

Despite the terms of your letter above-mentioned we write to afford your clients a final opportunity of discontinuing their infringing acts of our client's trade mark "VAPORUB" which has been registered in Jamaica since June 14th 1924. We must ask you to notify us by the end of this week whether your clients are willing to alter their decision and enter into a satisfactory arrangement involving a suitable undertaking to desist from their infringing acts which if they are willing to do we are authorised to say that our clients will waive their claim to damages for past infringements in consideration of an adjustment of the matter without the necessity of recourse to litigation. In event of their failing to make such an arrangement we will without delay carry out our instructions and 40



file action immediately thereafter for an injunction and damages resulting from your clients infringing acts. Kindly let us hear from you by the 26th instant.

Since our exchange of letters on this matter your clients have been incorporated and become a Limited Liability Company. We assume that you represent this Company also and in event of proceedings being necessary we write to ask whether you are authorised to accept service on behalf of Cecil de Cordova & Company and Cecil de Cordova & Company Ltd. and if you will undertake to accept service on behalf of the firm and  
10 the company and to enter appearance in due course to the action.

Yours faithfully,

LIVINGSTON & ALEXANDER.

No. 4.

LETTER from Livingston, Alexander & Levy (Plaintiffs' Solicitors) to Alberga & Hart (Defendants' Solicitors), dated 16th May 1946.

Dear Sirs,

*Re Vick Chemical Company vs. Cecil de Cordova et al*  
and associated Motion.

In continuation of our letter to you of May 7th and with reference  
20 to interview with Mr. Justice Savary yesterday, 15th inst., our understanding of the matter is that it was accepted that the action and motion would be heard together and there would be no severance of the two.

At the conclusion of the proceedings there would, of course, be judgments on each.

That being so the proceedings would be shortened if the Plaintiff did not file affidavits in answer to the motion as in any case *viva voce* evidence will be given at the hearing. To avoid any doubt or dispute we ask that you confirm immediately that no point will be made of the fact that the Plaintiff has not filed affidavits in answer to the motion and  
30 that all the oral evidence at the hearing will be treated as evidence on the motion as well as on the action. In effect we think this follows from the view that the motion is treated as if it was a counter-claim.

We also suggest that in due course we prepare and exchange a list of documents to be used at the trial on the footing that all the listed documents are the documents that would be disclosed and made available if a formal affidavit of documents was prepared. When this is done there could be an agreement as to the documents in the lists to be incorporated in the Judge's bundle of copies on the usual basis, i.e., that they exist and are copies of what they purport to be copies of and are to be treated  
40 as being in evidence by consent saving all proper grounds of objection to their reception in evidence that depend upon their materiality or relevancy to the issues in the case.

This will save an enormous amount of time and we should be ready with such a list by about the 29th inst. and should be glad if you would confirm that you would then be prepared to effect the exchange.

Yours faithfully,

LIVINGSTON, ALEXANDER & LEVY.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit A.  
Correspondence.  
No. 3.  
Letter from Livingston & Alexander (Plaintiffs' Solicitors) to Alberga & Hart (Defendants' Solicitors), 21st February 1944, continued.

No. 4.  
Letter from Livingston, Alexander & Levy (Plaintiffs' Solicitors), to Alberga & Hart (Defendants' Solicitors), 16th May 1946.

No. 5.

In the  
Supreme  
Court of  
Jamaica.

LETTER from Alberga & Hart (Defendants' Solicitors) to Livingston, Alexander & Levy  
(Plaintiffs' Solicitors), dated 29th May 1946.

Exhibits.

Dear Sirs,

*Vick Chemical Co. vs. Cecil de Cordova et al.*

Exhibit A.  
Corres-  
pondence.  
No. 5.  
Letter from  
Alberga  
& Hart  
(Defen-  
dants'  
Solicitors)  
to  
Livingston,  
Alexander  
& Levy  
(Plaintiffs'  
Solicitors),  
29th May  
1946.

In reply to your letter of 16th instant, we confirm that no point will be made of the fact that the Plaintiff has not filed any Affidavits in answer to the Motion on the ground that the Motion is being treated as if it were a counter-claim.

We also confirm that we will prepare and exchange lists of the 10 documents to be used at the trial on the basis suggested by you.

Yours faithfully,

ALBERGA & HART.

EXHIBIT "K."

PLAINTIFFS' RECORDS of advertising and sales campaigns and of quantities of sales in Jamaica.

JAMAICA

1923-24.

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica.

NEWSPAPER ADVERTISING :  
Kingston—(Series 24-10).  
Gleaner. 20

FORM LETTERS :  
300 individual testimonial.

DISTRIBUTION OF COUPONS & FOLDERS :  
House to house in Kingston and Lower Andrews. No definite information as to distribution in interior points.

DEALER ADVERTISING :  
Total Selling Costs .. .. . \$169.62  
Total Sales .. .. . 806.40  
% of S.C. to Sales .. .. . 21 % 30

1924-25.

NEWSPAPER ADVERTISING :  
Kingston—(Series 25-10A)  
Kingston Gleaner  
Kingston Jamaica Times

FORM LETTERS :  
139 Doctors testimonial (free jar)

DEALER ADVERTISING :  
39 Demonstration Counter-Stands and 40 samples each to dealers  
26 missionary packages 40  
Total Selling Costs .. .. . \$ 395.25  
Total sales .. .. . 2352.00  
% of S.C. to Sales .. .. . 16.8 %

JAMAICA  
1925-1926

*In the  
Supreme  
Court of  
Jamaica.*

NEWSPAPER ADVERTISING :

Kingston—

Gleaner—Special U.S.A. Series 26-10A

Herald—Series 26-3, 26-10

Times

Catholic Opinion—Series 26-7D

*Exhibits.*

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

10 ADVERTISING MATERIAL :

20 new counter-stands

23 missionary packages

Total selling cost .. .. . \$ 746.60

Total sales .. .. . 3897.60

% of S.C. to sales .. .. . 19.16%

1926-1927

NEWSPAPER ADVERTISING :

Kingston—Catholic Opinion—Series 26-7D—8 half pages.

Gleaner—Series 27-29A, 27-23C, 26-7B—232"

20

Herald— " " " " —196"

Times— " " " " — " "

Reminder ads. ran two times a week in the Gleaner and once a week in the Herald and the Times. The latter are weekly papers. This accounts for the difference in space.

ADVERTISING MATERIAL DISTRIBUTED :

24 Demonstration counter-stands complete

4,000 Romance of a Remedy booklets

10 Large window displays

24 Small counter stands

30

50 3/4 Medium signs

25 Large signs

50 Small signs

50 Car cards

1 Christmas packages to consul

19 Missionary packages

FORM LETTERS :

112 to individuals requesting testimonials.

Total selling costs .. .. . \$ 804.02

Total sales .. .. . 5617.20

% of S.C. to sales .. .. . 14.31%

40

JAMAICA  
1927-1928

NEWSPAPER ADVERTISING :

City	Papers	Series	Frequency
Kingston	The Gleaner	28-29C No. 1	One insertion
	The Herald	28-29C No. 2	"
	The Times	28-23	Once a week
	The Catholic Opinion	28-24	"
		28-20	Once a month

Total : 588 inches. Also 8 half pages used in the Catholic Opinion monthly.

50

*In the  
Supreme  
Court of  
Jamaica.*

**SAMPLE AND BOOKLET ADVERTISING :**

2,000 Blix and Blee Booklets distributed in Schools, grades 2 and 3.  
500 samples.

*Exhibits.*

**DEALER & DISPLAY ADVERTISING :**

2,000 Romance of a Remedy booklets  
50 American M. & C. counter-stands  
200 car cards  
10 large American window displays  
8 Demonstrations counter-stand with 40 samples each  
10 large signs  
50 small signs

10

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

**STORE DEMONSTRATIONS :**

4 Days demonstration word in drug stores in Kingston.  
(July 1928)

**DOCTORS :**

146 "Cold" booklets sent to all doctors throughout Jamaica,  
with 22 requests for free test jars received so far.

**CONSULS AND MISSIONARIES :**

1 package to Consul, and 2 packages sent to missionaries.

**FORM LETTERS :**

58 letters sent to all dealers outlining campaign and enclosing  
B. & B. booklet.

20

Total Selling Costs	..	..	..	..	\$ 398.05
Total Sales	..	..	..	..	7056.00
% Selling Cost to Sales	..	..	..	..	5.64%

**JAMAICA**

1928-1929

**NEWSPAPER ADVERTISING :**

The standard English schedule of 252" run in "The Gleaner,"  
a daily of Kingston. For the "Weekly Times," the same schedule,  
but on a weekly basis. (See Bahamas for detailed schedule.) For  
the "Catholic Opinion," a monthly, six insertions of 28-20, 1/2  
page, run from November to April.

30

**SAMPLE & BOOKLET DISTRIBUTIONS :**

3,000 N.P.E. h-to-h samples  
2,000 "B & B" booklets  
1,000 "3 Types of Colds" booklets

**DEALER & DISPLAY ADVERTISING :**

100 Car cards assorted  
6 large Am. window displays complete  
100 Influenza stickers  
50 Am. M & C counter-stands

40

**OUTDOOR ADVERTISING :**

200 small salesmen's signs  
8 Large Am. cloth posters  
100 Tin salesmen's signs

## STORE DEMONSTRATIONS :

None

## DOCTORS :

None

## PACKAGES TO MISSIONARIES &amp; CONSULS :

1 to consul and 21 to missionaries

Total Selling Costs	..	..	..	..	..	\$ 480.61
" Sales	..	..	..	..	..	8798.40
% S.C. to Sales	..	..	..	..	..	5.46

10

## JAMAICA

1929-30

## NEWSPAPER ADVERTISING :

The standard English schedule of 254" was run in the "Gleaner" of Kingston, as follows :

Series 29-2 : 6" double column and 6" triple column ads. were run once a week for a total of 6 insertions from Oct. thru Feb.....90"

Series 28-23 : 4" single column was run weekly from Oct. to March except during those weeks when a series 29-2 was published. Insertions 16.....64"

20

Series 29-24 : 2" single column ads. were run weekly from Oct. to Sept. for a total of 50 insertions.....100"——254"

The Times of Kingston also ran the same schedule but on a weekly basis and totalling only 216".

## SAMPLE AND BOOKLET DISTRIBUTION :

10,000 NPE samples h-to-h (supervised by Mr. R. M. Dunning)

2,000 B/B booklets

6,000 3 types of colds booklets

## 30 DEALER AND DISPLAY ADVERTISING :

200 each of 3 English flu. posters      200 Am. M. &amp; C counter-stands

4,000 flu. folders—English      200 Influenza stickers

200 English transparencies      200 English transparencies

66,000 paper bags      50 Enamelled door plates

300 Car cards      6 Window displays

50 Dummy cartons

## OUTDOOR ADVERTISING :

30 Large cloth signs

30 American road cloth fillers

40

150 3/4 metal signs

430 Small salesmen's signs

## FORM LETTERS :

Letter to agent about cold-season information

103 letters to dealers about Mr. Dunning's campaign

## FREE GOODS :

20 packages N.P.E. Vicks sent to consuls and missionaries

Total Selling Costs	..	..	..	..	..	\$1477.82
" Sales	..	..	..	..	..	8101.30
% S.C. to sales	..	..	..	..	..	18.24

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

CAMPAIGN HISTORY  
JAMAICA  
1930-31

*Exhibits.*

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

NEWSPAPER ADVERTISING :

"The Gleaner" of Kingston ran the standard English schedule of 250" (see Bahamas for details). "The Times" of Kingston ran the same schedule but on a weekly basis, dropping the extra insertions of series 29-24 during the first six months—232".

The following material was shipped to the agents to be used at their discretion but bearing in mind the recommendations made in 10 our letters of October 30, 1930 and March 10, 1931 :

OUTDOOR ADVERTISING :

250 metal signs  
12 large American road cloth signs

DEALER ADVERTISING :

70 dummy cartons—strung  
5 American window displays  
100 shelf strips  
350 car cards  
10,000 paper bags  
5,000 testimonial folders  
400 house-to-house samples

20

Total selling costs	..	..	..	..	..	\$ 297.47
„ sales	..	..	..	..	..	8101.30
% S.C. to sales	..	..	..	..	..	3.67

CAMPAIGN HISTORY  
JAMAICA  
1931-1932

NEWSPAPER ADVERTISING :

The standard English schedule of 248" (see Barbados for details) 30 was run in the Gleaner, a daily of Kingston : The Times, a weekly ran the weekly schedule of 204" (see Bahamas).

DEALER ADVERTISING :

20,000 English bottle wrappers  
200 Assorted American car cards  
50 Dummy cartons  
100 Three-quarter tin signs  
48 Rubber cash mats

OUTDOOR ADVERTISING :

20 Cloth road signs

40

FORM LETTERS :

None.

MISSIONARIES AND CONSULS :

20 Packages (NPE Vicks and samples)

Sales	..	..	..	..	..	..	\$4,289.36
Selling Costs	..	..	..	..	..	..	224.31
% S.C. to S.	..	..	..	..	..	..	5.23

(Note.—\$4.00 to the pound sterling)

## CAMPAIGN HISTORY

1932-33

## JAMAICA

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*

## NEWSPAPER ADVERTISING :

The standard English schedule for weeklies, totalling 210" (see Bahamas for details) was run in the Times of Kingston totalling 130".

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

## DISPLAY ADVERTISING :

- 10 16 English dummy cartons—strung  
200 car cards, assorted, illustrated  
8 doz. N.P.E. empty cartons  
8 Eng. window displays, tricolor, mounted  
(The above were distributed to the most important dealers to be used in making up window displays)  
20,300 English bottle wrappers  
300 " green cards  
60 " counter-stands, tricolor, mounted  
(Distributed by agent to dealers. The bottle wrappers to be given in bunches of 100 or more, for use in wrapping small packages)

## 20 FOLDERS &amp; BOOKLETS :

- 2,000 Vick Plan folders—to be given to principal dealers to pass out to their customers as they see fit  
10,000 " Why, When & How " folders  
(Given to the dealers in batches, with the understanding that when these are gone, they can have more)

## DIRECT MAIL ADVERTISING :

- 200 " Why, When & How " folders sent out to better families in country.  
For introductory purposes, a sample each of Nose Drops and Cough Drops was included in each package of VapoRub.

## MISSIONARIES &amp; CONSULS :

20

Total Sales	..	..	..	..	..	\$8079.51
Selling Costs	..	..	..	..	..	90.08
% S.C. to S.	..	..	..	..	..	1.11%

## CAMPAIGN HISTORY

## JAMAICA

1933-34

## NEWSPAPER ADVERTISING :

- 40 350" in the Gleaner Series—33-24C, 33-21P, 33-24N, 32-24A, 32-24  
500" in The Times 32-29

## CIRCULARS &amp; BOOKLETS :

- 25,000 English Vick Plan folders (used by Carlson in Campaign)

<i>In the Supreme Court of Jamaica. — Exhibits. — Exhibit K. Plaintiffs' records of advertising and sales campaigns and of quantities of sales in Jamaica, continued.</i>	<b>DEALER AIDS :</b>		
		28,000 English Vick Plan wrappers (used by Carlson)	
		100 " transparencies	
		100 " green cards	
		10 " window displays tri-coloured	
		15,000 paper bags	
		125 Vick Plan window stickers	
		160 Cough Drop window stickers	
		10 Voratone window displays (complete)	
		40 Voratone counter-stands	10
	200 Assorted car cards		
	500 " " "		
	<b>SAMPLES :</b>		
	4,320 samples of Vatronal in VapoRub stock		
	9,992 Vatronal samples packed in bulk		
	10,500 Cough Drop samples (for Carlson's campaign—4,000 balance distributed at tennis matches, market places, movies)		
	<b>OUTDOOR ADVERTISING :</b>		
	25 large cloth signs—VapoRub (used by Carlson)		
	5 " " " —" Avoid dosing "	20	
	3 " " " —" Also fine for headache "		
	3 " " " —" Catching cold "		
	2 " " " —" Coughs and Sore Throats "		
	3 " " " —" Vick Plan "		
	40 yellow signs for use by Carlson		
	150 3/4 metal signs (Vick Plan) used by Carlson		
	5 large cloth signs—Vatronal		
	5 2-sheet Vatronal folders		
	<b>FORM LETTERS :</b>		
	175 letters to doctors 11/2/33—250 Vatronal samples to about 30 50 doctors who returned cards.		
	110 letters to nurses (outside of Kingston) plus small Vatronal samples.		
	<b>MISSIONARIES &amp; CONSULS :</b>		
	20 —————		
	(Mr. Carlson's Campaign—11-14-33 to 12-17-33)		
	<b>FREE GOODS :</b>		
	1 dozen Vatronal and 24 Vatronal Samples to each of 23 leading druggists outside of Kingston in anticipation of newspaper advertising—11-16-33.	40	
	<b>DEALER AIDS :</b>		
	Distributed to druggists in Kingston and on trip to small towns, the following material :		
	16,200 English Vick Plan wrappers		
	124 window stickers		
	6,900 paper bags		
	568 assorted car cards		
	41 counter-stands		
	19 window displays		
	127 green cards		
	30 transparencies (200 Vat. samples to Kingston dealers)	50	



SAMPLING :

By hand :

11,350 Coughdrop samples with Vick Plan folders and Vratone slips House-to-House. Kingston 9,600 ; Port Antonio, 500 ; Montego Bay, 1,000 ; Port Maria, 250.

4,500 Cough Drop samples to persons in other towns and along the road

600 Vatronal samples given to persons in and near stores in small towns

10

For the work in Kingston, Carlson was assisted by 2 young men from Mr. McIntosh's office.

By Mail :

Envelopes containing 1 Cough Drop, 1 Vatronal and 1 Vick Plan folder and 1 Vratone slip to each of the following :

550 to school teachers outside of Kingston

2,600 to selected voters

1,500 " " " people in telephone directory

Movies :

20

500 Cough Drop samples to dealers in Falmouth who own small movies

Sales	..	::	::	::	::	..	\$8602.14
Selling Costs	..	::	::	::	::	..	2201.52
% Selling Costs to Sales	..					..	25.6 %
% Increase over previous year	..					..	6.46 %

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

*Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
continued.*

RLH : kh

JAMAICA  
CAMPAIGN HISTORY  
1934-35

1. NEWSPAPER ADVERTISING :

30 362" in Gleaner Series—33-21P, 32-24A, 33-24N, 33-24C, 35-23P,  
35-24N

501" in The Times

2. SAMPLE ADVERTISING :

100 combination dealer packages—Each package contained the following items :

14 Comb. de luxe samples of 3 products

50 Vick Plan Folders

1 ½ oz. bottle of Vatronal

1 Counter-stand holding

40 1 ½ oz. empty Vatronal carton

1 1 oz. " " "

1 Broadside

1 Circular

These packages were distributed as follows :

By hand :

47 to dealers in Kingston

By Mail :

53 mailed by agents to dealers outside of Kingston

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

12,200 Cough Drop Samples were handed out with Vick Plan folders at moving picture houses and garden parties in Kingston, and at moving picture houses and to dealers throughout the Island.

10,000 Vatronal Samples and Cough Drop Samples were mailed from New York to names in Jamaica's voting list which had been neglected the previous year.

3. OUTDOOR ADVERTISING :

24 Cloth road signs were placed on prominent corners in Kingston	} This material was used on 10 Mr. Hendry's trip to the interior of the Island
25 VapoRub signs (Duckine)	
50 3/4 metal signs VapoRub	
50 " " " Vatronal	

4. DEALER ADVERTISING :

75 Vatronal Window Displays	} This material was used in dressing Dealers' windows
1,195 Car Cards	
50 Empty Cartons	
15,000 paper bags were given to dealers throughout the Island	
50 Dummy Cartons	} Placed by Mr. Hendry in shops throughout Island
50 Cough Drop Door plates	
300 Cough Drop Window Stickers	
2,500 NPE Vorafone inserts	20
75 shelf strips	
50 rubber cash trays	

5. FORM LETTERS :

None

6. MISSIONARIES & CONSULS :

None

Sales	.. .. .	\$9936.71
Selling Costs	.. .. .	1248.41
% Selling Costs to Sales	.. .. .	12.6 % 30
% Increase over Previous Year	.. .. .	15.5 %

RLH : kh

JAMAICA  
CAMPAIGN HISTORY

1935-36

NEWSPAPER ADVERTISING :

The Gleaner (Daily)—10/5/35 to 5/28/36, 144 insertions to 500" of the following series :

Series	Size	Insertions	
36-23P	7"-36" Plan	24	40
35-24A	3" VR	26	
36-24N	1 1/2" VTN	32	
35-24C	1"-3" CD	62	

The Jamaica Times—10/5/35 to 9/26/36. This paper is used throughout the year because a very favourable rate is obtained for 52 insertions. The 52 insertions total 331". The first two series listed above and 33-24C, a 1" CD reminder ad., were used. During the

rainy or winter months, the larger ads. were run, the small reminders being used to fill out the schedule during the off months.

New display and reminder ads. were added for all three products (See RADIO).

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

**SAMPLING :**

3,000 Deluxe Combination 3-product Samples

5,000 Cough Drop Samples

10 These were distributed house-to-house in Kingston and immediate suburbs. The Cough Drop samples were left at the homes between the best homes. The VapoRub samples contained in the combination samples were of the "stainless" variety, to encourage its sale. Almost all VR now sold in Jamaica is amber. The charge for the distribution of all the above samples was £10 2s. 6d. We consider this charge quite high but because of the extreme selectivity of the distribution and the large amount of ground covered to get them out, the expense may be justified.

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

**OUTDOOR ADVERTISING :**

The following material was shipped to supplement the 10 duckine signs

20 18 CD door plates

10 shelf strips

65 car cards

50 CD window stickers

still on hand from last year's campaign :

6 three-sheet posters—2 VR, 2 VTN, 2 CD

15 cloth road signs—10 VR, 5 VTN

10 duckine—5 VR, 5 VTN

25 3/4s—VR

25 hogringers—VTN

30 The three-sheet posters and the cloth road signs were for special use in frames which we have in choice locations in various parts of the Island. The other pieces were for use wherever effective.

**DEALER ADVERTISING :**

The following material was shipped :

20,000 four-product paper bags

20 plan window displays

30 four-product counter-stands

1,000 assorted car cards

50 Cough Drop step strips

40 The paper bags were used in connection with the sales calls on dealers to make selling easier for our agent. The four-product counter-stands were of the type which required a carton of each product to be inserted. We did not ship cartons down for this purpose, but relied on the personal installation of our agent to see that the cartons were taken from the dealers' shelves and inserted. Most of this material was used among dealers and druggists in conjunction with the sample distribution.

**RADIO :**

50 Our agent suggested and strongly recommended that we do some newspaper advertising on our Grace Moore program because most of

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the sets on the Island listened to U.S. stations. He suggested that it would also lend prestige to our products. In compliance with his request, we ran four ads., one a week, during December, totalling 18" on the radio page.

*Exhibits.*

**FORM LETTERS :**

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

Letters were sent from New York, and complimentary packages of 1/2 oz. Va-tro-nol from Philadelphia, to 170 doctors (all of them).

	VapoRub	Va-tro-nol	Cough Drops	TOTAL	
Sales .. ..	\$4,467.18	\$1,148.47	\$2,088.01	\$7,879.22	10
Selling Costs ..	249.00	219.00	107.00	577.00	
% S.C. to Sales ..	5.6%	19.1%	5.1%	7.3%	
% Inc. over prev. year .. ..	20.1%	28.2%	21.7%	20.7%	

July 13, 1937

klh

**JAMAICA  
CAMPAIGN HISTORY  
1935-36**

**1. NEWSPAPER ADVERTISING :**

20

The Gleaner	} 331" to 500"	Series	Frequency
The Times		36-23 P	24
		35-24 A	26
		26-24 N	32
		35-24 C	62

**2. SAMPLES :**

3,000 combination samples	} thorough distribution under personal supervision of agent to best houses in Kingston and St. Andrew, the comb. samples being given the preference.	30
5,000 Cough Drop "		

**3. OUTDOOR ADVERTISING :**

Left over from prev. year.

- |  |                       |
|--|-----------------------|
| 6 3-sheet posters (2 ea. VAT, VR. CDs)   |                       |
| 16 road cloth signs                      | 10 Duckine signs      |
| 10 Duckine signs (5 Vaporub, 5 Vatronal) | 18 CD door plates     |
| 25 3/4 metal signs (VR)                  | 10 shelf strips       |
| 25 Hogringer " (Vat)                     | 50 CD window stickers |
|  | 65 car cards          |
|  | 8 dealer packages     |

**4. DEALER ADVERTISING :**

40

20,000 4-product paper bags	} These were distributed among the dealers and druggists in conjunction with the sample distribution, the agent personally supervising the placing of counter-stands etc.
20 Plan Window Displays	
30 4-product Counter Stands	
1,000 car cards	
50 Cough Drop Step Strips	

## 5. FORM LETTERS :

170 letters and  $\frac{1}{2}$  oz. pkg. of Vatronol sent to all doctors 1/26/36.

## 6. MISSIONARIES &amp; CONSULS :

None

Sales .. .. .	\$7,879.22
Selling Costs .. .. .	577.00
% Selling Costs to Sales .. .. .	7.3%
% Increase over previous year .. .. .	20.7%

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continued.*

10

JAMAICA  
CAMPAIGN HISTORY  
1936-37

## PRESS ADVERTISING :

Two newspapers were used, both published in Kingston. At the suggestion of our agent schedules were started several months earlier than usual to take advantage of the rainy season. An entirely new set of ads were used. The bulk of the schedule was concentrated in the rainy months of July, August and September and the winter months of December, January and February.

20

The Gleaner—Daily (20,000) 7/25/36 to 2/26/37, 105 insertions to 500"

Series	Size	Insertions
36-23P	7"-36" Plan	22
36-24N	1-1/2" VTN	31
36-24	3" VR	29
37-24C	1"-3" CD	23

The Jamaica Times—Weekly (10,000) 7/25/36 to 3/20/37, 52 insertions to 370"

30

Series	Size	Insertions
36-23P	7"-36" Plan	22
33-24C	1" CD	22
37-24C	1"-3" CD	9

## SAMPLING :

4,952 Combination samples were distributed by the agent while travelling, and 980 were sent out by mail to homes off the beaten path. The names for this mailing were obtained from dealers and druggists in nearby towns. The house-to-house distribution of the combination samples, on the agent's island trip, was very selective.

40

10,000 Cough Drop samples were shipped, of which approximately 6,000 were distributed on the island trip. Quite a number were utilized for house-to-house distribution in instances where for various reasons the combination samples were not utilized, and in several instances the agent arranged for distribution at several Cinemas. About 2,500 were distributed in Kingston, house-to-house and the balance in Kingston Cinemas, etc.

## CIRCULARS AND BOOKLETS :

30,000 Vicks Home News were shipped.

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Jamaica,  
*continued.*

17,000 of these were distributed in the interior. In some instances these were distributed along with the combination samples, but in other cases small quantities were given to the dealers, several of whom had asked for supplies which they were desirous of sending out to their various customers along with household supplies ordered and delivered at the end of each week. This served as a means of establishing goodwill.

Approximately 7,000 were distributed in Kingston to dealers. The balance of 6,000 was distributed to certain dealers who carry on business outside of Kingston proper but whom, on account of distances 10 involved, are not visited as often as city accounts.

#### OUTDOOR ADVERTISING :

The following material was shipped :

- 165 Plan 3/4 tin signs
- 100 VR 3/4 tin signs (India)
- 30 Cloth road signs (15 VR and 15 VTN)
- 63 Hogringer tin signs

This material was used on the Agent's Island trip for us. He had 10 cloth road signs on hand 5/24/37. All other material was used up.

20

#### DEALER AND DISPLAY ADVERTISING :

The following material was shipped :

- 20 Dom Window Displays (35-36)
- 90 Plan shelf strips
- 40 Plan door plates
- 30 CD
- 100 Plan ceiling hangers
- 660 Car cards—assorted
- 20,000 Four-product paper bags

All of the above material was used up on our Agent's trip, except 30 128 car cards and 11 shelf strips.

#### FORM LETTERS :

"Granted that . . ." booklets with a return request card for VR and VTN were sent to 169 doctors. 37 requests for our products were received. When the full-size samples were sent a covering letter was mailed informing the doctors that their requests had been complied with. This was done in an effort to prevent the theft of the samples by household or other assistants. Our Agent tells us that this practice is quite common.

#### AGENT'S TRIP THROUGHOUT ISLAND :

40

At our request, Jamaica Agencies, Ltd. sent a man by automobile to visit exactly 100 towns. On this trip combination samples were distributed, roadside and dealer advertising put up, and orders taken for our products. We granted our agent permission to take orders for his other lines while making calls, but did not permit him to engage in any other promotional work. Many districts and towns not previously covered at all were visited. The trip took between

four and five weeks. Paper bags were well received by the trade and our samples were very well received. This trip cost us \$244.53.

	VR	VTN	CD	Total
Sales .. .. .	\$5802	\$1263	\$2603	\$9699
Selling Costs				
% Selling costs to sales				
% Increase over previous year .. .. .	29.9%	10%	24.7%	23.1%

ECAM : bs

10 8.3.37

**JAMAICA  
CAMPAIGN HISTORY  
1937-38**

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*Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
continued.*

**PRESS ADVERTISING :**

The "Gleaner" and the "Times," along with a full page ad in Booker's Almanac of British Guiana whose distribution has been extended to Jamaica, were used. Both newspapers are published in Kingston.

20 All three products were advertised in both newspapers. Advertising in the "Gleaner" started on 7th December, 1937 and ended 22nd April, 1938, covering a total space of 555". Series 37-23, 37-33N, 37-24P, 37-24C, 37-24 and 36-24N were used.

Advertising in the Jamaica "Times," a weekly, ran from 9th October, 1937 to 21st May, 1938—a total space of 401", using series 37-25, 37-23N, 37-24P and 37-24C.

**SAMPLING :**

10,000 CD samples were distributed in movies and markets throughout the island by Mr. Muss.

**CIRCULARS & BOOKLETS :**

30 20,000 Movie booklets  
10,000 Comic booklets  
10,000 Domestic 8-page plan folders

Movie booklets were left with leading merchants in each town, and they included them in week-end orders. In Sav-la-mar 500 were distributed H/H.

Comic booklets were distributed to dealers. Our merchandising scheme entailed offering these booklets as a premium, but the dealers of this market were unable to comprehend their purpose and were found giving them away as gifts to customers.

40 The 8-page plan folders were left in small quantities with merchants.

Mr. Muss supervised the distribution of all booklets on his trip around the Island the latter part of September and early October, during which time he was accompanied by Mr. Hendry of JAL.

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campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

**DEALER & DISPLAY MATERIAL :**

20 Plan window displays	300 Car cards
175 comic counter cards	300 plan ceiling hangers
20 plan door plates	167 shelf strips
40 CD " "	150 CD step strips
100 Plan transparencies	20,000 paper bags

All of this material has been disposed of, some by Mr. Muss on his trip and the balance by JAL later in the season. The material was well received by the trade, which proved to be most co-operative.

**OUTDOOR ADVERTISING :**

10

100 VR tins	10 VR cloth signs
50 Plan tins	10 VTN " "

Placed by Mr. Muss on trip. It is not advisable to ship cloth signs in view of the few spots for this type of advertising. Tin signs, on the other hand, are excellent pieces for this market.

**SALES PROMOTION :**

63 mechanical pencils, stamped with the name of the dealer in gold, were sent to a selected list of dealers compiled by our representative.

496 dealer letters announcing the arrival of our representative 20 and the special 1937-38 campaign were mailed from New York on August 1928.

**GENERAL :**

On 1st July a new Restricted Sales Law was put into effect, restricting the sale of medicines to pharmacists, although enforcement of the law has not yet been effected.

**SALES RESULTS :**

	VapoRub	Va-tro-nol	Cough Drops	Total	
Sales .. ..	\$4451	\$1387	\$2602	\$8583	
Selling Costs .. ..	950	823	405	2178	30
% S.C. to Sales .. ..	20.7%	59.3%	15.6%	25.4%	
% Incr. over prev. year .. ..	23.3%	9.8%	0	11.6%	

**JAMAICA**

**CAMPAIGN HISTORY**

1938-39

NOTE : No report on campaign was made by agent. Our instructions were as follows, and we assume that they were carried out.

**PRESS ADVERTISING :**

"The Gleaner" and "The Standard," both published in Kingston, 40 carried schedules of the same length which ran from September 5, 1938 to March 29, 1939, a total space of 547", 146 insertions. These schedules were made up from series 37-24, 37-23, 38-23N, 38-24N, 38-24C and 38-24P. "The Jamaica Times" also carried Vicks



advertising, running a series of ads. which started on September 10, 1938 and ran until March 2, 1939, a total of 331", 74 insertions. This schedule was made up of ads. from series 37-23, 38-23N, 38-24P and 38-24C.

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BOOKLETS :

30,000 "How to" booklets.  
15,000 8-page folders ("For Mothers").

The "How to" booklets were distributed house-to-house in a complete coverage of the Island.

10 The 8-page folders were shipped at the end of April for the rainy season. These were distributed through the stores.

Exhibit K.  
Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

SAMPLES :

5,000 Va-tro-nol.

These were for distribution house-to-house at the better homes during the "How to" booklet distribution.

DEALER DISPLAY ADVERTISING :

10 window displays.  
40 metal flange plan signs.  
100 CD ceiling hangers.

20 100 car cards.  
20,000 paper bags.

Window displays and 4-way signs for better stores. Paper bags to help influence dealers to place substantial orders.

OUTDOOR ADVERTISING :

50 CD step strips.  
10 VR & VTN cloth signs.  
100 VR  $\frac{3}{4}$  tins.  
50 Plan  $\frac{3}{4}$  tins.

For placement at selected outdoor locations.

30 RESULTS :

	VapoRub	Va-tro-nol	Cough Drops	Total
Selling Costs ..	\$389.00	\$398.00	\$94.00	\$881.00
% S.C. to sales ..	6.7%	26.2%	2.9%	8.3%
% Inc. over prev. yr. .. ..	30.8%	9.4%	23.9%	23.2%
Net Sales ..	5,811.00	1,515.00	3,217.00	10,555.00

JAMAICA

CAMPAIGN HISTORY

1939-40

40 PRESS ADVERTISING :

From September 5, 1939 to April 20, 1940, "The Gleaner" carried a schedule of 514"; 256" VR, 180" VTN and 78" CD, these ads. taken from series 39-29, 39-23, 37-24, 39-23N, 40-23N, 38-24N and 39-24C.

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campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

The "Jamaica Times" carried a 385" schedule from September through April, composed of ads. of series 39-23, 39-29, 39-23N, 40-23N and 39-24C—a total of 152 insertions.

"The Jamaica Standard" discontinued publication as of December 27, 1939 consequently the 514" schedule was not completed.

All of the above newspapers are published in Kingston.

**SAMPLING :**

6,000 Cough Drop Samples.

These were distributed in three of the most important cinemas in Kingston—The Palace Theatre, the Movies and the Tivoli, and the 10 balance were distributed at ten of the most important Cinemas in certain country towns (exact ones not specified).

Contrary to last year the sum of £4 0s. 0d. over and above the usual distribution costs was charged by the Jamaica Theatres for the distribution in the three theatres in Kingston. This makes cinema distributions costly in Jamaica.

**BOOKLET DISTRIBUTION :**

7,000 Cold Facts & Fancies.

5,000 Vicks Home News.

2,500 Baby pictures.

20

The Cold Facts Booklets were distributed house-to-house in the better residential districts of Kingston and its precincts, as well as in Spanish Town and St. Andrew. The baby pictures (offered as a premium in the booklet) were divided among the dealers in the areas where the Cold Facts booklets were distributed. Some dealers did not have enough purchasers of Vicks products to use up their supplies of pictures within a reasonable time, and in such cases the remaining pictures were given away.

The house-to-house work was under the personal supervision of Mr. Humphries and Mr. Hendry, who hired extra assistants in the 30 usual manner. The materials were well received. Distribution costs, car hire, etc., were paid by Vicks.

**DEALER DISPLAY ADVERTISING :**

25 VTN fibres.

50 4-way signs.

125 assorted car cards.

150 VR tins.

15 large VR display cards.

Good sites were obtained for the large VTN fibres at outdoor locations. JAL considers them of good value when placed in the 40 right positions. Balance of the material was distributed both inside and outside of dealers' stores with an eye to permanency. The window displays were not all used in windows because the agents found it difficult to obtain the dealer's permission to use them without paying a fee. In some instances they were placed inside the stores.

## GENERAL :

The distribution, placement of signs, etc., were carried out in January 1940 instead of the fall of 1939 because storms delayed the campaign.

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## SALES RESULTS :

	VapoRub	Va-tro-nol	Cough Drops	Total	Exhibit K. Plaintiffs' records of advertising and sales campaigns and of quantities of sales in Jamaica, <i>continued.</i>
Total sales ..	\$3,170	\$516	\$1,862	\$5,548	
Exchange adjustment ..	230	37	135	402	
10 Net sales ..	2,940	479	1,727	5,146	
Selling Costs ..	368	248	133	749	
% S.C. to net sales ..	12.5%	51.8%	7.7%	14.6%	
% sales increase—					
par ..	-15.5%	-66%	-12.2%	-47.5%	
net ..	-49.4%	-68.4%	-46.3%	-51.3%	

## JAMAICA

## CAMPAIGN HISTORY

1940-41

## 20 PRESS ADVERTISING :

All three products were advertised in "The Gleaner" and the "Jamaica Times" (both published in Kingston). Covering the period from September 15 through April 20, a 516" schedule for "The Gleaner" included (1) 284" for Vaporub, using ten 18 display ads., 14 four-inch insertions and weekly 1½" reminders (2) 154" for Vatronal in a two-ads.-a-week program, with small display and reminder insertions used (3) weekly 1½" reminders for Cough Drops.

30 Covering the period from September 8 through April 20, the schedule of 346" for the "Jamaica Times" provided for (1) 192" for Vaporub, using eight 18" insertions and 12 four-inch ads. (2) 91" for Vatronal, with weekly small display ads. (3) 42 Cough Drop reminders, 1½" in size.

All ads. used were taken from Australian series.

In addition, this market benefited from the 10,000 circulation total there of Booker's Almanac, which carried a full-page Vaporub ad., half page for Vatronal and quarter-page for Cough Drops.

## HANDBILLS :

Supplementing the relatively limited newspaper coverage 35,000 handbills (or bottle wrappers) were distributed to the public by dealers.

## 40 OUTDOOR ADVERTISING :

Seven Vaporub and three Vatronol cloth signs, 25 Vaporub fibre signs and 150 Vaporub tin signs were used in outdoor sites. Commenting on this advertising after the campaign's close, the agent reported that more materials of this sort could be used to a good advantage, that the Vaporub tin signs were particularly effective—being used on buses and store fronts, as well as at usual outdoor sites.

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DEALER DISPLAY MATERIALS :

The following pieces were used for display in retail outlets :—  
15 large Vaporub displays, 100 Vatronol and 100 Vaporub cardboard  
flange signs, 400 assorted car cards, 200 stickers and 100 transparencies  
advertising Cough Crops.

Exhibit K.  
Plaintiffs'  
records of  
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and sales  
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quantities  
of sales in  
Jamaica,  
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REMARKS :

In April, 1941, a consignment sales arrangement was established  
in this market. Under this arrangement the agent built up a year's  
supply of Vaporub and Vatronol and a six to eight months' reserve  
stock of Cough Drops. These stocks were sold off this year as 10  
tightening import regulations reduced the agent's early orders and  
finally stopped all United States shipments to him.

In June, 1941, the agent obtained permission to import our  
products from Canada and was given an annual quota of \$4,800  
(figured on the basis of half his 1938 profits) which was to be filled  
through quarterly orders of \$1,200 each. This of course put an end  
to the Cough Drop business.

Total Sales	..	
Exchange Adjust-		
ment	.. ..	20
Net Sales	.. ..	
Selling Costs	..	
% S.C. to net sales		
% Sales Increase—		
par	.. ..	
net	.. ..	

JAMAICA  
CAMPAIGN HISTORY  
1941-42

PRESS ADVERTISING :

30

From September 14, 1941 through April 26, 1942 "The Gleaner"  
carried a schedule of 438"; for Vaporub—

10—18" display ads., series 40-29, 41-29.

18— 3" insertions, series 41-23.

32—1½" insertions, series 37-24.

for Vatronol—

4—14" display ads., series 41-29N.

22—2¾" insertions, series 40-23N.

20—1¾" insertions, series 38-24N.

"The Jamaica Times" provided for 303" of space; for 40  
Vaporub—

8—18" display ads., series 40-29, 41-29.

13— 3" insertions, series 41-23.

17—1½" insertions, series 37-24.

for Vatronal—

4—14" display ads., series 41-29N.

14—2 $\frac{3}{4}$ " insertions, series 40-23N.

Because regulations prohibited the import of Cough Drops from the U.S.A., no Cough Drop ads. were run.

#### SAMPLING, OUTDOOR AND DEALER ADVERTISING :

This type of advertising could not be used, since the import of these materials was prohibited.

#### SALES RESULTS :

	Vaporub	Vatronal	Cough Drops	Total
10 Sales .. ..	\$3,486	\$765	—	\$4,251
Selling Costs .. ..	185	90	—	281
% S.C. to Sales .. ..	5.3%	11.7%	—	6.6%
% Sales Inc. .. ..	32%	47%	—	46.3%

NOTE : The decrease in sales is entirely due to import restrictions. Our agent was allowed a certain quota from the Government which did not cover the demand.

### JAMAICA CAMPAIGN HISTORY

20 1942-1943

#### ADVERTISING

##### PRESS :

Jamaica Gleaner September 13, 1942 to April 25, 1943

VR 32 insertions 48" Series 37-24.

VTN 16 insertions 32" Series 42-23N.

VP 51 insertions 239" Ads. 1 thru 11.

—  
99

Extended VR & VTN 8 weeks—20".

Total 239".

30 Cost \$187.88.

#### SALES RESULTS :

	VR	VTN	Total
Sales .. ..	\$1,042	—	\$1,042
Selling Cost .. ..	51	17	68
% S.C. to sales .. ..	4.9%	—	6.5%
% Sales increase .. ..	-70.0%	—	-75.5%

#### GENERAL REMARKS :

40 The shipping space situation was very bad (one order taking a year. May '42 to May '43 for delivery) and the quota set up by the local authorities cut down our sales very much. The quota allowed was one-half the CIF value of the 1938 shipments.

Importation of advertising material was prohibited so we could not ship him any supplies of these.

(384 doz. VR shipped arriving in May. No VTN.)

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Exhibit K.  
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JAMAICA  
CAMPAIGN HISTORY

1943-44

*Exhibits.* ADVERTISING

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Plaintiffs'  
records of  
advertising  
and sales  
campaigns  
and of  
quantities  
of sales in  
Jamaica,  
*continued.*

## PRESS :

Jamaica Gleaner September 12, 1943 to April 23, 1944  
VR 64 insertions 234" Series 42-29, 41-23, 37-24.  
VTN 47 insertions 109" Series 42-23N.  
VP 57 insertions 319" Ads. No. 1 thru 11.

168                      652

(VP schedule—July 4, 1943 to March 19, 1944)

Jamaica Times September 12, 1943 to April 23, 1944  
VR 26 insertions 78" Series 41-23.  
VTN 26 insertions 52" Series 42-23N.

52                      130

Cost \$413.77.

## SALES RESULTS :

Sales .. ..	\$5,118	\$1,326	\$1,812	\$900	\$9,156	
Selling Cost ..	200	77	—	149	426	
% S.C. to Sales ..	3.9%	5.8%	—	16.6%	4.7%	20
% Sales increase	—	—	—	—	—	

## GENERAL REMARKS :

At the beginning of our fiscal year the quota for Jamaica was the same as for last year. However, in January, the agent's quota was increased and he managed to get a quota for CD and 1-ounce VTN. In addition, he received additional quotas for the Canadian goods. This, plus improved shipping conditions for Jamaica, increased the sales to this country.

We were still not able to send advertising material and had to rely upon press alone.

(1,872 doz. VR, 432  $\frac{5}{8}$  oz. VTN, 48 doz. 1-oz. VTN, 1,000 ctn. CD.)

JAMAICA  
CAMPAIGN HISTORY

1944-1945

## ADVERTISING

## PRESS :

Jamaica Gleaner  
VR 58 insertions 134" Series 44-29, 44-23, 45-24.  
VTN 27 insertions 109" Series 44-29N, 42-23N.  
C.D. 44 insertions 66" Series 45-24C.  
INH 39 insertions 112" Series 45-21H.  
VP 25 insertions 225" Ads. —

193                      746

10

30

40

(VP ran for 25 weeks starting July 1, 1944.)  
 Jamaica Times September 1944 to March 1945  
 VR 26 insertions 78" Series 44-23.  
 VTN 26 insertions 60" Series 42-23N.

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		52	138				
SALES RESULTS :							
		VR	VTN	CD	INH	VP	Total
10	Sales ..	\$11,818	\$3,423	\$2,333	\$3,293	\$1,125	\$21,992
	Selling Cost ..	159	87	29	223	181	679
	% S.C. to Sales ..	1.3%	2.5%	1.2%	—	16.1%	3.1%
	% Sales Increase ..	130.9%	158.1%	28.8%	—	25.0%	140.2%

Exhibit K.  
 Plaintiff's  
 records of  
 advertising  
 and sales  
 campaigns  
 and of  
 quantities  
 of sales in  
 Jamaica,  
*continued.*

GENERAL REMARKS :

Inhalers introduced for first time supported by advertising.

20 This year, as last, the quota our agent was to have for our goods was supposed to be the same as the CIF value of goods he imported in 1938. However, as the year went on, he continued to get increases in his quota. This, plus the introduction of INH, gave us a considerable increase over last year's sales.

The INH introduction was strongly supported by our press campaign but no dealer help or outdoor advertising was sent, as it is still on the prohibited list as far as shipping space goes.

(4,200 doz. VR, 1, 116 $\frac{5}{8}$  & 96 1-oz. VTN, 1,288 ctn. CD, 1,800 doz. INH. (There was also a small amount of VP shipped in.))

JAMAICA SALES—Dozens—Cartons.

		VAPORUB (dozens)	VATRONOL (dozens)	COUGH DROPS (ctns. of 40 pkg. ea.)	VORATONE (dozens)
30	1923-24 ..	288	—	—	—
	1924-25 ..	840	—	—	—
	1925-26 ..	1,392	—	—	—
	1926-27 ..	2,006	—	—	—
	1927-28 ..	2,320	—	—	—
	1928-29 ..	3,142	—	—	—
	1929-30 ..	3,384	—	—	—
	1930-31 ..	3,384	—	—	—
	1931-32 ..	1,704	36	48	—
	1932-33 ..	2,112	36	1,514	24
40	1933-34 ..	1,836	267	1,616	228
	1934-35 ..	2,293	679	1,418	144
	1935-36 ..	1,866	487	1,110	144
	1936-37 ..	2,424	573	1,381	13
	1937-38 ..	1,858	585	1,380	126
	1938-39 ..	2,431	690	1,705	9
	1939-40 ..	1,324	234	988	—
	1940-41 ..	2,141	675	716	—
	1941-42 ..	1,335	285	—	—
	1942-43 ..	384	—	—	—
50	1943-44 ..	1,872	480	1,000	—
	1944-45 ..	4,200	1,212	1,288	—
TOTALS ..		44,536	6,239	14,164	688

## INHALERS.

In the  
Supreme  
Court of  
Jamaica.

1944-45 .. 1,800

5/23/46

Exhibits.

## JAMAICA SALES (\$) AND ADVERTISING AND SELLING COSTS (\$)

Exhibit K. Plaintiffs' records of advertising and sales campaigns and of quantities of sales in Jamaica, <i>continued.</i>	VAPORUB		VATRONOL		COUGH DROPS		VORATONE		
	Sales	Cost	Sales	Cost	Sales	Cost	Sales	Cost	
1923-24 ..	806	170	—	—	—	—	—	—	
1924-25 ..	2,352	395	—	—	—	—	—	—	
1925-26 ..	3,898	747	—	—	—	—	—	—	
1926-27 ..	5,617	804	—	—	—	—	—	—	10
1927-28 ..	6,033	326	—	—	—	—	—	—	
1928-29 ..	7,523	441	—	—	—	—	—	—	
1929-30 ..	8,101	1,478	—	—	—	—	—	—	
1930-31 ..	8,101	297	—	—	—	—	—	—	
1931-32 ..	4,289	224	120	—	90	—	—	—	
1932-33 ..	5,056	90	120	—	2,848	—	56	—	
1933-34 ..	4,395	585	888	901	3,040	585	279	130	
1934-35 ..	5,489	331	1,600	581	2,667	324	175	11	
1935-36 ..	4,467	249	1,148	219	2,088	107	175	2	
1936-37 ..	5,802	474	1,263	456	2,603	271	31	—	20
1937-38 ..	4,451	950	1,387	823	2,602	405	143	—	
1938-39 ..	5,821	389	1,518	398	3,223	94	12	—	
1939-40 ..	3,170	368	516	248	1,862	133	—	—	
1940-41 ..	5,126	260	1,447	114	1,353	56	—	—	
1941-42 ..	3,486	185	765	90	—	5	—	—	
1942-43 ..	1,042	51	—	17	—	—	—	—	
1943-44 ..	5,118	200	1,326	77	1,812	—	—	—	
1944-45 ..	11,818	159	3,423	87	2,333	29	—	—	
TOTALS ..	111,961	9,173	15,521	4,011	26,521	2,009	871	143	
1944-45 ..	3,293	223—Inhalers.							30
GRAND TOTAL ..		Sales	Costs						
		158,167	55,234						

SOURCES OF SALES AND COST FIGURES GIVEN IN TWO LISTS  
IMMEDIATELY PRECEDING.

1. From 1935-36 through 1944-45 :

Dozen-carton, and dollar figures taken from sales cards on file in Export Department, Vick Chemical Co.

2. From 1927-28 through 1934-35 :

Dollar figures taken from sales cards on file in Export Department. Dozen-carton figures taken from microfilm of sales cards no longer on file. 40

3. From 1923-24 through 1926-27 :

Dollar figures taken from official campaign histories on file in Export Department. Dozen figures computed by dividing dollar figures by \$2.80, for each year.



## EXHIBIT "L."

ORDERS in connection with sales of VapoRub in Jamaica.

(NOTE: All orders were received by Jamaica Agencies Ltd. Formal and non-material parts of order are not printed. The orders have been re-arranged in date order.)

*In the  
Supreme  
Court of  
Jamaica.*  
—  
*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica.

No. 1, from Kinkead Ltd., dated 2nd November 1935.

1 doz. lge. Vicks Vatronol.  
1 " sml. " "  
1 " " Vapo Rub Amber.  
10 1 ctn. " Cough Drops.

No. 2, from James Dunn, 89 Orange Street, Kingston, dated 18th November 1935.

Please send up—  
6 six doz. Vicks Vaporub.  
1 one ctn. Cough Drops.

No. 3, from The Jamaica Times Ltd., dated 30th December 1936.

Please deliver to Ja. Times Ltd. the following :—  
1 doz. stainless Vicks @ 15s. doz.

No. 4, from Navy, Army and Air Force Institutes, dated 31st August 1937.

20 Please deliver to N.A.A.F.I. at Bearer—  
2 doz. jars Vicks Vaporub.  
20 pkts. Vicks Cough Drops.

No. 5, from Fah Hing & Co., dated 3rd September 1937.

Please deliver to bearer the following :—  
4 doz. Vicks VapoRub.

No. 6, from E. M. Bailey, Christiana, dated 22nd March 1938.

30  $\frac{1}{2}$  doz. Spetons.  
1 " White Ace liquid red polish (sml.).  
1 Ctn. Cafia Aspirin.  
1 doz. Bayers Aspirin.  
1 " Vicks Vaporub white preferable.  
 $\frac{1}{2}$  " Phillips Milk of Magnesia lge.  
 $\frac{1}{2}$  " " " " " sml.

No. 7, from Navy, Army and Air Force Institutes, dated 26th April 1938.

Please deliver to N.A.A.F.I. At Bearer—  
1 doz. jars Vicks Vaporub.

No. 8, from Kinkead Ltd., dated 5th May 1938.

2 doz. Vicks Vaporub.  
1 " " Vatronol.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

**No. 9, from Hilton & Hilton, 27 St. James Street, Montego Bay, dated 10th October 1939.**

Kindly send us by rail the following :—

6 doz. Bayer's Aspirin Tabs.	24s.	
1 " " " "	100s.	
1 " Speton.		
1 " Cafiaspirina (tins).		
2 " Phillips M/Magnesia, large.		
3 " " " small.		
3 " " " Tablets.		
1 " Eskays Neurophosphate.		10
1 " Bromo Quinine.		
2 " Vicks Vaporub stainless.		
3 " " Vatronal small.		
$\frac{1}{2}$ " " Voratone "		
$\frac{1}{2}$ " Pazo Ointment asstd.		
2 cartons Vicks Cough Drops	40s.	
300 pks. Cafiaspirina Tabs. (3 pks.)		
1 doz. White Ace Shoe dressing.		
1 doz. Exclento Quin. Pomade.		

**No. 10, from the Drug & Grocery Shop, dated 25th October 1939.**

20

Kindly forward and oblige—

2 doz. colourless Vicks Rub.  
1 carton Vicks Cough Drops.  
1 doz. Irresistible cologne.

**No. 11, from Kinkead Ltd., dated 11th December 1939.**

1 doz. Vicks Vaporub amber.  
1 " Eskays Neuro Phos.

**No. 12, from Constabulary Depot Canteen, dated 2nd January 1940.**

Please deliver to Constabulary Depot Canteen the following :—

3 boxes (60 pks.) Vicks Cough Drops.		30
1 doz. botts. " Vaporub.		
1 " " " Vatronol.		

**No. 13, from the Constabulary Depot Canteen, dated 2nd September 1940.**

Please deliver to Constabulary Depot Canteen the following :—

1 carton Vicks Cough Drops (20 pks.).  
 $\frac{1}{2}$  doz. Vicks Vatronol.  
 $\frac{1}{2}$  " " Vapourub.  
1 " bot. white Beauty Shoe Cleaner.  
2 boxes assorted chocolates.

**No. 14, from Navy, Army and Air Force Institutes, dated 3rd December 1940.**

40

Please deliver to N.A.A.F.I.

At Bearer

100 pkts. Vick's Cough Drops.  
36 bots. Vick's Vaporub.

No. 15, from Norton & Co. Ltd., Savanna-la-mar, dated 8th January 1941.

Kindly send us by H. Spence's truck :  
 1 doz. bots. Vick's Vapor Rub, White.  
 1 " " " Nose Drops.

No. 16, from the Jamaica Times Ltd., dated 13th November 1941.

Please deliver to the Jamaica Times Ltd., the following :—  
 1 grs. Vicks Vapor-rub Salve Amber @ 24/- doz.  
 1 " " " " " White @ 24/- doz.

No. 17, from Cecil B. Facey Ltd., dated 13th November 1941.

10 Please deliver :  
 1 doz. Vicks Vapo-Rub.  
 1 " " Vatronol.

No. 18, from Kinkead Ltd., dated 19th December 1941.

Please supply :  
 1 doz. Vicks Vaporub.

No. 19, from Navy, Army and Air Force Institutes, dated 23rd December 1941.

Please supply  
 72 jars Vicks Vaporub.

No. 20, from C. H. Scott, dated 16th February 1942.

20 Please supply the following :—  
 3 doz. Bots. Aspirin Tabs. 24s.  
 1 " Milk Magnesia Tablets.  
 1 " 12 oz. bots. Milk Magnesia.  
 3 " Vicks VapoRub.  
 1 " sml. Vatronol.  
 1 " lge. Magnesia Tooth Paste.

No. 21, from Lue Shing Co., dated 19th February 1942.

30 Supply us  
 2 gr. Vicks Vaporub.  
 1 " Sml. Vick Vatronal.  
 1 ctn. lge. Phillips Magnesia.  
 2 " sml. " "  
 ½ Grs. Bayer's Aspirin.

No. 22, from Norton & Co. Ltd., Savanna-la-mar, dated 21st February 1942.

Please deliver to P. Jarrett's truck :  
 1 doz. bottles Vicks Vapo Rub.  
 1 " " " Vatronol.

No. 23, from E. L. Delvaille, dated 4th March 1942.

40 Please rail Savanna-la-mar at your earliest convenience :—  
 1 doz. Jars Vicks Vapo Rub.  
 1 " sml. bots. Vatronol.  
 ½ " lge. Bots. Vatronol.

*In the  
 Supreme  
 Court of  
 Jamaica.*

—  
*Exhibits.*

—  
 Exhibit L.  
 Orders in  
 connection  
 with sales  
 of VapoRub  
 in Jamaica,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

**No. 24, from Stanley Vaz & Co., dated 19th March 1942.**

Please deliver to Truck X 1528

The following :—

2 doz. Bots. Stainless Vicks.  
2 " " Vatronol.

**No. 25, from Cecil Yan, Savlamar, dated 14th April 1942.**

Please supply

1 doz. Vicks Vatronol.  
1 " " VapoRub, stainless.  
1 " " " amber.  
 $\frac{1}{4}$  " " Benzedrine inhaler—by rail to Mt. Pelier.

10

**No. 26, from Stanley Vaz & Co., dated 23rd April 1942.**

Please deliver to Truck X 1528 the following :—

2 doz. bots. Bayer Aspirin.  
3 Three Doz. Stainless Vicks.

**No. 27, from Hilton & Hilton, dated 30th April 1942.**

Kindly send us by rail :—

6 doz. Vigoron Tabs.  
3 " " Vick's VapoRub.  
1 " " " Vatronal (small).  
3 " " Bayer Aspirin Tabs. 24's.  
2 " " Phillips M/Magnesia (large).  
2 " " " " Tabs.  
6 " cartons Cafia Aspirin.  
3 " " Ross' Life Pills.  
 $\frac{1}{2}$  " " Benzedrine Inhalers.

20

**No. 28, from Navy, Army and Air Force Institutes, dated 4th May 1942.**

Please deliver to N.A.A.F.I.

At Up Park Camp.

36 bots. Vicks Vatronol  
@ 26/-.

30

**No. 29, from Arnold McKay, dated 16th May 1942.**

Please deliver to bearer

1 doz. Vicks Nose Drops  
2 " " Vick Vapor Rub

and charge to a/c.

**No. 30, from Leslie Mordecai, dated 2nd June 1942.**

Please deliver to Bearer the following :

two doz. Vicks Vapo Rub.  
one " " Vatronol.

40

**No. 31, from E. L. Delville, dated 6th July 1942.**

Please send over to Messrs. T. Geddes Grant Ltd. 1 doz. bottles  
Vicks Vapo-Rub, and send B/P early and oblige.

No. 32, from Stanley Vaz & Co., dated 9th July 1942.

Please deliver to Rail to Old Harbour the following :—

- 4 four doz. stainless Vicks.
- 3 three doz. pks. Cafiaspirin.
- 2 two doz. bottles aspirin.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

No. 33, from Navy, Army and Air Force Institutes, dated 14th July 1942.

Please deliver to N.A.A.F.I. at Bearer

- 6 doz. jars Vicks Vaporub @ 27/- doz.

Exhibit 1.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

No. 34, from Walton's Pharmacy, dated 16th July 1942.

10 Please send to Messrs. Cecil B. Facey Ltd. 168 Harbour St. to be forwarded to me the following—

- $\frac{1}{2}$  doz. absorbine T.N.W.
- $\frac{1}{2}$  " " ointment.
- 3 " Bayer Aspirin Tablets 24s.
- 2 bxs. cafiasparina.
- 1 doz. large Vicks nose and throat drops.
- 1 doz. Vick's Vapo Rub, stainless.
- 2 " small Phillips' Milk Magnesia.
- $\frac{1}{2}$  " large do.

20 No. 35, from Banks' Drug Store, dated 28th August 1942.

Please supply and charge a/c.

- 1 doz. ea. small & lge. milk magnesia.
- $\frac{1}{2}$  " Vatronal.
- 1 " Vicks Salve.
- $\frac{1}{4}$  " Atabrine.
- $\frac{1}{4}$  " Benzedrine inhalant.
- 1 " Ross Life Pills.
- $\frac{1}{2}$  " Absorbine Jnr. liqd.
- 1 blue Waltz talc.
- 1 doz. Phillips toothpaste med.

30

No. 36, from E. L. Delvaille, dated 15th September 1942.

Please rail Mt. Pelier :—

- 3 doz. 255 size bots. Bayers Asperin.
- 1 " lrg. Milk of Magnesia.
- 1 " sml. " " "
- 1 " Bots. Vicks Vapo-Rub.

No. 37, from Banks' Drug Store, dated 13th October 1942.

Please supply and charge a/c.

- 1 doz. ea. Vicks Salve (amber and stainless).
- 1 " " Vatronal.
- 1 " Bayers Aspirin (Bots.) 24s.
- $\frac{1}{2}$  " vials Gynomin tabs.
- 1 " ea. small & lge. Phillips Milk Magnesia.
- 1 " tins " " Milk Mag. tabs.
- 1 " ea. giant lge. & small Mag. Paste.
- $\frac{1}{4}$  " Benzidine inhalant.
- $\frac{1}{4}$  " vials atabrine tabs.

40

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

No. 38, from McPherson's Drug Store, dated 14th October 1942.

Will you please send by rail Williamsfield the following—

4 doz. Milk Magnesia (large).  
3 " " " (small)  
3 " " " (tablets).  
2 " " " Toothpaste (giant).  
2 " " " " (medium).  
2 " Vicks Vapor Rub.

No. 39, from Kong & Bros., dated 12th January 1943.

Please deliver to bearer and charge our Account :—

10

1 doz. Vicks Vaporub.  
1 " Vicks Vatronal.  
3 " lge. Phillips T. Paste.  
3 " small " " "

No. 40, from Banks' Drug Stores, dated 21st January 1943.

Please supply by bearer and charge a/c.

1 doz. ea. small & lge. Milk Mag.  
1 " giant do. do.  
1 " Ross Life Pills.  
1 " Vicks Salve (White & yellow).  
1 " Vick Vatronol.  
1 " small milk magnesia.  
1 " Bayers Aspirin tabs. (tins or bots.).  
(1 × 1000) tabs. Sulphathiozole.  
1 Blue Waltz Talc.  
Any Helento prep ?

20

No. 41, from Kong & Bros., dated 27th January 1943.

Please deliver to bearer and charge our Account :—

Mdse. order.  
also 1 doz. Vicks Vaporub.

30

No. 42, from The Jamaica Times Ltd., dated 2nd February 1943.

Please deliver to Jamaica Times Ltd.

2 grs. Stainless Vicks Vapo-Rub at 25/6 doz.

No. 43, from E. L. Delvaille, dated 4th February 1943.

Please rail Mt. Pelier promptly :—

2 doz. jars Vicks Vapo Rub.  
1 " small bots. Vatronal.  
1 " med. " "  
1 " Bots. Bayers Asperine 25s.  
1 " Phillips M. Tooth Paste.

40

and send B/P early.

No. 44, from E. A. Issa & Bros. Ltd., Kingston, Jamaica, dated 11th February 1943.

1 doz. Eskays Neurophosphates @ 72/- doz.  
 6 „ Phillips Mag. Tabs. @ 21/-.  
 3 „ Vicks Vapo Rub @ 27/-.  
 3 „ Vicks Vatronol @ 27/-.

*In the  
 Supreme  
 Court of  
 Jamaica.*

*Exhibits.*

No. 45, from J. J. Lyon & Co. Ltd., St. Ann's Bay, dated 16th February 1943.

Will you kindly ship us by the next sailing of the "Register" the following:—

10 (3) Three doz. bots. Bayer's Aspirin.  
 (2) Two doz. bots. Vicks Vapourub.  
 (1) One doz. bots. Vicks Va-tro-nol.  
 (2) Two boxes Phillips M. Magnesia Tablets.

*Exhibit L.  
 Orders in  
 connection  
 with sales  
 of VapoRub  
 in Jamaica,  
 continued.*

No. 46, from Kinkead Ltd., dated 20th May 1943.

Please supply :

1 doz. Eskays Neuro Phosphates.  
 4 „ Vicks Vapo Rub.  
 2 „ Vatronal.

No. 47, from Navy, Army and Air Force Institutes, dated 26th May 1943.

Please deliver to N.A.A.F.I.

20 at Bearer

36 Vicks Vaporub.  
 24 Vicks Vatronal.

B.P. 2412.

No. 48, from R. L. Edwards, dated 31st May 1943.

I must thank you for your offer of Vicks Vapor Rub and Vatronol. You will please find enclosed cheque for £10 17s. 0d. for which kindly send me by rail immediately the following :

3 doz. Vicks Vapor Rub.  
 2 „ „ Vatronal.

30 No. 49, from Johnston & Co. Successors, Port Maria, dated 3rd June 1943.

Kindly send us :

2 doz. Vick's Vaporub.  
 1 „ Va-tro-nol.

No. 50, from Johnston & Co. Successors, dated 3rd June 1943.

We understand from our Port Antonio House that you are at present able to supply Vicks Vaporub and Vicks Vatronol, and we are asking you to be good enough to rail to us at Annotto Bay, 6 dozen of the former and 3 dozen of the latter.

[In pencil:—]

40 2 doz. VapoRub.  
 1 „ Va-tro-nol.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

No. 51, from Cecil B. Facey, dated 3rd June 1943.

Enclosed please find cheque for £2 14s. 6d. for which please send

1½ doz. Vicks Vapo Rub—1½ doz.  
½ „ Vicks Vatronal ½ „

No. 52, from Cooper & Hylton, dated 4th June 1943.

Please supply by Rail—

Mt. Pelier.

3 doz. Vicks Vaporub )  
1 „ large Va-tro-nol ) or less.  
1 „ sml. „ )  
3 doz. large bot. Milk of Magnesia.  
3 „ „ „ Bayers Aspirin of 25s.

10

No. 53, from Kinkead Ltd., dated 8th June 1943.

Please supply :—

2 doz. Vicks Vaporub.  
1 „ Vatro-nol.

No. 54, from Aston Chai & Co., dated 8th June 1943.

1 doz. Vicks Vaporub.  
1 „ small Magnesia.

No. 55, from Norton & Co. Ltd., Savanna-la-mar, dated 15th June 1943.

20

In writing you on 5th June to send us :

1 doz. large size Bayer's Aspirin

we omitted to ask you to send us supplies of Vicks Vaporub and Vatronol.

Please send us by rail to Montpelier :—

3 doz. Vaporub.  
1 „ Vatronol.

No. 56, from Kinkead Ltd., dated 19th June 1943.

Please supply :—

4 doz. Vicks Vaporub.  
1 „ „ Vatronol.

30

No. 57, from A. L. Chen & Co., dated 21st June 1943.

Please deliver Vicks preparations to bearer as promised also bill.  
I will send cheque as soon as I know amount.

[The following appears in pencil :—]

2 doz. Vaporub 22/6.  
nett cash.

No. 58, from Edgar Thomas Yap, dated 22nd June 1943.

Please deliver to bearer Walter Whyte—

3 doz. lge. milk of magnesia.  
3 „ small milk of magnesia.  
3 „ Vicks vapor rub.  
1 „ Vicks Vatronol.

40



No. 59, from Leo Lopez, dated 22nd June 1943.

Please deliver to bearer—  
4 doz. Vicks Vapour Rub.  
2 „ „ Vatronol.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

No. 60, from Navy, Army and Air Force Institutes, dated 22nd June 1943.

Please deliver to N.A.A.F.I.—  
4 doz. Vicks Vapor rub.  
2 „ „ Vatronol.

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

No. 61, from Ivor S. Levy, The Dispensary, 7 Parade, Montego Bay, dated 22nd June 1943.

10 If your supply of Vicks has arrived, kindly forward—  
Two Doz. Vapo Rub, One Doz. Vatronol Drops.

No. 62, from James A. Chin & Co., dated 1st July 1943.

We note that a new shipment of Vicks Vapo-Rub has come to hand,  
we shall be much obliged if you could rail to us ; One gross of this.

No. 63, from Aston Chai & Co., 107 Barry St., dated 10th August 1943.

Please spare me 1 doz. Vicks Vaporub for my retail branch.

No. 64, from K. Taaffe, dated 10th August 1943.

Please deliver to bearer—  
 $\frac{1}{2}$  doz. Vick Vaporub stainless  
20 and receive cash.

No. 65, from Walton's Pharmacy, dated 13th August 1943.

Please supply the following :—  
2 doz. Vicks Vapo Rub.  
1 „ „ Vatronol Small.  
1 „ „ „ Large.  
1 „ „ Gynomin "Speton."  
3 „ „ Aspirin Tablets—bottles of 25.

No. 66, from W. J. Tomlinson, dated 8th September 1943.

Please sell bearer 1 doz. Vix Vaporub and oblige.

30 No. 67, from Kinkead Ltd., dated 10th September 1943.

Please supply :—  
3 g Vicks Vap o Rub.  
1 „ „ Va-tro-nol.

No. 68, from Brown's Drug Store, Montego Bay, dated 21st October 1943.

Please supply, the following :—  
1 doz. Bayers Aspirin Lge.  
3 doz. Vicks Vapo Rub.  
1 „ „ „ Vatronol.  
1 Carton Phillips Magnesia Lge.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

**No. 69, from Nathan & Co. Ltd., dated 21st October 1943.**

Please deliver and charge to our account the following—

3 doz.	Phillips Milk of Magnesia	12 oz.
3	"	" " " " " 4 Oz.
6	"	Bayers Aspirin 24s.
3	"	Vicks Vapo Rub.
2	"	" Vatronol.

**No. 70, from E. L. Delville, dated 27th October 1943.**

Enclosed please find cheque for £3.6.0 in settlement of balance on B/p 7.6.43. Kindly acknowledge same. 10

Please rail Mt. Pelier early November :—

2 doz.	lrg. Bottles Phillips M/Magnes.
2	" sml.
1	" Bottles Bayer's Aspirin 25's.
1	" " Vicks Vapo-Rub.
1	" Med. Vatro-Nol.
1	" Sml. " "

**No. 71, from Palace Drug Stores, dated 30th October 1943.**

$\frac{1}{2}$ doz.	12 oz. Phillips Milk of Mag.	41/-	1.0.6	
$\frac{1}{2}$	" Vicks Vaporub	27/6	13.9	20
			<u>1.14.3</u>	

[The above items appear on Jamaica Agencies Account delivered on 1st October 1943. The item below represents Palace Drug Stores order of 30th October 1943 which was written in ink on the account.]

Please send us 1 doz. bottles Vick.

30.10.43.

**No. 72, from Kinkead Ltd., dated 1st November 1943.**

Please supply :—

3 doz.	Vicks Vaporub.	
2	" " Vatronol.	30

**No. 73, from The Army & Navy Stores Ltd., dated 2nd November 1943.**

Please deliver :—

2 doz.	Vicks Vaporub.
2	" small Aspirin.
1	" lge. Aspirin.

**No. 74, from Kinkead Ltd., dated 30th November 1943.**

Please supply :—

2 doz.	Eskays Neuro Phosphates.	
2	" Vicks Vaporub.	
1	" Vicks Vatronol.	40
4	" 12 oz. Phillips M. of Mag.	
2	" 4 " " " " " "	
3	" Tabs. Phillips M. of Mag.	

No. 75, from Kinkead Ltd., dated 9th December 1943.

Please supply :—  
 2 doz. Vicks Vaporub.  
 1 „ „ Vatronol.

No. 76, from Evans Medical Hall, dated 20th December 1943.

Please deliver—  
 One doz. Vicks.

No. 77, from Kinkead Ltd., dated 28th December 1943.

10 Please supply :—  
 1 g. Vicks VapoRub.  
 1 „ „ Vatronol.

No. 78, from Brown's Drug Store, dated 29th December 1943.

20 Please supply, the following—  
 2 doz. Milk Magnesia Lge.  
 3 „ Vicks Rub.  
 1 „ „ Vatronol.  
 3 „ Bayers Aspirin.  
 4 „ Milk Magnesia paste lge.  
 1 „ Antiphlogistine Med.  
 1 „ „ „ Sml.  
 2 „ Milk Magnesia paste Giant.

No. 79, from Kinkead Ltd., dated 4th January 1944.

Please supply :  
 2 g. Vicks Vaporub.

No. 80, from Kinkead Ltd., dated 14th January 1944.

Please supply :  
 2 doz. Eskays Neuro Phosphates.  
 2 „ Vicks Vaporub.  
 2 „ „ Vatronol.

30 No. 81, from Jamaica Times Ltd., dated 27th January 1944.

Please deliver to Jamaica Times Ltd.  
 12 dzs. Stainless Vicks Vapo-Rub at 25/6 doz.

No. 82, from Banks' Drug Store, dated 28th January 1944.

40 Please supply and charge a/c.  
 1 doz. Vicks Salve.  
 1 „ „ Vatronal.  
 1 „ „ tubes white Ace.  
 2 lbs. tincture myrrh.  
 $\frac{1}{2}$  doz. tubes Speton.  
 $\frac{1}{4}$  „ bots. Absorbine Jnr.  
 1 „ „ Bayers Aspirin (24s).  
 1 box cafiaspirina.

*In the  
 Supreme  
 Court of  
 Jamaica.*

*Exhibits.*

*Exhibit 1.  
 Orders in  
 connection  
 with sales  
 of VapoRub  
 in Jamaica,  
 continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of VapoRub  
in Jamaica,  
*continued.*

**No. 83, from Bev Drug Store, dated 31st January 1944.**

Please supply  
2 doz. Vicks Vatronol.  
2 ,, Vicks Vapour Rub.

**No. 84, from E. A. Issa & Bros. Ltd., dated 8th February 1944.**

6 doz. Vicks Vapo Rub @ 27/- doz.  
4 ,, Vicks Vatronol @ 27/- doz.  
6 ,, Benzedrine Inhalant @ 36/- doz.  
4 ,, Absorbine Junior @ 36/- doz.

**No. 85, from the Jamaica Times Ltd., dated 2nd March 1944.**

Please deliver to Jamaica Times Ltd. the following:—  
12 doz. Vicks Vapo Rub 25/6 doz. 10

**No. 86, from The Army & Navy Stores Ltd., dated 13th March 1944.**

Please deliver :  
1 doz. Vicks Vapor Rub.  
1 ,, Absorbine Jn.

**No. 87, from E. H. Johnston, dated 20th March 1944.**

I thought you would have called in this morning but as you didn't  
I send by bearer six pounds 2/- to settle my account and please send—

2 boxes Vicks Cough Drops. 20  
(3 doz. vials Bayers Aspirin.)  
1 doz. 12 oz. milk of Magnesia.  
1 ,, 4 ,, ,, ,, ,,  
1 ,, Vicks Vatronol.  
2 ,, ,, Vaporub. (Receipt sent)

**No. 88, from Kinkead Ltd., dated 3rd April 1944.**

Please supply :  
6 doz. Vicks Vaporub.  
3 ,, ,, Vatronal.

**No. 89, from R. A. Segre, Brown's Town, dated 25th July 1945.**

Please rail to Ewarton 30  
6 doz. bots. Vicks Vaporub.  
2 ,, ,, ,, Vatronal, 1 oz.  
6 cartons ,, Cough Drops 4 oz.  
1 doz. ,, Inhalers.  
2 ,, bots. Phillips Milk of Magnesia 12 oz.  
4 ,, pkgs. Bayer's Aspirin.

**No. 90, from T. B. Goodin, dated 26th July 1945.**

4 doz. Vicks Vapour Rub.  
2 ,, sml. size Vatronal. 40  
8 cartons cough drops.  
2 doz. lge. size milk of magnesia.  
3 ,, sml. ,, ,, ,, ,,  
1 doz. whit. ace polish.  
6 ,, boxes of 12 S. Bayer's Aspirin.

No. 91, from Navy, Army and Air Force Institutes, dated 16th October 1945.  
Please deliver to N.A.A.F.I.  
10 doz. Vick Vap. Rub.  
3 „ Vick Vatronal.

No. 92, from The Palace Drug Stores Ltd., dated 29th October 1945.  
Please deliver to Bearer goods ordered over phone  
Vicks Vapo Rub.  
„ Vatronal large.  
„ „ small.  
10 „ cough drops.

No. 93, from D. Henderson & Co. Ltd., dated 14th November 1945.  
Please deliver  
3 doz. 4 oz. Milk of Magns.  
3 „ 12 oz. „ „ „  
2 „ Tablets „ „ „  
3 „ Vicks Rub.  
1 etn. „ C. Drops.

No. 94, from Edgar Thomas Yap, dated 7th January 1946.  
20 Please deliver the undermentioned goods to my bearer :  
4 doz. of Philip Milk of Magnesia  
12 doz. small „ „  
1 gross Vicks Vapor Rub.

No. 95, from The Palace Drug Stores Ltd., dated 26th January 1946.  
Please find enclosed cheque for £5.18.3 and send us by Bearer  
1 doz. Vicks Vapor Rub.  
1 „ „ Inhaler.  
 $\frac{1}{2}$  „ „ Vatronal Small.  
3 boxes Bayers Aspirin.

No. 96, from Lue Shing Co., undated.  
30 Please supply us 6 doz. Vicks Vaporub ordered.

No. 97, from The Palace Drug Stores, undated.  
Cheque enclosed for £2 16s. 0d. and send us by Bearer  
 $\frac{1}{2}$  doz. large Phillip M. Magnesia.  
 $\frac{1}{2}$  „ Vicks Vapo Rub.

No. 98, from The Palace Drug Stores Ltd., undated.  
Please find enclosed cheque for £2 11s. 6d. and send us by bearer  
1 doz. bottles Bayers Aspirin—25s.  
 $\frac{1}{2}$  „ Vicks Nose Drops.  
 $\frac{1}{2}$  „ „ Vapo Rub.  
40 „ „ Absorbine Jnr.

No. 99, from Palace Drug Store, undated.  
1 doz. Bayers Aspirin.  
 $\frac{1}{2}$  „ Vick Vapo Rub.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit L.  
Orders in  
connection  
with sales  
of Vapo Rub  
in Jamaica,  
*continued.*

In the  
Supreme  
Court of  
Jamaica.

Exhibits.

Exhibit M.  
Trade  
Mark  
Registra-  
tions  
Nos. 1852,  
3707, 3276,  
and 3092.

EXHIBIT "M."

TRADE MARK REGISTRATIONS in Jamaica, 1852, 3707, 3276 and 3092.

No. 1.—Registration No. 1852.

JAMAICA TRADE MARKS LAW, CHAP. 272.

CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE MARK.

No. 1852.

I WILLIAM PATRICK O'BRIEN THOMSON Registrar-General of the Island of Jamaica, hereby Certify that under date the Ninth day of December, 1936, VICK CHEMICAL COMPANY, a corporation organized in the year 1933, under the laws of the State of Delaware, located at 900 Market Street, in the City of Wilmington, State of Delaware, United States of America, Manufacturers, are registered as proprietors of Trade Mark No. 1852, in Class 3 in respect of A Medicinal Salve for external use, liver pills, headache tablets, and a liniment for the treatment of sprains, swellings, and lameness, rheumatism, neuralgia, burns, sore throat, soreness of the chest, bruises and cuts, or lameness requiring a liniment of this kind, Chemical Medical and pharmaceutical preparations, in Succession To VICK CHEMICAL COMPANY; a corporation organised (in 1930) and existing under the laws of the State of Delaware, United States of America, having a place of business at 7 West 10th Street, in the City of Wilmington, State of Delaware, United States of America, Manufacturers, in whose name the said Trade Mark was registered on the Sixteenth day of October, 1930, in the same Class and in respect of the same goods.

The Trade Mark was registered on the Seventh day of April, 1924, in the name of VICK CHEMICAL COMPANY a Corporation of the State of Delaware, in the United States of America, located and doing business at 7 West 10th Street, City of Wilmington, State of Delaware, Manufacturers, in the same Class and in respect of the same Goods.

The Trade Mark is associated with Trade Marks Nos. 3276 and 3707.

The registration of the said Trade Mark was renewed and will remain in force for a period of fourteen years from the Seventh day of April, 1938.

\*A representation of the said Trade Mark is affixed at the back hereof.

Witness my hand this Second day of April 1946.

W. P. THOMSON,  
Registrar-General.

The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

\*This is a copy of the  
representation of the Trade  
Mark.

TREVOR L. LYONS,  
Registrar Supreme  
Court, Jamaica.

14.8.46.



10

20

30

40

No. 2.—Registration No. 3707.

## JAMAICA TRADE MARKS LAW, CHAP. 272.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE  
MARK.Exhibit M.  
Trade  
Mark  
Registra-  
tions  
Nos. 1852,  
3707, 3276,  
and 3092,  
*continued.*

No. 3707.

I, WILLIAM PATRICK O'BRIEN THOMSON Registrar-General of the Island of Jamaica, hereby Certify that under date the Thirteenth day of October, 1941, VICK CHEMICAL COMPANY, a Corporation of the State of Delaware, located at 900 Market Street, Wilmington,  
10 State of Delaware, United States of America, Manufacturers, are registered as proprietors of Trade Mark No. 3707 in Class 3 in respect of Chemical substances prepared for use in Medicine and pharmacy.

The Trade Mark is associated with Trade Mark No. 1852.

The registration of the said Trade Mark will remain in force for a period of fourteen years from the Thirteenth day of October, 1941, and may be renewed at the expiration of that period and of each succeeding period of fourteen years.

A representation of the said Trade Mark is affixed hereto.

VAPORUB.

20 Witness my hand this Second day of April 1946.

W. P. THOMSON,  
Registrar-General.

The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

No. 3.—Registration No. 3276.

## JAMAICA TRADE MARKS LAW, 1911.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE  
MARK.

Exhibit M.  
Trade  
Mark  
Registra-  
tions  
Nos. 1852,  
3707, 3276,  
and 3092,  
*continued.*

No. 3276.

I, PERCY GRANVILLE DUFF, Registrar-General of the Island of Jamaica, hereby Certify that under date the 5th November 1936, VICK CHEMICAL COMPANY, a corporation organised in the year 1933 under the laws of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America, Manufacturers, are registered 10 as proprietors of the Trade Mark No. 3276 in Class 3, in respect of All goods included in Class 3.

The registration of the said Trade Mark remains in force for a period of Fourteen Years from the 5th November 1936.

The said Trade Mark is associated with registered Trade Mark No. 1852.

A representation of the said Trade Mark is affixed hereto.

VICKS.

Witness my hand this Second day of April 1937.

P. G. DUFF,

20

Registrar-General.

The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.



No. 4.—Registration No. 3092.

## JAMAICA TRADE MARKS LAW, 1911.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE  
MARK.Exhibit M.  
Trade  
Mark  
Registra-  
tions  
Nos. 1852,  
3707, 3276,  
and 3092,  
*continued.*

No. 3092.

I, PERCY GRANVILLE DUFF, Registrar-General of the Island of Jamaica, hereby Certify that under date the 9th December 1936, VICK CHEMICAL COMPANY, a Corporation organised in the year 1933 under the laws of the State of Delaware, located at 900 Market Street, in the City of Wilmington, State of Delaware, United States of America, Manufacturers, are registered as Proprietors of the Trade Mark No. 3092 in Class 3 in respect of "Chemical substances prepared for use in medicine and pharmacy", IN SUCCESSION TO VICK CHEMICAL COMPANY, a Corporation of the State of Delaware, located at Corner Roberts and Pulaski Avenues, City of Philadelphia, State of Pennsylvania, United States of America, Manufacturers, in whose name the said Trade Mark was registered on the 27th February 1935 in the same class and in respect of the same goods.

The registration of the said Trade Mark remains in force for a period of Fourteen Years from the said 27th February 1935.

A representation of the said Trade Mark is affixed hereto.

VA-TRO-NOL.

Witness my hand this Twenty-sixth day of January 1937.

P. G. DUFF,

Registrar-General.

The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

## EXHIBIT "R."

TRADE MARK REGISTRATIONS Nos. 1436 (Eno) and 1257 (Fruit Salt).

Registration No. 1436.

## JAMAICA TRADE MARKS LAW, CHAP. 272.

## CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE MARK.

No. 1436.

I, WILLIAM PATRICK O'BRIEN THOMSON Registrar-General of the Island of Jamaica, hereby Certify that under date the First day of December, 1920, J. C. ENO LIMITED of 160 Piccadilly, London W., and 25 Pomeroy Street, New Cross Road, London S.E. (formerly of Blackfriars House, New Bridge Street, London, E.C.), England, Manufacturing Chemists, are registered as proprietors of Trade Mark No. 1436 in Class 3 in respect of A Saline, being a Medicinal Preparation included in Class 3. 10

The Trade Mark is associated with Trade Mark No. 1272.

The Change of Address of Registered Proprietors was registered on the thirtieth day of October, 1934.

The registration of the said Trade Mark was renewed and will remain in force for a period of fourteen years from the First day of December, 1934. 20

A representation of the said Trade Mark is affixed hereto.

ENO

Witness my hand this Twenty-eighth day of May 1946.

W. P. THOMSON,  
Registrar-General.

The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

In the  
Supreme  
Court of  
Jamaica.

Exhibits.

Exhibit R.  
Trade  
Mark  
Registra-  
tions  
Nos. 1257  
and 1436.

Registration No. 1257.

## JAMAICA TRADE MARKS LAW, CHAP. 272.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*CERTIFICATE OF REGISTRAR AS TO REGISTRATION OF A TRADE  
MARK.Exhibit R.  
Trade  
Mark  
Registra-  
tions  
Nos. 1257  
and 1136,  
*continued.*

No. 1257.

I, WILLIAM PATRICK O'BRIEN THOMSON Registrar-General of the Island of Jamaica, hereby Certify that under date the First day of December, 1920, J. C. ENO LIMITED, of 160 Piccadilly, London, W. and 25 Pomeroy Street, New Cross Road, London, S.E. (formerly of Blackfriars  
10 House, New Bridge Street, London, E.C.) England, Manufacturing Chemists, are registered as proprietors of Trade Mark No. 1257 in Class 3 in respect of a Medicinal Preparation, In Succession To J. C. ENO LIMITED of 25 Pomeroy Street, New Cross Road, London S.E., England, Manufacturing Chemists, in whose name the said Trade Mark was registered on the Twenty-Sixth day of November, 1919, in the same Class and in respect of the same goods.

The Trade Mark is associated with Trade Marks Nos. 1272 and 3793.

The Change of Address of Registered Proprietors was registered on the Thirtieth day of October, 1934.

20 The registration of the said Trade Mark was renewed and will remain in force for a period of fourteen years from the Twenty-sixth day of November, 1933.

A representation of the said Trade Mark is affixed hereto.

FRUIT SALT

Witness my hand this Twenty-eighth day of May 1946.

W. P. THOMSON,  
Registrar-General.

30 The General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

## EXHIBIT "S."

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.

**CORRESPONDENCE** between Respondents or their advisers and P. A. Benjamin Manufacturing Co. Ltd., Burgoyne, Burbidges & Co. Ltd., and Ayrton, Saunders & Co. Ltd.

No. 1.

**LETTER** from the P. A. Benjamin Mfg. Co. Ltd. to Livingston & Alexander, dated 11th October 1933.

Dear Sirs,

Attention Mr. Aston Levy.

We have for acknowledgment your letter of the 5th inst., bringing to our attention a complaint of Messrs. Vicks Chemical Co. that we have been infringing their registered Trade Mark in Jamaica and in Panama. 10

The signer immediately investigated the matter and found that inadvertently, and without his knowledge a certain number of Hand Bills were issued featuring the terms "Vapor Rub" and "Vapour Rub." A few advertisements also appeared with those words inserted.

We take this opportunity of expressing our sincere regret that those words were used, and have taken immediate steps to see that as far as possible all Hand Bills not already distributed be destroyed, and that no further advertisements appear with the words in question.

With regard to the word "Vaporex" we are decidedly of the opinion that no infringement has been committed. In getting up the carton and label, we took particular care to use an entirely new design, and we sincerely trust that yourselves, and your clients, will feel with us that we have not infringed their trade mark. 20

We again express our regret for any inconvenience that may have been caused your clients through the term "Vapour Rub" appearing on our hand bills and advertisements.

Yours very truly,

P. A. BENJAMIN MFG. CO. LTD.,

Per CECIL B. FACEY,  
Managing Director.

30

This is a copy of the handbill which gave rise to the last letter :—

BENJAMIN

FOR FIFTY YEARS this name has been the Hall Mark of High quality goods.

Genius perfected the formulas and expert chemists make and test every lot of merchandise produced.

To-day we are even more particular to give the purchaser improved products for the same money.

10 Please don't let anyone persuade you to accept some article described "as good as Benjamin's" just for a few cents less in price.

THE P. A. BENJAMIN Mfg. Co. Ltd.  
KINGSTON, JAMAICA

MAKERS OF

BENJAMIN'S  
Jamaican  
Healing Oil

BENJAMIN'S  
Khus Khus  
Perfume

BENJAMIN'S  
Vaporex  
Vapor Rub

20 BENJAMIN'S  
Lung Balsam

BENJAMIN'S  
Coconut Oil  
Pomade

BENJAMIN'S  
Blood & Liver  
Pills

BENJAMIN'S  
Laxative  
Herb Tea

BENJAMIN'S  
Eye Lotion

BENJAMIN'S  
Liver Tonic

BENJAMIN'S  
Flavourings

BENJAMIN'S  
Colic & Diarrhoca  
Mixture

BENJAMIN'S  
Rose Water

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

LETTER from Vick Chemical Company to Burgoyne, Burbidges & Co., Ltd., dated  
11th August 1936.

*Exhibits.*

Burgoyne, Burbidges & Co. Ltd.,  
London, E.6,  
England.

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

Gentlemen,

We have been advised that you manufacture and distribute a product which is being introduced in Trinidad under the name "Vapour Rub." 10

We wish to call your attention to the fact that the word VAPORUB is, and has been for many years, one of our principal trade marks. This word is registered as a trademark either individually or in combination with other marks in many countries throughout the world, including Trinidad, and we have used the mark for many years throughout most of the world, except the British Isles, in connection with an ointment.

It is apparent, in our opinion, that your use of the words "VAPOUR RUB" in your export activities is an infringement of our trademark rights and also constitutes unfair competition. We feel sure you realize the importance of this to us and how we must protect our trademark rights 20 in this word regardless of any amount of trouble and expense which might be involved.

We are thus writing you with the thought that you possibly were not informed of these circumstances and did not realize the effect and consequences of your export activities. Our trademark attorneys advise us that an undertaking by you that you will not in the future export for sale or distribution or otherwise deal in outside the British Isles any medicinal product in connection with which there are used the words "VAPOUR RUB" or any other words confusingly similar to the trade mark "VAPORUB" will be essential to protect adequately our rights in 30 lieu of legal action.

We hope you realize that we have no desire to be anything but friendly, but that, on the other hand, it is absolutely necessary for us to protect our trademark rights. We will appreciate your careful consideration of this matter and your prompt advice as to your decision in regard thereto. It is essential that action be taken by you—or by us—without undue delay.

Yours very truly,

VICK CHEMICAL COMPANY.

Vice-President.

## No. 4.

LETTER from Burgoyne, Burbidges & Co. Ltd. London to The Vick Chemical Company, dated 24th August 1936.

The Vick Chemical Company,  
Manufacturing Chemists,  
122, E. 42nd Street,  
New York,  
U.S.A.

Dear Sirs,

10 We have your letter of the 11th instant, and note that your preparation "VAPORUB" is registered for the West Indies, and we are immediately withdrawing the sale of our preparation VAPOUR RUB for these Islands.

We may add that our sales for the past year in that territory have amounted to about one dozen only, and our preparation is never likely to create a big sale.

We are,

Yours faithfully,

BURGOYNE, BURBIDGES & CO. LTD.

20

W. CRAWFORD,

Director.

## No. 5.

LETTER from Ayrton, Saunders & Co. Ltd., Liverpool, to Vick Chemical Co., dated 21st October 1933.

Messrs. Vick Chemical Company,  
122 E 42nd Street,  
New York City,  
U.S.A.

Dear Sirs,

30 We have to acknowledge your letter of the 11th instant regarding the sale of our Ayrton brand Vapour Rub in British Honduras, and we thank you for confirming our impression that the title "VapoRub" had not been registered by you in that territory.

As we have already mentioned Ayrton brand Vapour Rub is not a line which is intended to be associated with our export business, and but for the interest taken in it by the London firm previously referred to we should never have thought of sending it to British Honduras.

40 Since we have no desire to dispute the rights which you claim in the title "VapoRub" in all territories outside the British Isles, we give you our undertaking that no further quantities of Ayrton brand Vapour Rub will be supplied for destinations outside the British Isles in future.

Yours faithfully,

AYRTON, SAUNDERS & CO. LTD.

B. C. LEWIS,

Export Manager.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

**LETTER from Ayrton, Saunders & Co., Ltd., Liverpool, to Messrs. Vick Chemical Co.,  
dated 26th November 1937.**

*Exhibits.*

Messrs. Vick Chemical Co.,  
122 E 42nd Street,  
New York, U.S.A.

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

Dear Sirs,

We have to acknowledge your letter of the 16th November from which we were concerned to read of the information that had reached you in regard to sales of Ayrton brand Vapour Rub being made in Jamaica by our local agent, Mr. Alexis Moren of Kingston. 10

We have referred to our records for the past few years without finding any trace of having supplied Mr. Moren with this product, and for the moment we are at a complete loss to account for the circumstance to which you refer.

After the undertaking given you in 1933 Ayrton brand Vapour Rub was entirely withdrawn from our export range, and it has not appeared in any of our lists since ; moreover the packing in tins which we sell in this country is not suitable for sending abroad.

Our agent, Mr. Moren, devotes his time to booking orders on an indent basis, and does not handle stock in the ordinary way with the exception of an occasional distress shipment, and this adds to our difficulty in trying to probe the matter. 20

If any supply of Ayrton brand Vapour Rub has reached Jamaica it can only be by the merest accident and the quantity is not likely to be large ; however, we do not see at the moment how supplies have reached there at all.

We have written out to our agent by to-day's mail, furnishing him with a copy of your letter, and asking for information on the subject, therefore we will claim your indulgence until we are in receipt of a reply. 30

In conclusion we wish to assure you that to the best of our knowledge and belief the undertaking which we gave in our letter of the 21st October 1933 has been rigidly observed, and we hope eventually to be able to clear up the present matter to your full satisfaction.

Yours faithfully,

AYRTON, SAUNDERS & CO. LTD.

B. C. LEWIS,  
Director.



No. 7.

LETTER from Vick Chemical Company to Ayrton, Saunders & Co. Ltd., Liverpool, 1,  
dated 7th December 1937.

Ayrton, Saunders & Co. Ltd.,  
34, Hanover Street,  
Liverpool, 1,  
England.

December 7th, 1937.

Dear Sirs,

We received to-day your letter of November 26th concerning the  
10 sale of Ayrton brand VAPOUR RUB in Jamaica.

As we intimated in our letter to you of November 16th we assumed  
this activity was not known or approved by you in view of your previous  
undertaking. It is most gratifying to learn that this assumption was  
correct.

There is just one favor we would like to ask of you. Will you please  
advise us of your agent's reaction to your letter to him? If he accedes  
to your request to discontinue further sales, we do not wish to disturb him  
by communicating with him direct. However, if he is able to obtain your  
product through unknown and, perhaps, indirect channels and continues  
20 to sell it in Jamaica regardless of our wishes, we must take appropriate  
action directly against him without undue delay. Otherwise, we fear that  
our trademark rights may be prejudiced. Please let me thank you again  
for your very courteous co-operation.

Sincerely yours,

VICK CHEMICAL COMPANY.

Vice-President.

No. 8.

LETTER from Ayrton, Saunders & Co. Ltd., Liverpool, 1, to Vick Chemical Co.,  
dated 15th December 1937.

30 Messrs. Vick Chemical Co.,  
122 E. 42nd St.,  
New York,  
U.S.A.

Dear Sirs,

We have to thank you for your letter of the 7th inst., in regard to  
the sale of our Vapour Rub in Jamaica, and we confirm having written our  
Jamaica agent on this matter at the end of November.

At the time of writing we have not received any reply from Kingston,  
but we shall be pleased to let you have a copy of our agent's letter  
40 immediately it comes to hand.

Yours faithfully,

AYRTON, SAUNDERS &amp; CO. LTD.

B. C. LEWIS,

Director.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

LETTER from Ayrton, Saunders & Co. Ltd., Liverpool, 1, to Vick Chemical Co.,  
dated 28th December 1937.

*Exhibits.*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

Messrs. Vick Chemical Co.,  
122 E. 42nd Str.,  
New York.

Dear Sirs,

With further reference to your letter of the 7th December regarding the sale of Ayrton Brand Vapour Rub in Jamaica, we have now heard from our local agent Mr. A. Moren of Kingston who writes as follows:— 10

“Ayrton Brand Vapour Rub—I had a conversation with the  
“Vick Chemical Co.’s agent relative to what you have written  
“about, and I assured him that I had not for years been selling  
“your brand Vapour Rub, and that it must have been very old  
“stock that he saw.

“I will however again interview him on the subject informing  
“him that I will go around Kingston and take away from any  
“customer those that are labelled Vapour Rub, and when I go out  
“in January I will do likewise at the country shops and have no  
“doubt he will agree to this.” 20

In view of the above report from Mr. Moren we think it likely that you will have heard from your agent in a similar strain, meantime we pass the above on for your information.

From our own investigations here, we were reasonably sure that the stock which has given rise to the present enquiry must be some years old, and Mr. Moren’s report lends support to this view.

Yours faithfully,

AYRTON, SAUNDERS & CO. LTD.

B. C. LEWIS,

Director. 30

No. 10.

LETTER from Vick Chemical Company to Ayrton, Saunders & Co. Ltd.,  
dated 11th January 1938.

Ayrton, Saunders & Co. Ltd.,  
34, Hanover Street,  
Liverpool, 1,  
England.

Attention : Mr. B. C. Lewis, Director.

Gentlemen,

10 Thank you very much for your letter of December 28th in further regard to the sale of Ayrton Brand Vapour Rub in Jamaica.

We have not as yet received further advices from our local agent but feel quite confident that your action has been adequate to terminate further infringing activities.

Please let us thank you for your prompt and courteous attention to this matter for us.

Yours very truly,

VICK CHEMICAL COMPANY.

Vice President.

*In the  
Supreme  
Court of  
Jamaica*

*Exhibits,*

Exhibit S.  
Corres-  
pondence  
between  
Respon-  
dents or  
their  
advisers  
and P. A.  
Benjamin  
Mfg. Co.  
Ltd., Bur-  
goyne,  
Burbidges  
& Co. Ltd.,  
and  
Ayrton,  
Saunders  
& Co. Ltd.,  
*continued.*

## EXHIBIT "T."

In the  
Supreme  
Court of  
Jamaica.

DOCUMENTS relating to the Application of Chemical Hall Ltd. to register Trade Mark  
"Vicks VapoRub Salve."

Exhibits.

No. 1.

THE APPLICATION of Chemical Hall Ltd.

Exhibit T.  
Documents  
relating to  
Application  
by  
Chemical  
Hall Ltd.  
to register  
Trade  
Mark  
"Vicks  
VapoRub  
Salve."

FORM T.M. No. 2.

6/T.M. 24.

JAMAICA—TRADE MARKS LAW, 1911.

APPLICATION FOR REGISTRATION OF TRADE MARK.

VICK'S  
VAPO-RUB  
SALVE.

VICTOR CHEMICAL  
COMPANY.

For inflammation and  
congestion.

One representa-  
tion to be fixed  
within this space,  
and four others  
to be sent on  
separate  
Forms. TM.  
No. 3

Representations  
of a larger size  
may be folded, but  
must then be  
mounted upon  
linen and affixed  
hereto.

(a) Only goods  
contained in  
one and the  
same class  
should be set  
out here.

A separate  
application  
form is required  
for each  
separate class.

(b) Here insert  
legibly the full  
name, address  
and description  
of the  
individual, firm  
or company.  
Add trading  
style (if any).

(c) Alter to "claim  
to be the  
proprietors  
thereof" in the  
case of a firm  
or company.

No claim is made  
to the exclusive  
use of the words  
"Victor Chemical  
Co."

Application is hereby made for Registration of  
the accompanying

Trade Mark in Class 3 in respect of

(a) Salve for human use in the name of

(b) Chemical Hall Ltd.

Chemists & Druggists

of Kingston Jamaica B.W.I. who claim to be  
the proprietors thereof (c) We do not claim  
the registration of this Trade Mark under the  
special provisions of paragraph 5 of section 9  
of the Trade Marks Law, 1911, in regard to  
names, signatures, or words.

CHEMICAL HALL, LTD.

(Signed) L. C. E. NUNES.

Dated the 21st day of January 1924.

To the Registrar,  
General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

To be signed by  
the applicant, or,  
in the case of a  
firm, by a partner,  
adding "A  
member of the  
firm," or, in the  
case of a body  
corporate by a  
Director or by the  
Secretary or other  
Principal Officer  
adding the name  
of the body  
corporate.

Or, in any case  
a duly authorized  
agent may sign  
adding "Agent."

No. 2.

## RESPONDENTS' NOTICE OF OPPOSITION.

FORM T.M. No. 7.

## JAMAICA—TRADE MARKS LAW, 1911.

## NOTICE OF OPPOSITION TO APPLICATION FOR REGISTRATION.

IN THE MATTER of an Application No. 6 by CHEMICAL HALL  
 LTD. Chemists and Druggists of Kingston.

Vick Chemical Co. of Wilmington Delaware, United States of America  
 HEREBY GIVE NOTICE of their intention to oppose the Registration of  
 10 the Trade-Mark advertised under the above number for Class 3 in the  
 Jamaica Gazette on the 7th day of February 1924 No. 9 page 113.

The grounds of opposition are as follows :

They claim to be rightful owners of Trade-Mark and to be the  
 prior users thereof.

The address for service is care of Livingston & Alexander, Solicitors,  
 6 Duke Street Kingston.

VICK CHEMICAL CO.,

by LIVINGSTON &amp; ALEXANDER,

Agents.

20 Dated this 7th day of March 1924.

No. 3.

LETTER from Registrar-General enclosing Respondents' Notice of Opposition.

24 March 1924.

Gentlemen,

I hand you, herewith, duplicate Notice of Opposition to Registration  
 of the Trade Mark submitted in your application of the 21st January, 1924  
 for registration in Class 3 of a Trade Mark in respect of Salve for human  
 use.

2. For your information I send you, on the back hereof, a copy of  
 30 Trade Mark Rule No. 53, and enclose two (2) copies of Trade Mark Form  
 No. 8.

I am, Gentlemen,

Your obedient servant,

Messrs. Chemical Hall, Ltd.,  
 68 King Street,  
 Kingston.

Registrar-General.

The copy of Rule No. 53 on back of above letter reads as follows :—

## TRADE MARKS RULES, 1913.

## 40 COUNTER-STATEMENT—RULE 53.

Within one month from the receipt of such duplicate the applicant  
 shall send to the Registrar a counterstatement (Form T.M. No. 8) in writing  
 setting out the grounds on which he relies as supporting his application.  
 The applicant shall also set out what facts, if any, alleged in the Notice of  
 Opposition he admits. Such counterstatement shall be accompanied by a  
 duplicate in writing.

In the  
 Supreme  
 Court of  
 Jamaica.

Exhibits.

Exhibit T.  
 Documents  
 relating to  
 Application  
 by  
 Chemical  
 Hall Ltd.  
 to register  
 Trade  
 Mark  
 "Vicks  
 VapoRub  
 Salve,"  
 continued.

No. 4.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit T.  
Documents  
relating to  
Application  
by  
Chemical  
Hall Ltd.  
to register  
Trade  
Mark  
"Vicks  
VapoRub  
Salve,"  
*continued.*

LETTER from Chemical Hall Ltd. to the Registrar-General, dated 25th March 1924.

A. R. Soares, Esq.,  
Registrar General,  
Spanish Town.

Dear Sir,

We are in receipt of your letter of the 24th inst. enclosing us notice of opposition to registration of the trade mark submitted in our application of the 21st Jan. 1924.

In view of the fact that there is opposition we will not be pursuing our 10 application, but will put our preparation on the market without registration, and leave them to take steps to prevent us from selling same.

Yours faithfully,

CHEMICAL HALL LTD.

No. 5.

REGISTRAR-GENERAL'S ORDER AS TO COSTS.

IN THE MATTER of the application by CHEMICAL HALL LTD., of Kingston, Jamaica, B.W.I., Chemists & Druggists for registration of the Trade Mark "Vick's Vapo-Rub Salve" AND IN THE MATTER of the Notice of Opposition by 20 VICK CHEMICAL Co., of Wilmington, Delaware, United States of America, through their agents, LIVINGSTON & ALEXANDER, Solicitors, Kingston, Jamaica.

The application has been abandoned by the applicants.

Under the provisions of Section 14 (10) of the Trade Marks Law, 1911, Law 37 of 1911, the Registrar awards Seven Pounds One Shilling and Eight Pence (£7 1s. 8d.) which he considers as reasonable costs and directs that such amount be paid by the applicants to the opponents through their Agents Messrs. Livingston & Alexander.

Dated this Twenty Fifth day of April, 1924.

30

To the Applicants :—

Messrs. Chemical Hall, Ltd.,  
King Street, Kingston, Jamaica,  
Chemists & Druggists.

The General Register Office, Trade Marks Branch,  
Spanish Town, Jamaica.

Registrar of Trade Marks

Drft.  
A. R. S.  
25/4/24

EXHIBIT "V."

DOCUMENTS relating to Respondents' Application to register Trade Mark No. 1852.

No. 1.

APPLICATION FORM.

FORM TM. No. 2.

JAMAICA—TRADE MARKS LAW, 1911.

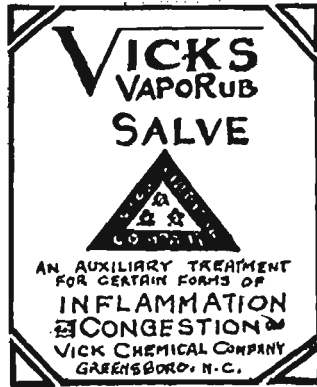
APPLICATION FOR REGISTRATION OF TRADE MARK.

*In the  
Supreme  
Court of  
Jamaica.  
Exhibits.*

Exhibit V.  
Respondents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852.

Note  
The words  
"Reg. U.S. Pat  
off" are deleted.

L. & A.,  
Agents.  
28.4.24.



One representa-  
tion to be fixed  
within this space,  
and four others  
to be sent on  
separate Forms.  
TM. No. 3.

Representations  
of a larger size  
may be folded, but  
must then be  
mounted upon  
linen and affixed  
hereto.

Application is hereby made for Registration of  
the accompanying

Trade Mark in Class 3 in respect of (a) a medicinal salve for external use, liver-pills, headache-tablets, and a liniment for the treatment of sprains, swellings and lameness, rheumatism, neuralgia, burns, sore throat, soreness of the chest, bruises and cuts, or lameness requiring a liniment of this kind; chemical, medical and pharmaceutical preparations in the name of (b) . . . Vick Chemical Company a Corporation of the State of Delaware, in the United States of America, located and doing business at 7 West 10th Street, City of Wilmington, State of Delaware, Manufacturers, who claim to be the proprietors thereof (c) and who do not claim the registration of this Trade Mark under the special provisions of paragraph 5 of section 9 of the Trade Marks Law, 1911 in regard to names, signatures, or words.

To be signed by  
the Applicant or  
in the case of a  
firm, by a partner,  
adding "A  
member of the  
firm," or, in the  
case of a body  
corporate by a  
Director or by the  
Secretary or other  
Principal Officer  
adding the name  
of the body  
corporate.

Or in any case a  
duly authorized  
agent may sign  
adding "Agent."

- (a) Only goods contained in one and the same class should be set out here.  
A separate application form is required for each separate class.
- (b) Here insert legibly the full name, address and description of the individual, firm, or company. Add trading style (if any).
- (c) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

VICK CHEMICAL COMPANY

By LIVINGSTON & ALEXANDER

(Signed) Agents.

Dated the 3 day of April 1924.

To the Registrar,  
General Register Office,  
Trade Marks Branch,  
Spanish Town, Jamaica.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit V.  
Respondents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
*continued.*

Registrable  
Trade  
Marks.

The following notice appears on the back of the Form :—

THE TRADE MARKS LAW, 1911, SECTION 9.

A registrable trade mark must contain or consist of at least one of the following essential particulars :—

- (1) The name of a company, individual, or firm represented in a special or particular manner.
- (2) The signature of the applicant for registration or some predecessor in his business.
- (3) An invented word or invented words.
- (4) A word or words having no direct reference to the character 10  
or quality of the goods, and not being according to its  
ordinary signification a geographical name or surname.
- (5) Any other distinctive Mark, but a name, signature, or word  
or words, other than such as fall within the descriptions in  
the above paragraphs (1), (2), (3), and (4), shall not, except  
by order of the Court, be deemed a distinctive mark :

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a Trade Mark by the applicant or his predecessors in business before the first day of April, one thousand eight hundred and eighty-nine, which has continued to be 20  
used (either in its original form or with additions or alterations not substantially affecting the identity of the same; down to the date of the application for registration) shall be registrable as a Trade Mark under this Law.

For the purposes of this section "distinctive," shall mean adapted to distinguish the goods of the proprietor of the Trade Mark from those of other persons.

In determining whether a Trade Mark is so adapted, the tribunal may, in the case of a Trade Mark in actual use, take into consideration the extent to which such user has rendered such Trade Mark in fact distinctive for the 30  
goods with respect to which it is registered or proposed to be registered.



AUTHORIZATION AND REQUEST FOR ASSIGNMENT.

In the  
Supreme  
Court of  
Jamaica.

Exhibits.

Sir,

10 WE, VICK CHEMICAL COMPANY, a corporation organized in 1925 under the laws of the State of Delaware, United States of America, located in the city of Wilmington, State of Delaware, U.S.A., do hereby appoint LANGNER, PARRY, CARD & LANGNER, 177 William St., New York City, New York, to act as our Agents in connection with the registration of the accompanying Assignment of Trademark No. 1852 dated April 7, 1924, and we hereby request under Rule 74, that the name of VICK CHEMICAL COMPANY (organized in 1925), may be entered in the Register of Trade Marks as Proprietor of the Trade Mark No. 1852 in Class 3.

Exhibit V.  
Respon-  
dents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
continued.

VICK CHEMICAL COMPANY.

By M. Y. PREYER.

To the Registrar,  
General Register Office, Trademarks Branch,  
Spanish Town, Jamaica.

(Seal.)

20 STATE OF NORTH CAROLINA }  
COUNTY OF GUILDFORD } ss.

On this 4th day of August 1925, before me personally appeared M. Y. Preyer to me known, who, being by me duly sworn, did depose and say that he is the Secretary-Treasurer of VICK CHEMICAL COMPANY, the corporation above-named which executed the foregoing instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

30

(Sgd.) GEORGE R. DAWSON,

Notary Public.

My Commission Expires August 24, 1927.

## JOINT REQUEST—FORM 15.

*In the  
Supreme  
Court of  
Jamaica.*

FORM T.M.—No. 15.

re T.M. 1852.

*Exhibits.*

## JAMAICA—TRADE MARKS LAW, 1911.

Exhibit V.  
Respon-  
dents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
*continued.*

JOINT REQUEST BY REGISTERED PROPRIETOR AND ASSIGNEE TO REGISTER  
THE ASSIGNEE AS SUBSEQUENT PROPRIETOR OF A TRADE MARK.

We, (a) VICK CHEMICAL COMPANY (corporation of 1923), of (b) Wilmington, Delaware, U.S.A. and (c) VICK CHEMICAL COMPANY (corporation of 1925), of (d) Wilmington, Delaware, U.S.A. hereby request under Rule 74, that the name of (e) VICK CHEMICAL COMPANY (a 10 corporation organized in 1925) located at 7 West 10th Street, Wilmington, Delaware, U.S.A. carrying on business as (f) Manufacturers, at (g) Wilmington, Delaware, may be entered in the Register of Trade Marks as proprietor of the Trade Mark No. 1852 in Class 3.

VICK CHEMICAL COMPANY.

(h) By H. S. RICHARDSON,  
Pres.

VICK CHEMICAL COMPANY.

(i) By M. Y. PREYER,  
Secty. Treas. 20

To the Registrar,  
General Register Office, Trade Marks Branch,  
Spanish Town, Jamaica.

- (a) Name of Registered Proprietor.  
(b) Address of Registered Proprietor.  
(c) Name of Assignee.  
(d) Address of Assignee.  
(e) Name of Assignee.

- (f) Trade or business of Assignee.  
(g) Address of Assignee.  
(h) Signature of Registered Proprietor.  
(i) Signature of Assignee.

No. 4.  
ASSIGNMENT.

TRADE MARK  
JAMAICA

*In the  
Supreme  
Court of  
Jamaica.  
—  
Exhibits.*

WHEREAS, VICK CHEMICAL COMPANY, a corporation organized in 1923 under the laws of the State of Delaware, United States of America, located in the city of Wilmington, State of Delaware, U.S.A. (hereinafter called the Assignor), is the owner of the entire right, title and interest in and to JAMAICAN Trademark No. 1852 dated April 7, 1924 :

*Exhibit V.  
Respon-  
dents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
continued.*

10 AND WHEREAS, VICK CHEMICAL COMPANY, a corporation organized in 1925 under the laws of the State of Delaware, United States of America, located in the city of Wilmington, State of Delaware, U.S.A. (hereinafter called the Assignee), is desirous of acquiring the entire right, title and interest in and to the aforesaid Trademark and the goodwill of the business in connection with which said trademark is used :

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN, Be It Known that for and in consideration of the sum of FIFTY POUNDS STERLING (£50. 0. 0. Stg.), in hand paid, the receipt of which is hereby acknowledged, the said Assignor has sold, assigned and transferred, and  
20 by these presents does sell, assign and transfer unto the said Assignee, the entire right, title and interest in and to the aforesaid Trademark together with the goodwill of the business in connection with which said trademark is used, and all other rights which the said Assignor has heretofore enjoyed thereunder.

IN WITNESS WHEREOF, the said parties to these presents, have hereunto set their hands and seals this 4th day of August, 1925.

THE COMMON SEAL of the said Assignor was hereunto affixed in the presence of } VICK CHEMICAL COMPANY.  
By L. RICHARDSON.

30 T. M. Ross.  
JAMES HUGHES.

THE COMMON SEAL of the said Assignee was hereunto affixed in the presence of } VICK CHEMICAL COMPANY.  
By M. Y. PREYER.

T. M. Ross.  
JAMES HUGHES.

*In the  
Supreme  
Court of  
Jamaica.*

LETTER from Livingston & Alexander to Registrar-General, dated 5th April 1924.

*Exhibits.*

Dear Sir,

re Trade Mark Application "Vicks Vapo Rub."

Exhibit V.  
Respon-  
dents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
*continued.*

We send you herewith Application for the registration of the above Trade Mark consisting of Application Form with 4 additional representations of the mark, and electro-block.

Our authority to act in the matter is already in your hands and we enclose cheque for 10/- to cover your fee.

Yours faithfully,

10

LIVINGSTON & ALEXANDER.

Per A. V. L.

The Registrar-General,  
Spanish Town.

The following official notes appear on this letter:—

£-10/- recd. Brt. to account receipt No. 5521 sent

Initl'd.

7/4

(1) File block (temporarily) Done

Initl'd. S.B.

20

8/4

(2) Search

Initl'd.

7/4

(2) Wait

(1) Yes

A.R.S.

8/4

Return the appln. and point out that as regn. is sought in class 3 the specification cannot include preparations for veterinary purposes for which a separate application must be made in class 2, and say that the applicants' name etc. should be more fully set out to show the State of incorporation etc. and the words "Reg. U.S. Pat Off" deleted.

A. R. S.

8/4

Letter T.W.

Dup. herewith

Initl'd. S.B.

9/4

No. 6.

LETTER from Registrar-General to Livingston &amp; Alexander, dated 9th April 1924.

Gentlemen,

9 April 1924.

re Trade Mark Vicks Vapo Rub Salve.

I return, herewith, this Trade Mark Application submitted with your letter of the 5th instant and have to point out the following:—

(A) As registration of the Mark is sought in class 3 the specification cannot include preparations for Veterinary purposes for which a separate application must be made in Class 2.

10 (B) The applicants name etc. should be more fully set out to show the State of Incorporation etc.

(C) The words "Reg. U.S. Pat Off." should be deleted.

I am, Gentlemen,

Your obedient servant,

Messrs. Livingston & Alexander,  
Solicitors,  
6, Duke Street,  
Kingston.

Registrar-General.

No. 7.

20 LETTER from Livingston &amp; Alexander to the Registrar-General, dated 28th April 1924.

re Trade-Mark Vicks Vapo Rub.

Dear Sir,

We return you the Application herein duly amended which now conforms to your requirements.

We attach some prints of the Trade Mark, from which has been omitted the words "Reg. U.S. Pat. Off."

Yours faithfully,

LIVINGSTON &amp; ALEXANDER.

30 The Registrar-General,  
Spanish Town.

The following official notes appear on this letter:—

Filed unaffixed copies. Done

S.B.

29/4

Search

Initl'd.

29/4

Yes,

A.R.S.

40

29/4

Search made proposed. T.M. distinct from anything on the register or pending.

Initl'd.

30/4

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit V.  
Respondents'  
application  
for registra-  
tion of  
Trade  
Mark  
No. 1852,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

## EXHIBIT "W."

DOCUMENTS relating to Respondents' application to register Trade Mark No. 3276  
as follows :—

*Exhibits.*

Exhibit W.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3276.

No. 1.

No. 3276

T/M No. 12.

(c)  $\frac{96}{\text{T.M. 36}}$

## JAMAICA TRADEMARKS LAW, 1911.

-----  
APPLICATION FOR REGISTRATION OF TRADEMARK.

VICKS.

10

Application is hereby made for registration of the accompanying trademark in Class 3, in respect of All goods included in Class 3, in the name of VICK CHEMICAL COMPANY, a corporation organised in the year 1933 under the laws of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America, Manufacturers, trading as VICK CHEMICAL COMPANY, who claim to be the proprietors thereof. Applicant does not claim the registration of this trademark under the special provisions of paragraph 5 of Section 9 of the Trademarks Law, 1911, in regard to names, signatures, or words.

The applicant agrees to the association of this trademark with the 20 registered trademark No. 1852.

VICK CHEMICAL COMPANY.

By LANGNER, PARRY, CARD & LANGNER.  
Agents.

Dated the 26th day of October 1936.

To the Registrar,  
General Register Office, Trademarks Branch,  
Spanish Town, Jamaica.

No. 2.

MINUTES appearing on folder of General Register Office.

96/T.M. 36.

## GENERAL REGISTER OFFICE.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*

From Whom	Langner, Parry, Card & Langner.
Place	New York City, U.S.A.
Date	26.10.36.

Exhibit W.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3276.  
*continued.*

## SUBJECT.

(1) Appln. for regn. of trade mark—Vicks—in class 3.

10

## MINUTES.

Received 5.11.36  
£2. 11. 3.

Recpt. 19609 for £2. 6/- hw. for 5/3 balance—see 54/T.M. 36.

M.I.R.

12/11/36.

File block and unaffixed copies.

Filed

Initl'd.

24/11

20

Search.

Initl'd.

24.11.36

Search made in indexed and among pending applications.

Please see 1852 herewith.

Initl'd.

27.11.36

30

In view of the  
absence of a  
disclaimer of the  
word Vicks on  
T.M. 1852 it is  
taken to be an  
invented word or  
a diminutive in use  
in the U.S.A.

Refuse as resembling T.M. 1852 in which the word Vicks is a prominent feature. Say if there has been a change in the proprietorship of the T.M. 1852 the change must be registered before the present appln. can be proceeded with. Return the appln. herein for the Co. to be further identified by the year of Inc. and for a note of assocn. to be made. Fee 1/-

Initl'd.

1.12.36

Letter hw. in dup.

Initl'd.

8/12

Letter not sent.

40

The T.M. No. 1852 has been assigned to them vide 1976/36 papers rec'd. 9.12.36.

Return the appln. to be associated with No. 1852 and ask that the year of Incorporation (1933) be entered. Say there is 13/8 from their remittance of 30th ult. in re Assgt. of the 2 T.Ms therein, and association fee will be taken therefrom.

[NOTE: further minutes, not relevant to the proceedings, appear in the original Exhibit but do not appear in the Record.]

No. 3.

LETTER from Langner, Parry, Card & Langner to Registrar-General, dated  
26th October 1936.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit W.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3276,  
*continued.*

Dear Sir,

Re : VICK CHEMICAL COMPANY  
Trademark VICKS in Jamaica.

We beg to send you herewith the following :

- (1) Authorization
- (2) Electro
- (3) 10 Prints
- (4) Application—Form No. 12
- (5) Form T/M No. 3
- (6) Cheque for £2 7s. 0d.

10

comprising an application for registration of the above trademark in the name of VICK CHEMICAL COMPANY, a corporation of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America.

Please be good enough to send us proof of registration of this mark at your convenience, and oblige.

Respectfully,

20

LANGNER, PARRY, CARD &amp; LANGNER.

By F. H. LOGAN.

No. 4.

LETTER from Registrar-General to Langner, Parry, Card & Langner, dated the  
17th December 1936.

Gentlemen,

re T.M. "VICKS."

I return herewith the Application, submitted with your letter of the 26th October 1936, for registration of the above Trade Mark in Class 3 in the name of VICK CHEMICAL COMPANY, a corporation of Delaware, U.S.A., and have to request that the application be noted for association with registered Trade Mark No. 1852, and that the year of Incorporation of the applicants (1933) be entered on the application. 30

2. There is a balance of 13/8 from your remittance of 30th November, in re Assignment of the 2 Trade Marks therein, and association fee will be taken therefrom.

I am, Gentlemen,

Your obedient Servant,

Registrar-General.

Messrs. Langner, Parry, Card & Langner,  
17, John Street,  
New York City, U.S.A.

40



No. 5.

LETTER from Langner, Parry, Card & Langner to the Registrar-General, dated  
6th January 1937.

Sir,

Re: VICK CHEMICAL COMPANY

Trade Mark VICKS in Jamaica.

We are in receipt of your letter of December 17, 1936, and as requested by you we have inserted on the application form the required statement as to the applicant company, and we have also inserted an agreement of association with the trade mark No. 1852. We now return the application form herewith and trust that the application may now be accepted and proceed to registration.

Respectfully yours,

LANGNER, PARRY, CARD & LANGNER.

By L. R. SEYMOUR.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

*Exhibit W.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3276.  
continued.*

EXHIBIT "X."

DOCUMENTS relating to Respondents' application to register Trade Mark No. 3707.

No. 1.

APPLICATION FORM.

20 FORM T/M No. 2.

JAMAICA—TRADE MARKS LAW, CHAPER 272.

APPLICATION FOR REGISTRATION OF TRADE MARK.

VAPORUB.

30 Application is hereby made for registration of the accompanying Trade Mark in class 3, in respect of Chemical substances prepared for use in medicine and pharmacy in the name of VICK CHEMICAL COMPANY, a corporation of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America, Manufacturers, trading as VICK CHEMICAL COMPANY, who claim to be the proprietors thereof. Applicant does not claim the registration of this Trade Mark under the special provisions of paragraph 5 of Section 8 of the Trade Marks Law Chapter 272, in regard to names, signatures or words. This trade mark is to be associated with No. 1852.

VICK CHEMICAL COMPANY.

By LANGNER, PARRY, CARD & LANGNER,  
Agents.

Dated the 2nd day of October 1941.

To the Registrar-General,  
General Register Office, Trade Marks Branch,  
Spanish Town, Jamaica.

40

*Exhibit X.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3707.*

## MINUTES appearing in and on folder of General Register Office.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

*Exhibit X.  
Documents  
relating to  
Respondents'  
application  
to register  
Trade  
Mark  
No. 3707,  
continued.*

[EXPLANATORY NOTE.—The Plaintiffs had applied simultaneously for the registration of the trade mark VA-TRO-NOL, having apparently overlooked the fact that this mark had already been registered—see Trade Mark 3092 in Exhibit No. M. The minutes below deal not only with the VAPORUB application but also with the VA-TRO-NOL application. After the Registrar-General had pointed out that the mark VA-TRO-NOL application had already been registered, the Application for such mark was withdrawn.]

10

## GENERAL REGISTER OFFICE.

---

From Whom	Langner Parry Card & Langner.
Place	New York.
Date	13th October, 1941.

---

## TRADE MARK APPLICATION.

(A) VAPORUB

(B) VA-TRO-NOL

Class 3

Former Papers

MINUTES.

Appln. 10 Prints—4 affxd. & 6 unaffxd.; Block, Auth. of Agt. in respect of each appln. also \$2303.

20

Receipt. Q 63080 for £4 12/- h/with.

£1.10.1 change

J.M.L.

14.10.41

3/3 used re 985 : 41

J.M.L.

15.10.41

Mr. Hearne,

Search &c.

E.P.

15 Oct. 1941

30

A.R.G.

Search made.

Please see marks of Applicants now on Register

Nos. 1852 Vicks "VapoRub"

" 3276 Vicks

" 3092 VA-TRO-NOL

all in the same class.

T.M. 3092. VA-TRO-NOL and the one now applied for are identical. They should, of course, be associated, but I cannot see why a registration should be applied for when the one now on Register has several years to go yet.

40

2. VapoRub should be associated with 1852 now on Register.

3. Inform applicants re above.  
 Initl'd.  
 28.10.41
- Mr. Abrahams,  
 Please check.  
 Initl'd.  
 28.10.41
- 10 Mr. Hearne,  
 Checked.  
 Please see Mark No. 2672, appln. h'with.  
 Initl'd.  
 31.10.41
- A.R.G.  
 2672. Vapex. Nothing confusing or likely to deceive.  
 Initl'd.  
 3.11.41
- (A) Ask for association.  
 (B) Identical point out.  
 Initl'd.  
 6 Nov. 1941
- 20 Typist  
 Initl'd.  
 6.11.41  
 Letter in dupl. & Appln. recpt. & reprn. attd.  
 Initl'd.  
 7.11.41
- Letter from P.M. Spanish Town rec'd. 28.11.41  
 Ag. R.G.  
 1. There is enough in hand to make refund to P.M. Spanish  
 30 Town, but in our next communication to L.P.C. & L. the error will  
 have to be pointed out.  
 Initl'd.  
 1.12.41
- Mr. Lloyd,  
 Refund 9/9. Inform L.P.C. & L. in continuation of letter  
 No. 63/T.M. 41 dated 7th Nov. 1941.  
 Initl'd.  
 29.11.41
- 40 Nine shillings and ninepence sent by Doris Burrell.  
 Initl'd.  
 1.12.41
- ackment. rec'd. 1.12.41  
 Typist  
 As in Ag. R.G.'s minute above.  
 Initl'd.  
 1.12.41  
 Letter in dup.  
 A.S.H.  
 2.12.41
- 50 Amended appln. rec'd. let. 8.12.41  
 Initl'd.  
 9.12.41

*In the  
 Supreme  
 Court of  
 Jamaica.*

*Exhibits.*

*Exhibit X.  
 Documents  
 relating to  
 Respon-  
 dents'  
 application  
 to register  
 Trade  
 Mark  
 No. 3707,  
 continued.*

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit X.  
Documents  
relating to  
Respondents'  
application  
to register  
Trade  
Mark  
No. 3707,  
*continued.*

No. 3.

LETTER from Langner, Parry, Card & Langner to the Registrar-General, dated  
3rd October 1941.

Dear Sir,

re : VICK CHEMICAL COMPANY  
Trade Mark VAPORUB in Jamaica.

We beg to send you herewith the following :

- (1) Authorisation
- (2) Electro
- (3) 10 prints 10
- (4) application—form No. 2
- (5) Form T.M. No. 3
- (6) Money Order for \$11.52 (the equivalent of £2. 7. 0)

for registration of the above trademark in the name of VICK CHEMICAL COMPANY, a corporation of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America.

Please be good enough to send us proof of registration of this mark at your convenience, and oblige.

Respectfully,

LANGNER, PARRY, CARD & LANGNER. 20

By F. H. LOGAN.

No. 4.

63a/T.M. 41.

FORM T/M No. 3.

JAMAICA—TRADEMARKS LAW CHAPTER 272.

ADDITIONAL REPRESENTATION OF TRADEMARK, TO ACCOMPANY  
APPLICATION FOR REGISTRATION.

VAPORUB.

No. 5.

LETTER from the Registrar-General to Langner, Parry, Card & Langner, dated  
7th November 1941.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Dear Sirs,

re Trade Marks "VapoRub" and "Va-tro-nol"  
Class 3.

Exhibit X.  
Documents  
relating to  
Respondents'  
application  
to register  
Trade  
Mark  
No. 3707,  
*continued.*

I acknowledge the receipt of your letters of 3rd October, 1941, forwarding in connection with each of the above Trade Marks, the following:—

- 10 (A) Authorization.  
(B) Electro Block.  
(c) 10 Unaffixed representations.  
(D) 4 Affixed Representations on Form T.M. No. 3.  
(E) Application in Class 3 in respect of Chemical substances prepared for use in medicine and pharmacy in the name of Vick Chemical Company, a corporation of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America, Manufacturers.
- 20 (F) Money Orders for \$11.52 in regard to "Vaporub" and \$11.51 in regard to "Va-tro-nol" which have realised a total of £6. 2. 1d. Receipt for £4. 12. 0. is enclosed.

2. In reply I have to ask that you will associate the present mark with Trade Mark No. 1852 registered in the same class and in the name of the same proprietors, the fee for association being 1/-. The Application is returned herewith and copy of T.M. No. 1852 is enclosed.

3. With reference to Trade Mark "Va-tro-nol," I have to inform you that there is already on the Trade Marks Register an identical mark registered in the same class in respect of the same goods and in the name of the same proprietor, in 1935; and numbered 3092.

30

Yours faithfully,

E.P.,  
Acting Registrar-General.

No. 6.

*In the  
Supreme  
Court of  
Jamaica.*

LETTER from Langner, Parry, Card & Langner to Registrar-General, dated  
26th November 1941.

*Exhibits.*

Dear Sir,

Re : Vick Chemical Company—Trade  
VAPORUB in Jamaica Class 3.

Exhibit X.  
Documents  
relating to  
Respon-  
dents'  
application  
to register  
Trade  
Mark  
No. 3707,  
*continued.*

1. Referring to the office letter of November 7, in the above matter, the application has been amended in order to show that the mark is to be associated with prior Registration No. 1852. The amended application form is returned herewith, together with the print of the prior 10 Registration No. 1852, kindly loaned by the Registrar.

2. Favorable consideration of the application is requested.

Respectfully,

LANGNER PARRY CARD &amp; LANGNER.

By F. H. LOGAN.

encs.

1. Amended Application.
2. Print of Registration No. 1852.

No. 7.

LETTER from Registrar-General to Langner, Parry, Card & Langner, dated  
13th December 1941.

20

Gentlemen,

re Trade Mark "VapoRub."

I have to acknowledge the receipt of your letter of the 26th November, returning application dated 2nd October, 1941, for Registration of a Trade Mark in Class 3 in the name of Vick Chemical Company, a corporation of the State of Delaware, located at 900 Market Street, Wilmington, State of Delaware, United States of America, Manufacturers, which application will be duly advertised as required by the Trade Marks Law.

30

2. Should no successful opposition be offered registration will be effected in due course.

\* \* \* \* \*

I am, Gentlemen,

Your obedient Servant,

E. POULLE,

Acting Registrar-General.

EXHIBIT "Y."

INVOICE of exportation of Karsote Vapour Rub to Jamaica, dated 26th August 1941.

No. 1.

Manchester August 26th 1941.  
England.

Messrs. THE PALACE DRUG STORES LTD. Chemists, Druggists, etc.  
51 East Queen Street,  
Kingston Jamaica B.W.I.

EA31281  
10 ER5208  
E 472

Bought of  
E. GRIFFITHS HUGHES LTD.

T 6083 JS.  
14/10/41

In the  
Supreme  
Court of  
Jamaica,  
---  
Exhibits.

Exhibit Y.  
Invoice of  
exporta-  
tion of  
Karsote  
Vapour  
Rub to  
Jamaica,  
26th  
August  
1941.

Country of Origin	Marks and Numbers on Packages	Order dated 24/7/41 Quantity and Description of Goods	Current domestic values in currency of exporting country	Selling price to Purchaser	
			£ s. d.	£ s. d.	
ENGLAND		6 doz. Kruschen Salts (Large Size) Dry Net	4 4 0	4 4 0	
		3 doz. Kruschen Salts (Small Size) Powder Net	1 5 3	1 5 3	
		1 doz. 10-oz. pkts. Radox Bath Salts Net	0 12 0	0 12 0	
		½ doz. 20-oz. pkts. Radox Bath Salts Net	0 9 7	0 10 0	
		3 doz. Small Size Pkts. Digestif Rennie Pastilles Net	0 12 6	0 12 0	
		1 doz. Large Size Pkts. Digestif Rennie Pastilles Net	0 14 3	0 14 0	
		3 doz. Karsote Vapour Rub Net	0 13 2	0 12 0	
		3 doz. Karsodrine Inhalers Net	1 12 2	1 10 0	
		1 doz. Large Size Laxobac "	0 6 0	0 6 0	
			<u>10 8 11</u>	<u>10 5 3</u>	
		P.D.S. Ltd. Kingston Jamaica	1 Case		0 10 5
					<u>£10 15 8</u>
				<u>Net</u>	

"The domestic value declared above does not include Purchase Tax."

Cwts. Qrs. Lbs. Ozs.

50	Total Net				
	Weight	—	1	3	9¼
	" Legal				
	Weight	—	3	7	8
	" Gross				
	Weight	1	0	10	0
	Size of Case	19¾" × 17¼" × 23¾"			
	Delivered to Docks				
	For shipment per S/S "Dramatist"				
	C/o Messrs. Holt & Moseley Ltd.				

This is to certify this invoice is correct.  
for E. Griffiths  
Hughes  
E. Fairclough  
86890

Invoice relating to  
Licencee  
No. M 86890

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit Y.  
Invoices of  
exportation of  
Karsote  
Vapour  
Rub to  
Jamaica,  
26th  
August  
1941 and  
8th  
September  
1941,  
*continued.*

	Amount in currency of exporting country	State if included
(1) Cartage to rail or docks		Yes
(2) Inland Freight and other charges to the dock area, including insurance	0 2 9	Yes
(3) Labour in packing the goods into outside packages	0 0 5	Yes
(4) Value of outside packages	0 10 5	No
(5) Charge by way of Royalties	Nil	Nil
		10

No. 2.

Manchester September 8th 1941  
England

MESSRS. THE PALACE DRUG STORES LTD. Chemists, Druggists, etc.

51 East Queen Street  
Kingston Jamaica B.W.I.

Bought of

E. GRIFFITHS HUGHES LTD.

EA 31281

Goods Packages 20

T 6083

14/10/41

JS

Kruschen Salts, Radox, Digestif Rennie Pastilles, Karsote  
Vapour Rub, Inhalers & Laxobac

Freightage etc. (1 Case)

Rate Min. .. ..	0 15 0	
25 % .. ..	0 3 9	
	<u>0 18 9</u>	0 18 9
Dues Entry & F.O.B. Expenses 1/1 & 1/- .. ..	.. ..	2 1
Bills of Lading .. ..	.. ..	3 9 30
Attendance, Postage & Agency .. ..	.. ..	1 6
Passing Pre-entry .. ..	.. ..	1 6
Insurance—War Risk & Marine .. ..	.. ..	9 11
		<u>£1 17 6</u>

Mark :—P.D.S. Ltd. 1  
Kingston  
Jamaica

Per S/S "Dramatist"

This is to certify this invoice  
is correct.

E. Griffiths Hughes Ltd.  
E. Fairclough.



177

No. 3.

86890

Manchester September 8th 1941  
England

*In the  
Supreme  
Court of  
Jamaica.  
—  
Exhibits.*

Messrs. THE PALACE DRUG STORES LTD. Chemists, Druggists etc.  
51 East Queen Street  
Kingston Jamaica B.W.I.

Exhibit Y.  
Invoice of  
exportation of  
Karsote  
Vapour  
Rub to  
Jamaica,  
8th  
September  
1941,  
*continued.*

Bought of

E. GRIFFITHS HUGHES LTD.

10

T 6083  
14/10/41

J.S.

EA 31281 (STATEMENT)

To Kruschen Salts, Radox Bath Salts, Digestif Rennie Pastilles, Karsote Vapour Rub, Karsodrine Inhalers & Laxobac .. .. .	10 5 3
” ” ” ” Case	10 5
” ” ” ” Freightage etc.	1 17 6
	<hr/>
	Net £12 13 2
	<hr/> <hr/>

20 Mark :—P.D.S. Ltd. 1  
Kingston  
Jamaica

Per S/S “ Dramatist ”

This is to certify this invoice  
is correct.

E. Griffiths Hughes Ltd.  
E. Fairelough.

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Invoice relating to  
Licence  
No. M. 86890  

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## EXHIBIT "CC."

UNITED STATES REGISTRATIONS—(1) 103601, (2) 292248 and (3) 333896.

No. 1.

No. 103601.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*Exhibit CC.  
United  
States  
Registra-  
tion Nos.  
103601,  
292248 and  
333896.

## THE UNITED STATES OF AMERICA.

To all whom these Presents shall come :

THIS IS TO CERTIFY that by the records of the United States Patent Office it appears that THE VICK CHEMICAL CO., of Greensboro, North Carolina, did on the 18th day of July 1913, duly file in the said office an application for REGISTRATION of a certain TRADE-MARK 10 for A SALVE That they duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and have duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicants are entitled to registration of their said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to The Vick Chemical Co., their successors or assigns, in the UNITED STATES 20 PATENT OFFICE, this sixth day of April 1915.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this sixth day of April in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States the one hundred and thirty-ninth.

J. T. NEWTON,

Acting Commissioner of Patents. 30

## UNITED STATES PATENT OFFICE.

THE VICK CHEMICAL CO., OF GREENSBORO, NORTH CAROLINA.

TRADE-MARK FOR A SALVE.

103,601

Registered Apr. 6, 1915.

Application filed July 18, 1913. Serial No. 71,850.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*Exhibit CC,  
United  
States  
Registra-  
tion Nos.  
103601,  
292218 and  
333896,  
*continued.*

## STATEMENT.

To all whom it may concern :

Be it known that we, THE VICK CHEMICAL CO., a firm domiciled in Greensboro, county of Guilford, State of North Carolina, doing business in the said city, and composed of the following members, L. RICHARDSON and H. S. RICHARDSON, citizens of the United States of America, have adopted and used the trade-mark shown in the accompanying drawing, for a salve in Class No. 6, Chemicals, Medicines, and pharmaceutical preparations.

The trade mark has been continuously used in our business since January 1st, 1911.

The trade mark is applied or affixed to the jars containing the goods, by placing thereon a printed label on which the trade mark is shown, and by inclosing the jars in printed wrappers on which the mark is shown.

THE VICK CHEMICAL CO.

By L. RICHARDSON,  
A Member of the Firm.

20

"VAPORUB."

## DECLARATION.

State of North Carolina, county of Guilford, ss :

LUNSFORD RICHARDSON, being duly sworn, deposes and says that he is a member of the firm, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said firm is the owner of the trade mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to

deceive; that the said trade mark is used by said firm in commerce among the several States of the United States; that the drawing and description presented truly represent the trade mark sought to be registered; and that the specimens show the trade mark as actually used upon the goods.

LUNSFORD RICHARDSON.

Subscribed and sworn to before me this 17th day of July, 1913.

(L.S.) F. C. BOYLES,  
Notary Public.

Copies of this trade mark may be obtained for five cents each by addressing the "Commissioner of Patents, Washington, D.C."

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit CC.  
United  
States  
Registra-  
tion Nos.  
103601,  
292248 and  
333896,  
*continued.*

THE UNITED STATES OF AMERICA.

Application having been made by Vick Chemical Company, of Philadelphia, Pennsylvania, a corporation of Delaware, assignee by mesne assignments, for renewal of Certificate of Registration of Trade-Mark No. 103,601 registered April 6, 1915, to The Vick Chemical Co., for A Salve, and the renewal fee required by law having been paid, this is to certify that the said Certificate of Registration No. 103,601, has been renewed to Vick Chemical Company, a corporation of Delaware, and will remain in force for twenty years from April 6, 1935, unless sooner terminated by law.

IN TESTIMONY WHEREOF I have hereunto set my hand 10  
and caused the seal of the Patent Office to be affixed at the City  
L.S. of Washington, this 18th day of December, 1934.

COMRAY P. COX,

Commissioner of Patents.

Attest :

H. S. MILLER,  
Law Examiner.

No. 2.

No. 292248.

THE UNITED STATES OF AMERICA.

To All To Whom These Presents Shall Come :

20

THIS IS TO CERTIFY That by the records of the UNITED STATES PATENT OFFICE it appears that VICK CHEMICAL COMPANY, of Philadelphia, Pennsylvania, a corporation organized under the laws of the State of Delaware, did on the 4th day of November, 1931, duly file in said Office an application for REGISTRATION of a certain TRADE-MARK shown in the drawing for the goods specified in the statement, copies of which drawing and statement are hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon, due examination, it appearing that the said applicant is 30  
entitled to have said TRADE-MARK registered under the law, the said TRADE-MARK has been duly REGISTERED this day in the UNITED STATES PATENT OFFICE, to Vick Chemical Company, its successors or assigns.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

IN TESTIMONY WHEREOF I have hereunto set my hand  
and caused the seal of the PATENT OFFICE to be affixed, at  
the City of Washington, this eighth day of March, in the year of  
L.S. our Lord One thousand nine hundred and thirty-two, and of the 40  
Independence of the United States the one hundred and fifty-  
sixth.

THOMAS E. ROBERTSON,

Commissioner of Patents.

Attest :

G. P. TUCKER,  
Law Examiner.

Registered Mar. 8, 1932

Trade Mark 292,248.

## UNITED STATES PATENT OFFICE.

VICK CHEMICAL COMPANY, OF PHILADELPHIA,  
PENNSYLVANIA.

Act of February 20, 1905.

Application filed November 4, 1931. Serial No. 320,800.

(Design)

VICKS  
VAPORUB

10

## STATEMENT.

To the Commissioner of Patents:

Vick Chemical Company, a corporation duly organized under the laws of the State of Delaware, and located at Philadelphia, and doing business at the corner of Roberts and Pulaski Avenues, Philadelphia, Pennsylvania, has adopted and used the trade-mark shown in the accompanying drawing, for MEDICINAL SALVE FOR USE IN  
 20 SUCH AILMENTS AS CROUP, COLDS, PNEUMONIA, CATARRH, TONSILLITIS, BRONCHITIS, SORE THROAT, WHOOPING COUGH, ASTHMA, BURNS, BRUISES, SPRAINS, STINGS, NEURALGIA, ECZEMA, ITCHING HUMORS, ITCHING PILES, BOILS, AND RHEUMATIC PAINS, in Class 6, Chemicals, medicines and pharmaceutical preparations, and presents herewith five  
 30 specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States patent office in accordance with the act of February 20, 1905, as amended.

The Trade-mark has been continuously used and applied to said goods in applicant's business and in the business of its predecessors as to Vicks since 1894, as to Vaporub since January 1st, 1911, and as to the trade-mark shown on the drawing since October 8, 1931.  
 40

The lining on the drawing is intended to denote the colors blue and red.

No claim is made to the representation of a jar, per se. The portrait shown on the drawing is fanciful.

Applicant is the owner of trade-mark registrations Nos. 100,455 dated October 20, 1914; 103,601 dated April 6, 1915; 135,667 dated November 19, 1918; 157,235 dated July 25, 1922; 241,960 dated May 8, 1928; and 241,961 dated May 8, 1928.

The Trade-mark is applied or affixed to the goods, or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown by printing, impressing and lithographing the same upon cartons, boxes, or other receptacles containing the said goods, and upon and in connection with said goods in various other convenient ways.

The undersigned hereby appoints Edward S. Rogers and James F. Hoge, both of 41 East 42nd Street, New York City, New York, and Francis L. Browne, Dudley Browne and Thomas L. Mead, Jr., Shoreham Building, Washington, D.C., its attorneys to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, and receive the certificate, and to transact all business in the Patent Office in relation thereto.

VICK CHEMICAL COMPANY.

By W. Y. PREYER,  
First Vice-President.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

Exhibit CC.  
United  
States  
Registration Nos.  
103601,  
292248 and  
333896,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

No. 3.  
No. 333896.

No. 333896.

*Exhibits.*

THE UNITED STATES OF AMERICA.

Exhibit CC.  
United  
States  
Registra-  
tion Nos.  
103601,  
292248 and  
333896,  
*continued.*

To All To Whom These PRESENTS Shall Come :

THIS IS TO CERTIFY That by the records of the UNITED STATES PATENT OFFICE, it appears that VICK CHEMICAL COMPANY, of Philadelphia, Pennsylvania, a corporation organized under the laws of the State of Delaware, did, on the 22nd day of November, 1935 duly file in the said Office an application for REGISTRATION of a certain TRADE-MARK shown in the drawing for the goods specified in the statement, copies of which drawing and statement are hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS. 10

And, upon due examination, it appearing that the said applicant is entitled to have said TRADE-MARK registered under the law, the said TRADE-MARK has been duly REGISTERED this day in the UNITED STATES PATENT OFFICE, to Vick Chemical Company, its successors or assigns. 20

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

L.S. IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this fourteenth day of April, in the year of our Lord one thousand nine hundred and thirty-six, and of the independence of the United States the one hundred and sixtieth.

CONWAY P. COX,

Commissioner of Patents. 30

Attest :

H. S. MILLER,  
Law Examiner.

Registered Apr. 14, 1936

Trade-Mark 333,896.

## UNITED STATES PATENT OFFICE.

VICK CHEMICAL COMPANY, PHILADELPHIA, PA.

Act of February 20, 1905.

Application November 22, 1935. Serial No. 371,895.

VICK  
VAPORUB  
(Design)

Vick Chemical Company.

*In the  
Supreme  
Court of  
Jamaica.**Exhibits.*Exhibit CC.  
United  
States  
Registration  
Nos.  
103601,  
292248 and  
333896,  
*continued.*

10

## STATEMENT.

To the Commissioner of Patents:

Vick Chemical Company, a corporation duly organized under the laws of the State of Delaware and located at Philadelphia, Pennsylvania, and doing business at the corner of Roberts and Pulaski Avenues, Philadelphia, Pennsylvania, has adopted and used the trade-mark shown in the accompanying drawing, for a

20 MEDICINAL SALVE FOR USE IN SUCH AILMENTS AS CROUP, COLDS, PNEUMONIA, CATARRH, TONSILITIS, BRONCHITIS, SORE THROAT, WHOOPING COUGH, ASTHMA, BURNS, BRUISES, SPRAINS, STINGS, NEURALGIA, ECZEMA, ITCHING HUMORS, ITCHING PILES, BOILS AND RHEUMATIC PAINS, in Class 6, Chemicals, medicines and pharmaceutical

30 preparations, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to the said goods in applicant's business since October 8, 1935.

40 The applicant is the owner of trade-mark registrations Nos. 100,455, dated October 20, 1914; 103,601 dated April 6, 1915; 135,667 dated November 19, 1918;

157,235 dated July 25, 1922; 241,960 dated May 8, 1928; 241,961 dated May 8, 1928; 292,220 dated March 8, 1932 and 292,248 dated March 8, 1932.

The drawing is lined to indicate the color blue.

No claim is made to the representation of the outline of a carton panel.

The Trade-mark is applied or affixed to the goods, or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown, by printing and impressing the same upon cartons, boxes, or other receptacles containing the said goods, and upon and in connection with said goods in various other convenient ways.

The undersigned hereby appoints Edward S. Rogers and James F. Hoge, 41 East 42nd Street, New York City, and Francis L. Browne, Dudley Browne and Thomas L. Mead, Jr., Munsey Buildings, Washington, D.C. its attorneys, to prosecute this application, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

VICK CHEMICAL COMPANY.

By HUGH D. MCKAY,

Vice-President.

## EXHIBIT "EE."

EXTRACTS from The British Pharmaceutical Codex, Edition of 1934, from pages 639, 640, 641 and 1765.

In the  
Supreme  
Court of  
Jamaica.

Exhibits.

Exhibit EE.  
Extracts  
from the  
British  
Pharma-  
ceutical  
Codex,  
Edition of  
1934, from  
pages 639,  
640, 641  
and 1765.

## MENTHOL

(Menthol)

MENTHOL

 $C_{10}H_{20}O = 156.2$ 

Menthol, *l-p*-menthan-3-ol,  $CH_3 \cdot C_6H_9(OH)C_3H_7$ , is a saturated cyclic alcohol, which is obtained from the volatile oils of various species of *Mentha*, and is imported into England chiefly from Japan. It is obtained 10  
mainly from *M. arvensis* var. *piperascens* Holmes in Japan, var. *glabrata* Holmes in China and *M. piperita* Linn. in America, and is separated from the oils by freezing. Menthol occurs in colourless, acicular or prismatic crystals, with a penetrating odour similar to that of peppermint, and a warm, aromatic taste, followed by a sensation of coldness. It volatilises slowly at ordinary temperatures but rapidly on warming. Specific gravity, about 0.890; boiling-point, about 216°. The alcoholic solution is laevorotatory and neutral to litmus. When triturated with camphor, thymol and other substances, the mixture liquefies. It is readily identified 20  
by means of its benzoic ester which is obtained by heating menthol with benzoic anhydride; it has a melting-point of 54.5° and is almost non-volatile in steam. Menthol may be differentiated from thymol, or the presence of the latter in menthol detected, by the addition of 3 drops of sulphuric acid and 1 drop of nitric acid to 1 millilitre of a solution of menthol in glacial acetic acid; no green colouration should be produced. Synthetic menthol, having similar properties but with a melting-point of from 30 to 35°, is also available, and can be obtained in the form of colourless crystals. It is a mixture of stereo-isomerides.

Very SOLUBLE in alcohol (90 per cent.) (5 in 1), ether (8 in 3), chloroform (about 4 in 1), liquid paraffin (1 in 6), light petroleum (10 in 7), olive 30  
oil (1 in 4) and volatile oils; almost insoluble in water and glycerin.

STANDARD, B.P.—Menthol has a melting-point of 42° to 43°. Residue on volatilisation, not more than 0.05 per cent.

ACTION AND USES.—Menthol is an antiseptic with a mildly anæsthetic action. When applied to the skin, a sensation of cold is produced, with dilatation of the vessels and a rise in the skin temperature, followed by partial anæsthesia and a feeling of numbness. Menthol is employed occasionally as a carminative, but it is liable to upset digestion. A solution in oil, or a mixture with an inert substance, may be ADMINISTERED in capsules, or it may be given in pills massed with powdered soap. When 40  
prescribed in pills with camphor, phenol, chloral hydrate, thymol, or other substance with which menthol liquefies, a small quantity of wax should be added. Pastilles containing menthol, frequently with oil of eucalyptus, are employed for nasal and bronchial catarrh.

Menthol is applied EXTERNALLY, in the form of cones, or as a liniment or ointment with methyl salicylate, as an analgesic in neuralgia and



rheumatic affections. Menthol is much used as an inhalation or application to inflamed nasopharyngeal and laryngeal mucous membranes. Mixed with camphor and oil of eucalyptus, it is inhaled from cotton wool or from hot water for the relief of catarrh. It is a common ingredient of snuffs, and is used in solution in light liquid paraffin (1 or 2 per cent.) as a spray to the nose or larynx. Menthol ointment (1 per cent. in soft paraffin) is applied to the nares in coryza. Mixtures of equal weights of menthol and chloral hydrate or camphor are applied on cotton wool to carious teeth to allay pain. Vapour rubs are preparations of menthol with other volatile substances in a basis of soft paraffin, and are applied to the chest for their local action and on account of their value when inhaled.

Dose.—0·03 to 0·12 gramme ( $\frac{1}{2}$  to 2 grains).

MENTHYLIS VALERIANAS.—Menthyl valerianate may be prepared by the esterification of menthol with valerianic acid. It occurs as a colourless, pleasantly smelling liquid, insoluble in water and miscible with alcohol, ether and fatty oils. It is used as a nerve sedative and as a remedy for sea-sickness.

#### PREPARATIONS

20 AQUA MENTHOLIS, B.P.C.—(Aq. Menthol.)—Menthol Water. A saturated solution of menthol in water. Dose.—15 to 30 millilitres ( $\frac{1}{2}$  to 1 fluid ounce).

EMPLASTRUM MENTHOLIS, B.P.C.—(Emp. Menthol.)—Plaster of Menthol. Menthol, 15 per cent., in yellow beeswax and colophony.

INSUFFLATIO MENTHOLIS, B.P.C.—(Insuff. Menthol.)—Menthol Insufflation. *Syn.*—Insufflatio Mentholis Composita; Menthol Snuff. Menthol, 1 in 20, with ammonium chloride, boric acid and lycopodium.

30 INSUFFLATIO MENTHOLIS ET COCAINAE, B.P.C.—(Insuff. Menthol et Cocain.)—Menthol and Cocaine Insufflation. *Syn.*—Menthol and Cocaine Snuff. Menthol, 2·5 per cent., and cocaine hydrochloride, 0·14 per cent., with ammonium chloride, camphor and lycopodium.

NEBULA COCAINAE COMPOSITA, B.P.C.—(Neb. Cocain. Co.)—Compound Cocaine Spray. Cocaine, 0·5 per cent. w/v, in compound menthol and thymol spray.

NEBULA GUAIACOLIS ET MENTHOLIS, B.P.C.—(Neb. Guaiacol. et Menthol.)—Guaiacol and Menthol Spray. Guaiacol, 2 per cent. w/v, and menthol, 4 per cent. w/v, in light liquid paraffin.

NEBULA IODI ET MENTHOLIS, B.P.C.—(Neb. Iod. et Menthol.)—Iodine and Menthol Spray. Iodine, 2 per cent. w/v, and menthol, 4 per cent. w/v, in light liquid paraffin.

40 NEBULA MENTHOLIS ET THYMOLIS COMPOSITA, B.P.C.—(Neb. Menthol. et Thymol. Co.)—Compound Menthol and Thymol Spray. Menthol, camphor and phenol, of each 2 per cent. w/v, and thymol, 0·2 per cent. w/v, in light liquid paraffin.

*In the  
Supreme  
Court of  
Jamaica.*

*Exhibits.*

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Exhibit EE.  
Extracts  
from the  
British  
Pharma-  
ceutical  
Codex,  
Edition of  
1934, from  
pages 639,  
640, 641  
and 1765,  
*continued.*

*In the  
Supreme  
Court of  
Jamaica.*

PASTILLI MENTHOLIS ET COCAINAE, B.P.C.—(Pastil. Menthol. et Cocain.)  
—Menthol and Cocaine Pastilles. Each pastille contains menthol,  
 $\frac{1}{20}$  grain, and cocaine hydrochloride,  $\frac{1}{40}$  grain.

*Exhibits.*

Exhibit EE.  
Extracts  
from the  
British  
Pharma-  
ceutical  
Codex,  
Edition of  
1934, from  
pages 639,  
640, 641  
and 1765,  
*continued.*

PASTILLI MENTHOLIS ET EUCALYPTOLIS, B.P.C.—(Pastil. Menthol. et  
Eucalyp.)—Menthol and Eucalyptol Pastilles. Each pastille contains  
menthol,  $\frac{1}{20}$  grain, and eucalyptol,  $\frac{1}{2}$  minim.

PIGMENTUM MENTHOLIS ET TOLUENI, B.P.C.—(Pig. Menthol. et Toluene.)—  
Menthol and Toluene Paint. *Syn.*—Löffler's Paint. Menthol, 10 per  
cent. w/v, with dehydrated alcohol, strong solution of ferric chloride  
and toluene. 10

SPIRITUS MENTHOLIS, B.P.C.—(Sp. Menthol.)—Spirit of Menthol. Menthol,  
1 in 20, in alcohol (90 per cent.).

SPIRITUS MENTHOLIS COMPOSITUS, B.P.C.—(Sp. Menthol. Co.)—Compound  
Spirit of Menthol. Camphor, menthol, terebene and eucalyptol, of  
each 1 in 10, in alcohol (90 per cent.). Dose.—10 drops, by inhalation.

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Extract from index at page 1765.

Vapour Rubs, 640.

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EXHIBIT "FF."

Exhibit FF.  
Extracts  
from the  
Extra  
Pharma-  
copœia,  
Edition of  
1938, from  
pages 375,  
377, 378.

EXTRACTS from the Extra Pharmacopœia Edition of 1938 from pages 375, 377, 378.

THERMOGENE BRAND VAPOUR RUB (*The Thermogens Co. Ltd., 20  
Haywards Heath, Sussex*). Camphor 4.00, Menthol 4.00, Oleores. Capsici  
0.04, Methyl. Salicylat. 18.00, Ol. Terebinthinæ 12.00, Ol. Camph.  
Essent. 3.45, Ol. Caryophylli 2.50, Ol. Cinnam. Fol. 2.00, Cineol 2.00,  
"combined with a perfumed Lanolin-Wax base and a trace of colouring  
matter to make 100.00."

VICK BRAND VAPOUR-RUB (*Newbery & Phillips Ltd., London*).  
Camphor 6.0 g., Menthol 2.0 g., Oil of Turpentine 5.0 ml., Oil of  
Eucalyptus 1.0 ml., Oil of Cedarleaf 1.0 ml., Oil of Nutmeg 1.0 ml., Oil  
of Thyme 1.0 ml., Oil of Pumlilio Pine 1.0 ml., Oleoresin of Capsicum  
0.05 g., Guaiacol 0.01 g., Balsam of Peru 0.05 g., Petrolatum to 100 g.

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EXHIBIT "GG."

EXTRACT from the Trade Mark Journal of 8th June 1940 at page 1140.

In the  
Supreme  
Court of  
Jamaica.  
  
Exhibits.

CLASS 3.

**"VAPORUB"**

408,756. Salves (Medicated) for Human Use. VICK CHEMICAL COMPANY (a Corporation organized and existing under the laws of the State of North Carolina, United States of America), 100, Milton Avenue, City of Greensboro, County of Guilford, State of North Carolina, United States of America; Manufacturers.—15th October, 1920. (*Address for Service in the United Kingdom is, c/o White, Langner, Stevens & Parry, Jessel Chambers, 88, 89, & 90, Chancery Lane, London, W.C.2.*)

Exhibit GG.  
Extract  
from the  
Trade  
Mark  
Journal of  
8th June  
1940, at  
page 1140.

EXHIBIT "KK."

EXTRACT from Pharmaceutical Formulæ, Edition of 1929, page 940.

CHEST VAPOUR RUB

P.F. 1

Ol. camph. essent.	. . . . .	1.0
Ol. cajuputi	. . . . .	0.2
Menthol	. . . . .	0.1
Ol. eucalypti	. . . . .	0.1
Vaselin. alb.	. . . . .	10.0

Exhibit KK  
Extract  
from  
Pharma-  
ceutical  
Formulæ,  
Edition of  
1929,  
page 940.

EXHIBIT "NN."

CASH BILL for Exhibit N.3—Bottle of Karsote Vapour Rub.

Johnston's Drug Store,  
Cross Roads, Jamaica.  
5/7/1946.

M Cash

Bought of E. H. Johnston  
Dispensing Chemist and Druggist  
and at Black River, St. Elizabeth.

1 Bottle Karsote VapoRub . . . . . 0 1 0

30

Initl'd.

Paid.  
E. 8/44 & E. 44/45  
Vick Chemical Co.  
de Cordova et al

Put in evidence  
at the trial  
& marked N.N.

A. F. RAE,  
for Registrar.  
29.7.46.

Exhibit NN.  
Cash Bill  
for  
Exhibit  
N. 3—  
bottle of  
Karsote  
Vapour  
Rub.