

1976,9

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31 OF 1975

IN THE PRIVY COUNCIL

No. \_\_\_\_\_ of 1975

ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN:

HANNAFORD & BURTON LIMITED

Appellant

- and -

POLAROID CORPORATION

Respondent

---

RECORD OF PROCEEDINGS

---

SLAUGHTER AND MAY  
35 Basinghall Street,  
London, EC2V 5DB.

Agents for :

Swan, Davies, McKay & Co.,  
Wellington,  
New Zealand.

Solicitors for Appellant.

TITMUSS, SAINER & WEBB,  
2 Serjeants Inn,  
London, EC4Y 1LT.

Agents for :

Ennis, Callander & Gault,  
Wellington,  
New Zealand.

Solicitors for Respondent.

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN:HANNAFORD & BURTON LIMITEDAppellant

- and -

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31 OF 1975

IN THE PRIVY COUNCIL

No. \_\_\_\_\_ of 1975

O N A P P E A L  
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

HANNAFORD & BURTON LIMITED

Appellant

- and -

POLAROID CORPORATION

Respondent

10

RECORD OF PROCEEDINGS

No. 1

NOTICE OF MOTION FOR AN ORDER TO RECTIFY  
THE REGISTER OF TRADE MARKS

In the Supreme  
Court of New  
Zealand

IN THE SUPREME COURT OF NEW ZEALAND

WELLINGTON DISTRICT

WELLINGTON REGISTRY

No. M. 21/71

IN THE MATTER of the Trade Marks  
Act 1953

No. 1  
Notice of Motion  
for an Order to  
Rectify the  
Register of  
Trade Marks

A N D

20

IN THE MATTER of Trade Mark  
Registered Number B82513

22nd January  
1971.

BETWEEN POLAROID CORPORATION,  
a corporation organised  
and existing under the  
laws of the State of  
Delaware, United States  
of America, of 730  
Main Street, City of  
Cambridge, State of  
Massachusetts, United  
States of America

30

Applicant

In the Supreme  
Court of New  
Zealand

AND HANNAFORD & BURTON LIMITED a  
New Zealand company, of 25  
Rutland Street, Auckland, New  
Zealand

No. 1

Respondent

Notice of Motion  
for an Order to  
Rectify the  
Register of  
Trade Marks

22nd January  
1971  
- continued

TAKE NOTICE that on        day the        day of  
197        at 10 o'clock in the forenoon or so soon  
thereafter as Counsel can be heard Counsel  
for the abovenamed applicant will move this  
Honourable Court at Wellington FOR AN ORDER 10  
to rectify the Register of Trade Marks by  
expunging therefrom the abovementioned trade  
mark UPON THE GROUNDS:

1. That the said trade mark registered  
number B82513 is a mark wrongly remaining  
on the Register having been wrongly  
entered for the following reasons:
  - (a) At the date of registration the  
trade mark was not and could not  
have been distinctive of the goods 20  
of the proprietor.
  - (b) At the date of registration the  
mark was likely to deceive or cause  
confusion and otherwise dis-  
entitled to protection.
  - (c) At the date of registration there  
existed on the Register a trade  
mark belonging to the applicant,  
registered for the same goods or  
description of goods which the 30  
trade mark SOLAVOID so nearly  
resembled as to be likely to  
deceive or cause confusion.
  - (d) The registered proprietor had not  
at the time of application for  
registration of the said trade  
mark and has not now any bona fide  
claim to be the proprietor of the  
said trade mark.

Each and every reason set forth in sub-paragraphs 40  
(a) to (d) inclusive hereof is as applicable  
to the said registration now as it was at the  
date on which the said registration was granted.

3.

- |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                       |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. | The trade mark was registered without any <u>bona fide</u> intention at the date of application on the part of the applicant for registration (the registered proprietor) that it should be used in relation to the goods for which it is registered and there has been in fact no <u>bona fide</u> use of the trade mark in relation to those goods by the proprietor thereof for the time being or any registered user up to the date one month before the date of this application. | In the Supreme Court of New Zealand<br><hr style="width: 10%; margin: 0 auto;"/><br>No. 1<br><br>Notice of Motion for an Order to Rectify the Register of Trade Marks |
| 10 | 3.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 22nd January 1971<br>- continued                                                                                                                                      |

AND UPON SUCH FURTHER GROUNDS as shall appear in the affidavits to be filed herein upon the part of the applicant.

DATED at Wellington this 22nd day of January 1971.

20

"T.M. Gault"  
Solicitor for Applicant.

TO: The Registrar of the Supreme Court at Wellington and

TO: The abovenamed Respondent.

No. 2

No. 2

AFFIDAVIT OF HERBERT S. KASSMAN

I, HERBERT S. KASSMAN, residing at 5 Stonewall Road, Lexington, Massachusetts, U.S.A. make oath and say as follows :

Affidavit of  
Herbert S.  
Kassman for  
Applicant  
(Respondent)

30

1. I am Secretary of Polaroid Corporation a corporation organized under the laws of the State of Delaware, located at 730 Main Street, Cambridge, Massachusetts, U.S.A. I have been associated with my company since the year 1953 and I have held my present office therewith since the year 1966.

19th March  
1971



In the Supreme  
Court of New  
Zealand

No. 2

Affidavit of  
Herbert S.  
Kassman for  
Applicant  
(Respondent)

19th March  
1971  
- continued

2. As Secretary of the corporation, I am custodian of the principal documents and records of the corporation. Corporate records which are not kept in my custody are readily available to me in forms authenticated by officers and managers of the corporation with whom I am familiar. The facts set out in this affidavit have been assembled from the corporate records and files, and I have reviewed them and am satisfied that these facts have been truthfully compiled from accurate records by competent employees of the corporation. 10

3. I am duly authorized by Polaroid Corporation to make this affidavit on its behalf.

4. POLAROID sunglasses were first manufactured and sold in the United States of America in 1936. Since that time, sales of POLAROID sunglasses, both inside and outside the United States, have steadily increased. In the year 1965 worldwide sales of POLAROID sunglasses exceeded 10,000,000 units and in the year 1969 such sales exceeded 20,000,000 units. 20

5. POLAROID sunglasses are sold in virtually every country of the world. They are presently manufactured, under licence from Polaroid Corporation, and with supervision over quality exercised by Polaroid Corporation, in the following countries: the United States, United Kingdom, The Netherlands, Mexico, South Africa, Japan, Australia, and New Zealand. 30

6. POLAROID sunglasses have been continuously sold in Australia and in New Zealand since at least 1950. During this period of time well over 3,000,000 pairs of POLAROID sunglasses have been sold in Australia and more than 750,000 pairs of POLAROID sunglasses have been sold in New Zealand. 40

7. POLAROID sunglasses have been heavily advertised and promoted since their first sales. During the past ten years

(1961-1970) more than (U.S.) \$10,000,000 have been expended on the worldwide advertising and promotion of POLAROID sunglasses.

In the Supreme  
Court of New  
Zealand

8. My company is the exclusive owner of the trademark POLAROID around the world and has registered POLAROID as its trademark for a variety of products including sunglasses in more than 150 countries and jurisdictions. My company is the owner of New Zealand trademark registration No. 38281 (dated May 28, 1940) and No. 42821 (dated March 29, 1946) of POLAROID. These registrations are valid and subsisting and include coverage for sunglasses and other optical goods.

No. 2

Affidavit of  
Herbert S.  
Kassman for  
Applicant  
(Respondent)

19th March  
1971

- continued

9. My company has licensed Polarizers (New Zealand) Limited to manufacture and market in New Zealand sunglasses bearing the POLAROID trademark. An application is currently pending for the entry of Polarizers (New Zealand) Limited as registered user of the trademark POLAROID for light-polarizing sunglasses and sungoggles under Trademark Registration Nos. 38281 and 42821, owned by my company.

10. As a result of the tens of millions of pairs of POLAROID sunglasses sold over many years throughout the world, and the millions of dollars worth of advertising for POLAROID sunglasses, POLAROID has become an internationally famous trademark and enjoys an extensive and valuable good-will and reputation throughout the world both with the relevant trade and with the purchasing public.

"Herbert S. Kassman"

Sworn to at Cambridge, Massachusetts, U.S.A.  
this 19th day of March, 1971  
before me.

"Edward J. Sullivan"

[Notary Public]

No. 3

In the Supreme  
Court of New  
Zealand

FIRST AFFIDAVIT OF WALTER WILLIAM BRACKENRIDGE

I, WALTER WILLIAM BRACKENRIDGE of Wellington,  
Company General Manager, make oath and say as  
follows :

No. 3

First Affidavit  
of Walter William  
Brackenridge  
for Applicant  
(Respondent)

1. I am general manager of Polarizers (New  
Zealand) Limited a duly incorporated company  
having its registered office at Wellington  
(hereinafter referred to as "my Company") and I  
am duly authorised by my company to make this  
affidavit.

10

20th January  
1971

2. FROM the year 1938 until the year 1955  
except for a period during the Second World War  
I was employed as warehouse manager and later as  
joint general manager of Arthur Cocks & Company  
(N.Z.) Limited, a duly incorporated company  
having its registered office at Wellington,  
which company imported and distributed in New  
Zealand sunglasses the merchandise of the  
Applicant Polaroid Corporation of the United  
States of America which were promoted and sold  
in New Zealand under and by reference to the  
trade mark POLAROID.

20

3. IN the year 1949 a South African company  
was established under the name Polarizers  
International Limited, which company was granted  
a licence by the Applicant to manufacture and  
market sunglasses under the trade mark POLAROID  
outside the United States of America. This  
company appointed the said Arthur Cocks & Company  
(N.Z.) Limited as marketing agent for New  
Zealand. In this capacity the said Arthur  
Cocks & Company (N.Z.) Limited continued to  
import and distribute POLAROID sunglasses in  
New Zealand until the year 1955.

30

4. IN the year 1955 my company was incorporated  
and I was appointed the New Zealand Director  
although the company did not commence trading  
until the year 1956 when I terminated my  
association with the said Arthur Cocks &  
Company (N.Z.) Limited and took up the  
position of general manager of my company.

40

5. FROM 1956 when it commenced trading until 1964 my company imported from subsidiaries of the said Polarizers International Limited in Australia, South Africa and the United Kingdom although in the later years almost exclusively from the Australian subsidiary POLAROID sunglasses which were distributed by my company in New Zealand
6. IN the year 1964 my company commenced assembling sunglasses for sale in New Zealand incorporating POLAROID lenses manufactured by the Applicant in the United States of America and other component parts manufactured in Australia and in New Zealand. This continued for a period of two years until the agreement under which my company marketed POLAROID sunglasses in New Zealand terminated. Thereafter POLAROID sunglasses were imported into New Zealand only in completely made up form by my company and a small number of other importers to the extent that import licences permitted. My company's imports were acquired from Polaroid (Australia) Pty. Limited an Australian subsidiary of the Applicant.
7. ONLY recently my company has entered into a licence agreement with the Applicant for the manufacture and marketing of POLAROID sunglasses in New Zealand in order that quantities available to the New Zealand market may be increased by local assembly of sunglasses using lenses manufactured by the Applicant. An application has been filed to enter my company as a Registered User of the trade mark POLAROID.
8. IN the light of the foregoing I claim to be fully conversant with the marketing of sunglasses under the trade mark POLAROID in New Zealand from the year 1938 to the present time first by virtue of my association with Arthur Cocks & Company (N.Z.) Limited and later by virtue of my association with my company.
9. THERE are produced to me and marked "W.W.B.1" and "W.W.B.2" respectively certificates of the New Zealand Commissioner of Trade Marks setting forth particulars of trade mark registrations numbers 38281 and 42821 which I am advised by my solicitors and therefore believe are still current.

In the Supreme  
Court of New  
Zealand

No. 3

First Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

20th January  
1971

- continued

In the Supreme  
Court of New  
Zealand.

—  
No. 3

First Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

20th January  
1971

- continued

10. THE trade mark POLAROID was first used in New Zealand in relation to sunglasses in the year 1938 and has been continuously and extensively used in New Zealand in relation to sunglasses since at least 1950. The mark has been applied to the sunglasses themselves, to the boxes and other forms of packaging in which they have been sold and to swing tickets and other labels used from time to time. Produced to me and marked "W.W.B.3" is an envelope containing a typical selection of swing tickets which have been attached from time to time to sunglasses sold in New Zealand under the trade mark POLAROID. 10

11. NOTWITHSTANDING restrictions in the volume of sales of POLAROID sunglasses dictated by import licensing I believe POLAROID sunglasses have been available to a large proportion of purchasers over many years. At a time when almost all sunglasses sold in New Zealand were imported it was possible to gauge with some accuracy the share of the market enjoyed by POLAROID sunglasses from official import figures and in the period from 1956 to 1967 the proportion by value of POLAROID sunglasses to the total imports of sunglasses fluctuated between 13% and 15%. In the last two years with an increased volume of locally made sunglasses on the market a similar proportion cannot be determined as accurately but I believe from such marketing information as is available to me that POLAROID sunglasses have constituted about the same proportion of all sunglasses sold in New Zealand as in previous years and I estimate that there are probably about 200,000 POLAROID sunglasses currently in use in this country. 20 30 40

12. POLAROID sunglasses have been distributed by my company and before it the said Arthur Cocks & Company (N.Z.) Limited throughout the whole of New Zealand through opticians and through chemists shops. In the year 1950 there were some 800 retail outlets in New Zealand for POLAROID sun-

glasses and this number has steadily increased until now there are in excess of 1200 such retail outlets. These retail outlets make almost the whole of their annual sales of sunglasses in the few weeks prior to Christmas during which time the shops are invariably crowded and noisy and the assistants are very busy.

In the Supreme  
Court of New  
Zealand

—  
No. 3

First Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

10 13. SUNGLASSES sold in New Zealand under the trade mark POLAROID have been regularly and extensively advertised throughout New Zealand. Advertising has been carried out by means of the distribution of brochures, publication of advertisements in the daily press and in magazines and periodicals and point of sale displays. Over 20th January and the years tens of thousands of dollars have been spent by my company promoting sunglasses under the trade mark POLAROID. There is produced to me and marked "W.W.B.4" a brochure 20 for POLAROID sunglasses which is typical of those produced and distributed by my company. Produced to me and marked "W.W.B.5" is a selection of typical advertisements which have appeared in newspapers and magazines throughout New Zealand.

- continued

30 14. A particular characteristic of the advertising of POLAROID sunglasses which was used extensively in the years 1967 and 1968 was a stylized form of lettering in which the expression "Sunglasses 1968" was featured prominently at the top of press and magazine advertisements. There is produced to me and marked "W.W.B.6" a collection of advertisements cut from newspapers and magazines which is typical of the series of advertisements published by my company in this period.

40 15. I am satisfied that as a result of the extensive sales and advertising of POLAROID sunglasses in New Zealand over an extensive period the trade mark POLAROID has acquired a wide and high reputation among members of the trade and the general public in relation to the sunglasses.

16. LATE in the year 1968 or early in the year 1969 I became aware that there were on the New Zealand market sunglasses which were offered for sale mainly through chemists' shops and

In the Supreme  
Court of New  
Zealand

—  
No. 3

First Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

20th January  
1971

- continued

departmental stores under the name SOLAVOID. As a result I made investigations which showed these sunglasses to be distributed by a company named Solavoid International Limited of Auckland, which I believe to be related to Hannaford and Burton Limited the respondent.

17. IN view of the extensive reputation enjoyed by the trade mark POLAROID and the close phonetic similarity of the word SOLAVOID I was immediately concerned as to the possibility of confusion. This led me to investigate the full circumstances surrounding the promotion and sale of sunglasses under the name SOLAVOID. I ascertained that the said sunglasses incorporated polarizing lenses and that on the cases in which they were sold the material attached to the sunglasses at the time of retail sale and in promotional material and price lists there was frequent use of such words as "polarglass", "polarplastic" and "polarclip".

10

20

18. THERE is now produced to me marked "W.W.B.7" a pair of sunglasses I purchased from J.B. Porath Limited, chemists, Lambton Quay, Wellington, on the 28th day of May 1970 together with the case in which they were supplied and the swing tickets which were attached at the time of sale.

30

19. I am advised by my solicitors and believe that the trade mark SOLAVOID was registered in New Zealand in the name of Hannaford and Burton Limited by virtue of registration B82513 dated 21 October 1966 in respect of sunglasses.

20. SO far as I have been able to ascertain there has been no use of the mark or name SOLAVOID in relation to sunglasses in New Zealand by Hannaford and Burton Limited. Such use as I have discovered has been by the company Solavoid International Limited which I am advised by my Solicitors and therefore believe, is neither the registered proprietor nor a registered user of the mark SOLAVOID in New Zealand.

40

21. TO the best of my knowledge the following are the brand names and trade marks used in respect of sunglasses by competitors of my company in New Zealand:

Rayban	Rodenstock	Protex
Calobar	Zeiss Umbral	Tele Relax
Coolray	Verres Filtrants	Protector
Samco	Nilson	Lozza
Filos	Ratti	Filtray
Solamor	Viennaline	

10

SWORN at Wellington )  
this 20th day of )  
January 1971 before )  
me :

"W.W. Brackenridge"

"D.E. Hurley"

A Solicitor of the Supreme Court  
of New Zealand

In the Supreme  
Court of New  
Zealand

No. 3

First Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

20th January  
1971

- continued

No. 4

No. 4

SECOND AFFIDAVIT OF WALTER WILLIAM BRACKENRIDGE

Second Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

20

I, WALTER WILLIAM BRACKENRIDGE of Wellington,  
Company General Manager, make oath and say  
as follows :

1. I am General Manager of Polarizers  
(New Zealand) Limited and I have made a  
previous affidavit which was sworn on the 20th  
day of January 1971 and filed herein.

29th November  
1971

30

2. IN paragraph 4 of my said earlier  
affidavit there is a typographical error in  
line 3 where reference to the year 1955  
when my company commenced trading should  
read "1956".

3. I have noticed that frequently retail  
traders keep together for sale and display  
in their shops sunglasses of different brands  
including sunglasses offered respectively



In the Supreme  
Court of New  
Zealand

No. 4

Second Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

29th November  
1971  
- continued

under the marks POLAROID and SOLAVOID.  
Typical of this practice was a display of  
sunglasses in the retail chemist shop premises  
of Fred Castle Limited in Dixon Street,  
Wellington, during the month of December  
1970 where a display stand bearing  
prominently at the top panels making  
reference to POLAROID sunglasses had  
attached thereto in addition to sunglasses  
bearing POLAROID labels a number of sun-  
glasses bearing labels incorporating the  
SOLAVOID name. 10

4. I HAVE also noticed that shop assistants  
do not always exercise care in distinguishing  
between brands of sunglasses particularly  
when they are busy. I encountered a typical  
instance of this in the retail shop premises  
of James Smith Limited, Wellington, on the  
26th day of May 1971. Having seen in an  
advertisement published by James Smith  
Limited in the "Evening Post" of the previous  
evening a reference to a new range of sun-  
glasses with "polaroid lenses" I called at  
the watch department of the store where there  
was a revolving wire display unit for sun-  
glasses fitted with a number of panels  
making reference to the name SOLAVOID. 20  
Displayed were a number of sunglasses bearing  
SOLAVOID labels as well as a number of pairs  
of sunglasses with the "polaroid lenses" and 30  
was told by the assistant that there were  
plenty scattered through the range and he  
showed me first a pair of sunglasses bearing  
a SOLAVOID label. On further investigation  
I found that in fact the stand held only one  
pair of POLAROID sunglasses.

SWORN at Wellington )  
this 29th day of )  
November 1971 before ) "W.W. Bracnekrige"  
me : )

[Signature illegible] 40

A solicitor of the Supreme Court  
of New Zealand



In the Supreme  
Court of New  
Zealand

No. 6

Exhibit "A" to  
Affidavit of  
Lindsay Douglas  
Beck sworn  
9th August 1971

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

Polarizers (N.Z.) Ltd.

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.

10

Woman's Weekly, Eve, Thursday  
Magazine, Radio"

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

20

Yes.

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

Yes.

8. How long have you known the trade mark SOLAVOID?

3 to 4 years

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

30

Solavoid (N.Z.) Ltd. Auckland

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Yes - some Radio Advertising  
Prior to 31.12.70

In the Supreme  
Court of New  
Zealand

No. 6

Exhibit "A" to  
Affidavit of  
Lindsay Douglas  
Beck sworn  
9th August 1971

- 10 11. Please indicate briefly the nature of the business carried out by you or your company.

Pharmaceutical

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 20 plus Female A dozen or so.

13. Please provide :

(a) your full name:

Lindsay Douglas Beck

20 (b) the full name of your company or firm:

Boots the Chemists (New Zealand Limited)

(c) Your position in the company or firm:

Head Buyer

(d) the length of time you have held the present position

25 years

- 30 (e) the length of time you have been connected with the type of business in which you are currently engaged:

35 years

In the Supreme  
Court of New  
Zealand

No. 7

AFFIDAVIT OF JOHN ROWE BRADBURN

No. 7

I, JOHN ROWE BRADBURN of Mount Roskill,  
Pharmaceutical Chemist make oath and say:

Affidavit of  
John Rowe  
Bradburn  
for applicant  
(Respondent)

1. DURING March 1971 I received from  
Messrs. A.J. Park & Son, Solicitors & Patent  
Attorneys of 140-150 Lambton Quay, Wellington,  
a typewritten questionnaire. I caused the  
said questionnaire, when completed, to be  
returned by post to Messrs. A.J. Park & Son. 10  
The original questionnaire is now produced  
to me and marked "A".

1st July 1971

2. THE said questionnaire was completed  
by myself and the answers to the respective  
questions as stated therein were, at the  
time they were made, and are, to the best of  
my knowledge and belief, true and correct.

SWORN at Mt. Roskill)  
this 1st day of July ) "J.R. Bradburn"  
1971 before me : )

20

"J.R. O'Brien"

A Solicitor of the Supreme Court  
of New Zealand

No. 8

No. 8

"A"

Exhibit "A" to  
Affidavit of  
John Rowe  
Bradburn sworn  
1st July 1971

QUESTIONNAIRE  
from Messrs. A.J. Park & Son,  
P.O. Box 949, Wellington.

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used 30  
upon and in relation to sunglasses?

Yes.

2. If so, how long have you known it?

20 years.

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company. In the Supreme Court of New Zealand

None

No. 8

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising. Exhibit "A" to Affidavit of John Rowe Bradburn sworn 1st July 1971

10

Press - Showcard - Display Stands

- continued

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

Nil

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

No.

20

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

-

8. How long have you known the trade mark SOLAVOID?

-

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

-

In the Supreme Court of New Zealand

No. 8

Exhibit "A" to Affidavit of John Rowe Bradburn sworn 1st July 1971

- continued

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

11. Please indicate briefly the nature of the business carried out by you or your company

Pharmaceutical Chemist

12. What would be the average number of assistants employed by you or your company who might handle sunglasses? 10

Male 1      Female 4

13. Please provide :

(a) Your full name: JOHN ROWE BRADBURN

(b) The full name of your company or firm JOHN BRADBURN LTD.

(c) Your position in the company or firm: MANAGING DIRECTOR 20

(d) The length of time you have held the present position: 20 years

(e) The length of time you have been connected with the type of business in which you are currently engaged: 25 years 30





In the Supreme  
Court of New  
Zealand

No.10

Exhibit "A"  
to Affidavit of  
Colin Henry  
Brittain sworn  
21st July 1971

- continued

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

N.Z. Optical Company

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.

10

Weekly magazines

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

No.

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

20

N/A

8. How long have you known the trade mark SOLAVOID?

Never

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

30

N/A

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

N/A

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.10

11. Please indicate briefly the nature of the business carried out by you or your company.

10 Chemists

Exhibit "A" to  
Affidavit of  
Colin Henry  
Brittain sworn  
21st July 1971

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 1 Female 1

- continued

13. Please provide :

- (a) Your full name: C.H. Brittain
- (b) the full name of your company or firm: H. Brittain Ltd.
- 20 (c) your position in the company or firm: Manager
- (d) the length of time you have held the present position: 38 years
- (e) the length of time you have been connected with the type of business in which you are currently engaged: 47 years
- 30

In the Supreme  
Court of New  
Zealand

No. 11

AFFIDAVIT OF RICHARD NEAL CARPENTER

No. 11

I, RICHARD NEAL CARPENTER of Otaki, Pharmacist  
make oath and say :

Affidavit of  
Richard Neal  
Carpenter  
for Applicant  
(Respondent)

3rd June 1971

1. DURING March 1971 I received from Messrs.  
A.J. Park & Son, Solicitors & Patent Attorneys  
of 140-150 Lambton Quay, Wellington, a  
typewritten questionnaire. I caused the said  
questionnaire, when completed, to be returned  
by post to Messrs. A.J. Park & Son. The  
original questionnaire is now produced to me  
and marked "A". 10

2. THE said questionnaire was completed by  
myself and the answers to the respective  
questions as stated therein were, at the time  
they were made, and are, to the best of my  
knowledge and belief, true and correct.

SWORN at Otaki this )  
3rd day of June 1971 ) "R.N. Carpenter"  
before me : )

"R.W. Roussell" 20

A Solicitor of the Supreme Court  
of New Zealand

No. 12

No. 12 "A"

Exhibit "A" to  
Affidavit of  
Richard Neal  
Carpenter sworn  
3rd June 1971

QUESTIONNAIRE

from Messrs. A.J. Park & Son  
P.O. Box 949, Wellington

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used  
upon and in relation to sunglasses?

Yes

2. If so, how long have you known it? 30

12 years

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.
- Polarizers N.Z. Ltd.
- In the Supreme Court of New Zealand  
—  
No.12
- 10 4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.
- Magazine
- Exhibit "A" to Affidavit of Richard Neal Carpenter sworn 3rd June 1971  
  
- continued
5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.
- Small classified Ad. for Polaroids last summer
- 20 6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?
- Yes
7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?
- Some have
8. How long have you known the trade mark SOLAVOID?
- Two years
- 30 9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company
-

In the Supreme  
Court of New  
Zealand

—  
No.12

Exhibit "A" to  
Affidavit of  
Richard Neal  
Carpenter sworn  
3rd June 1971

- continued

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Radio

11. Please indicate briefly the nature of the business carried out by you or your company.

Pharmaceutical Chemists

10

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 1      Female 3

13. Please provide :

(a) Your full name: Richard Neal  
Carpenter

(b) The full name  
of your company or firm      Carpenter  
Pharmacy Ltd.

20

(c) Your position in  
the company or firm:      Proprietor

(d) The length of  
time you have  
held the present  
position      5 years

(e) the length of  
time you have  
been connected  
with the type  
of business in  
which you are  
currently  
engaged      12 years

30



In the Supreme  
Court of New  
Zealand

—  
No.14

Exhibit "A" to  
Affidavit of  
Frederick  
Thomas Castle  
sworn  
4th June 1971

- continued

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

Polarizers N.Z. Ltd.  
N.Z. Optical.

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising. 10

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

Yes. 20

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

Some

8. How long have you known the trade mark SOLAVOID?

1 year

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company. 30

Solavoid Ltd.

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.
11. Please indicate briefly the nature of the business carried out by you or your company.  
Pharmacy
- 10 12. What would be the average number of assistants employed by you or your company who might handle sunglasses?  
Male      1      Female      4
13. Please provide :
- (a) your full name:  
Frederick Thomas Castle
- (b) the full name of your company or firm  
Fred Castle Ltd. Chemists  
37 Dixon St. Wellington
- 20 (c) your position in the company or firm:  
Manager
- (d) the length of time you have held the present position:  
35 years
- (e) the length of time you have been connected with the type of business in which you are currently engaged:  
30 40 years

In the Supreme  
Court of New  
Zealand

—  
No.14

Exhibit "A" to  
Affidavit of  
Frederick  
Thomas Castle  
sworn  
4th June 1971

- continued



In the Supreme Court of New Zealand

No. 15

AFFIDAVIT OF GERARD ALFRED DAVIDSON

No.15

I, GERARD ALFRED DAVIDSON of Hamilton, make oath and say:

Affidavit of Gerard Alfred Davidson for Applicant (Respondent)

8th June 1971

1. DURING March 1971 I received from Messrs. A.J. Park & Son, Solicitors & Patent Attorneys of 140-150 Lambton Quay, Wellington, a typewritten questionnaire. I caused the said questionnaire, when completed, to be returned by post to Messrs. A.J. Park & Son. The original questionnaire is now produced to me and marked "A". 10

2. THE said questionnaire was completed by myself and the answers to the respective questions as stated therein were, at the time they were made, and are, to the best of my knowledge and belief, true and correct.

SWORN at Hamilton )  
this 8th day of ) "G.R. Davidson"  
June 1971 before me:)

[Signature illegible] 20

A Solicitor of the Supreme Court of New Zealand

No.16

No. 16. "A"

Exhibit "A" to Affidavit of Gerard Alfred Davidson sworn 8th June 1971

QUESTIONNAIRE

from Messrs. A.J. Park & Son,  
P.O. Box 949, Wellington

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used upon and in relation to sunglasses?

Yes. 30

2. If so, how long have you known it?

20 years

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

N.Z. Optical (Wholesale) Ltd.

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.16

- 10 4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.

Exhibit "A" to  
Affidavit of  
Gerard Alfred  
Davidson sworn  
8th June 1971

-

- continued

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

Yes, Shop window displays

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

Yes.

- 20 7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

Yes.

8. How long have you known the trade mark SOLAVOID?

2 years

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

30

Not known Supply by our Head  
Office.

In the Supreme Court of New Zealand

No.16

Exhibit "A" to Affidavit of Gerard Alfred Davidson sworn 8th June 1971

- continued

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Nil

11. Please indicate briefly the nature of the business carried out by you or your company

Retail Chemists

10

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 2 Female 9

13. Please provide :

(a) your full name:

Gerard Alfred Davidson

(b) the full name of your company or firm:

Boots the Chemists (N.Z.) Ltd.

20

(c) your position in the company or firm:

Branch Manager

(d) the length of time you have held the present position:

2 years

(e) the length of time you have been connected with the type of business in which you are currently engaged:

17 years

30

No. 17

AFFIDAVIT OF KENNETH HUGH MCGUIRE

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.17

I, KENNETH HUGH MCGUIRE of 19 High Street,  
Picton, make oath and say:

Affidavit of  
Kenneth Hugh  
McGuire for  
Applicant  
(Respondent)

1. DURING March 1971 I received from  
Messrs. A.J. Park & Son, Solicitors & Patent  
Attorneys of 140-150 Lambton Quay, Wellington,  
a typewritten questionnaire. I caused the  
said questionnaire, when completed, to be  
returned by post to Messrs. A.J. Park & Son.  
10 The original questionnaire is now produced to  
me and marked "A".

17th June 1971

2. THE said questionnaire was completed  
by myself and the answers to the respective  
questions as stated therein were, at the time  
they were made, and are, to the best of my  
knowledge and belief, true and correct.

SWORN at Blenheim )  
this 17th day of ) "K.H. McGuire"  
June 1971 before me: )

20

[signature illegible]

A Solicitor of the Supreme Court  
of New Zealand

No. 18 "A"

No.18

QUESTIONNAIRE

Exhibit "A" to  
Affidavit of  
Kenneth Hugh  
McGuire sworn  
17th June 1971

from Messrs. A.J. Park & Son  
P.O. Box 949, Wellington

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID  
used upon and in relation to sunglasses?  
Yes.
- 30 2. If so, how long have you known it?  
20 years

In the Supreme  
Court of New  
Zealand

No.18.

Exhibit "A" to  
Affidavit of  
Kenneth Hugh  
McGuire sworn  
17th June 1971

- continued

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

N.Z. Optical Ltd.

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising. 10

In Store Display Material,  
Magazines.

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses? 20

Yes

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

Yes.

8. How long have you known the trade mark SOLAVOID?

3 years

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company. 30

Solavoid Ltd.

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Radio

In the Supreme  
Court of New  
Zealand

No.18

11. Please indicate briefly the nature of the business carried out by you or your company.

Retail Pharmacy

Exhibit "A" to  
Affidavit of  
Kenneth Hugh  
McGuire sworn  
17th June 1971

10

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male one Female two

- continued

13. Please provide:

- (a) Your full name

Kenneth Hugh McGuire

- (b) the full name of your company or firm:

20

McGuire's Pharmacy Ltd.

- (c) your position in the company or firm:

Managing Director

- (d) the length of time you have held the present position:

10 years

- (e) the length of time you have been connected with the type of business in which you are currently engaged:

30

20 years

In the Supreme  
Court of New  
Zealand

No. 19

AFFIDAVIT OF DAVID CHARLES MANSON

No.19

I, DAVID CHARLES MANSON of Christchurch,  
make oath and say:

Affidavit of  
David Charles  
Manson for  
Applicant  
(Respondent)

11th June 1971

1. DURING March 1971 I received from  
Messrs. A.J. Park & Son, Solicitors & Patent  
Attorneys of 140-150 Lambton Quay, Wellington,  
a typewritten questionnaire. I caused the  
said questionnaire, when completed, to be  
returned by post to Messrs. A.J. Park & Son.  
The original questionnaire is now produced  
to me and marked "A". 10

2. THE said questionnaire was completed  
by myself and the answers to the respective  
questions as stated therein were, at the  
time they were made, and are, to the best of  
my knowledge and belief, true and correct.

SWORN at Christchurch)  
this 11th day of June ) "D.C. Manson"  
1971 before me: )

[signature illegible] 20

A Solicitor of the Supreme Court  
of New Zealand

No.20

No. 20 "A"

Exhibit "A" to  
Affidavit of  
David Charles  
Manson sworn  
11th June 1971

QUESTIONNAIRE

from Messrs. A.J. Park & Son  
P.O. Box 949, Wellington

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID  
used upon and in relation to  
sunglasses?

Yes.

2. If so, how long have you known it?

12 years

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.
- New Zealand Optical Co.
4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.
- Radio & Newspaper
5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details
- No.
6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?
- Yes.
7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?
- Yes - Glass Lens
8. How long have you known the trade mark SOLAVOID?
- 3 years
9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.
- Solavoid International Ltd.
- In the Supreme  
Court of New  
Zealand  

---

  
No.20
- Exhibit "A" to  
Affidavit of  
David Charles  
Manson sworn  
11th June 1971
- continued



In the Supreme  
Court of New  
Zealand

—  
No.20

Exhibit "A" to  
Affidavit of  
David Charles  
Manson sworn  
11th June 1971

- continued

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Radio & Newspapers

11. Please indicate briefly the nature of the business carried out by you or your company.

Pharmacy

10

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male      3      Female      5

13. Please provide:

(a) your full name:

David Charles Manson

(b) the full name of your company or firm:

Bonningtons (The Chemists) Ltd.      20

(c) your position in the company or firm:

Manager

(d) the length of time you have held the present position:

6 years

(e) the length of time you have been connected with the type of business in which you are currently engaged:

30

11 years

No. 21

AFFIDAVIT OF LEONARD TALFORD MITCHELL

In the Supreme  
Court of New  
Zealand

I, LEONARD TALFORD MITCHELL of 14 Vodanovich Road, Te Atatu near Auckland Chemist make oath and say:

No.21.

Affidavit of  
Leonard Talford  
Mitchell for  
Applicant  
(Respondent)

8th June 1971

1. DURING March 1971 I received from Messrs. A.J. Park & Son, Solicitors & Patent Attorneys of 140-150 Lambton Quay, Wellington, a typewritten questionnaire. I caused the said questionnaire, when completed, to be returned by post to Messrs. A.J. Park & Son. The original questionnaire is now produced to me and marked "A".

2. THE said questionnaire was completed by myself and the answers to the respective questions as stated therein were, at the time they were made, and are, to the best of my knowledge and belief, true and correct.

SWORN at Auckland )  
this 8th day of June ) "L.T. Mitchell"  
1971 before me: )

"K.L. Hubard"

A Solicitor of the Supreme Court  
of New Zealand

No. 22 "A"

No.22

QUESTIONNAIRE

Exhibit "A" to  
Affidavit of  
Leonard Talford  
Mitchell sworn  
8th June 1971

from Messrs. A.J. Park & Son,  
P.O. Box 949, Wellington.

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used upon and in relation to sunglasses?

30 Yes.

2. If so, how long have you known it?

15 years

In the Supreme  
Court of New  
Zealand

No.22

Exhibit "A" to  
Affidavit of  
Leonard Talford  
Mitchell sworn  
8th June 1971

- continued

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

Polarizers (N.Z.) Ltd.  
N.Z. Optical

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising. 10

Weekly News

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

Yes.

20

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

Not all Solavoid Sunglasses have  
Polarized Lenses

8. How long have you known the trade mark SOLAVOID?

Two years

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company 30

Solavoid International

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

Radio

In the Supreme Court of New Zealand

No.22

11. Please indicate briefly the nature of the business carried out by you or your company.

Exhibit "A" to Affidavit of Leonard Talford Mitchell sworn 8th June 1971

10

Pharmacy

- continued

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 2 Female 7

13. Please provide:

(a) your full name:

Leonard Talford Mitchell

(b) the full name of your company or firm:

20

Boots The Chemists N.Z. Ltd.  
104 Queen St. Auckland.

(c) your position in the company or firm:

Assistant Manager

(d) the length of time you have held the present position:

Two years

(e) the length of time you have been connected with the type of business in which you are currently engaged:

30

Twenty-five years

In the Supreme Court of New Zealand

No. 23

AFFIDAVIT OF ROBERT WILLIAM POLLOK

No.23

I, ROBERT WILLIAM POLLOK of Invercargill, Chemist, make oath and say:

Affidavit of Robert William Pollok for Applicant (Respondent)

10th June 1971

1. DURING March 1971 I received from Messrs. A.J. Park & Son, Solicitors & Patent Attorneys of 140-150 Lambton Quay, Wellington, a typewritten questionnaire. I caused the said questionnaire, when completed, to be returned by post to Messrs. A.J. Park & Son. The original questionnaire is now produced to me and marked "A". 10

2. THE said questionnaire was completed by myself and the answers to the respective questions as stated therein were, at the time they were made, and are, to the best of my knowledge and belief, true and correct.

SWORN at Invercargill)  
this 10th day of June ) "Robert W. Pollok"  
1971 before me : )

[Signature Illegible] 20

A Solicitor of the Supreme Court of New Zealand

No.24

No. 24 "A"

QUESTIONNAIRE

Exhibit "A" to Affidavit of Robert William Pollok sworn 10th June 1971

from Messrs. A.J. Park & Son  
P.O. Box 949, Wellington

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used upon and in relation to sunglasses?

Yes

2. If so, how long have you known it? 30

Many years estimate approximately thirty years

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.

N.Z. Optical (Wholesale) Ltd.  
and several wholesale drug companys

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.24

10 4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.

Display material

Exhibit "A" to  
Affidavit of  
Robert William  
Pollok sworn  
10th June 1971

- continued

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

No.

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

20 Yes

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

I understand this to be so.

8. How long have you known the trade mark SOLAVOID?

Two or three years

30 9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

In the Supreme  
Court of New  
Zealand

—  
No.24

Exhibit "A" to  
Affidavit of  
Robert William  
Pollok sworn  
10th June 1971

- continued

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

-

11. Please indicate briefly the nature of the business carried out by you or your company.

Retail Pharmacy

12. What would be the average number of assistants employed by you or your company who might handle sunglasses? 10

Male      1      Female      2

13. Please provide:

(a) your full name:

Robert William Pollok

(b) the full name of your company or firm:

Pollok's Pharmacy

(c) your position in the company or firm: 20

Proprietor

(d) the length of time you have held the present position:

Thirty years

(e) the length of time you have been connected with the type of business in which you are currently engaged:

Forty-two years

No. 25

In the Supreme  
Court of New  
Zealand

AFFIDAVIT OF IAN FRANCIS SCOTT

I, IAN FRANCIS SCOTT of Queen Street,  
Waimate, Chemist make oath and say:

\_\_\_\_\_  
No.25

1. DURING March 1971 I received from  
Messrs. A.J. Park & Son, Solicitors & Patent  
Attorneys of 140-150 Lambton Quay, Wellington,  
a typewritten questionnaire. I caused the  
said questionnaire, when completed, to be  
returned by post to Messrs. A.J. Park & Son.  
10 The original questionnaire is now produced to  
me and marked "A".

Affidavit of  
Ian Francis  
Scott for  
Applicant  
(Respondent)

29th June 1971

2. THE said questionnaire was completed by  
myself and the answers to the respective  
questions as stated therein were, at the time  
they were made, and are, to the best of my  
knowledge and belief, true and correct.

SWORN at Waimate this )  
29th day of June 1971 ) "I.F. Scott"  
before me : )

20 "R.T. Henderson"

A Solicitor of the Supreme Court  
of New Zealand

No. 26

"A"

No.26

QUESTIONNAIRE

from Messrs. A.J. Park & Son,  
P.O. Box 949, Wellington

Exhibit "A" to  
Affidavit of  
Ian Francis  
Scott sworn  
29th June 1971

re: Trade Marks POLAROID and SOLAVOID

1. Do you know the trade mark POLAROID used  
upon and in relation to sunglasses?

Yes

30 2. If so, how long have you known it?

Since 1953 at least



In the Supreme  
Court of New  
Zealand

---

No.26

Exhibit "A" to  
Affidavit of  
Ian Francis  
Scott sworn  
29th June 1971

- continued

3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company

POLAROID Corporation U.S.A. have been familiar for many years with the work of Dr Alfred Land and his researches into colour vision etc. Have never had any doubts as to the name POLAROID being an absolute trade name and consequently always have adhered to strict division between POLAROID and any other polarized lens etc.

10

4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.

Only that in which the name, green and blue colour, used on cardboard containers and leaflets such as those issued to the agents and Polaroid Corporation, Cambridge, Mass.

20

5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details

Only window displays in which the name POLAROID is an integral part of the theme which always mentions "POLAROID BRAND" sunglasses and have never attempted to mislead that any lens was polarized until the appearance on the market of UVEX and POLARIZED of Vergo. I always make sure that the name POLAROID is understood by customer in any sale.

30

40

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?

In the Supreme  
Court of New  
Zealand

No. I have never heard, seen or otherwise been aware of such a name. I vaguely recall in the early fifties an expensive POLAROID sunglass which I think was made in France at that time and were called SOLAMAR? POLAROID. I have never seen them in the last 12-15 years.

No.26

Exhibit "A" to  
Affidavit of  
Ian Francis  
Scott sworn  
29th June 1971

10

7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?

- continued

Do not know

8. How long have you known the trade mark SOLAVOID?

Never before today heard the name

20

9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company.

-

10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.

-

30

11. Please indicate briefly the nature of the business carried out by you or your company.

Pharmacy

In the Supreme  
Court of New  
Zealand

No.26

Exhibit "A" to  
Affidavit of  
Ian Francis  
Scott sworn  
29th June 1971

- continued

12. What would be the average number of assistants employed by you or your company who might handle sunglasses?

Male 1      Female 1

13. Please provide :

- (a) your full name

Ian Francis Scott M.D.S.

- (b) the full name of your company or firm:

I.F. Scott, Chemist,  
Queen St. Waimate.

- (c) your position in the company or firm:

Sole Prop. and  
Manager

- (d) the length of time you have held the present position:

20 years in 3 different  
localities in the S.  
Island

- (e) the length of time you have been connected with the type of business in which you are currently engaged:

27 years

10

20

AFFIDAVIT OF PETER MICHAEL LUXFORD

No.27

I, PETER MICHAEL LUXFORD of Wellington,  
Solicitor, make oath and say as follows :

Affidavit of  
Peter Michael  
Luxford for  
Applicant  
(Respondent)

1st November  
1971

1. I AM a Solicitor employed by the firm of  
Messrs. A.J. Park & Son, Solicitors & Patent  
Attorneys of Wellington which firm has been  
responsible for the collection of evidence in  
affidavit form from traders within New Zealand  
10 to be filed in support of the application to  
remove from the register, New Zealand Trade  
Mark Registration No. B 82513. I am familiar  
with my firm's file in this matter and I am  
authorised to make this affidavit.

2. ON THE 8th February 1971 my firm sent  
to thirty retail traders throughout New  
Zealand a letter in the form now produced to  
me and marked "PML 1" accompanied by a  
questionnaire in the form now produced to me  
20 and marked "PML 2" and over the following two  
months thirteen answered questionnaires were  
received by my firm.

3. ON 29th April 1971 my firm sent a  
reminder letter in the form now produced to  
me and marked "PML 3" accompanied by a further  
copy of the said questionnaire to the seventeen  
traders from whom answered questionnaires had  
not been received at that date. During the  
following month a further six answered  
30 questionnaires were received by my firm.

4. FOLLOWING receipt of the said answered  
questionnaires each was attached to a form  
of affidavit verifying the truth of the answers  
and returned to the trader concerned under  
cover of a letter in the form now produced to  
me and marked "PML 4". Subsequently, eleven  
completed affidavits were received by my firm  
and have been filed in these proceedings.

In addition, my firm received letters  
40 indicating that two traders who had answered  
the questionnaire forms did not wish to  
proceed with the completion of affidavits

In the Supreme Court of New Zealand

No.27

Affidavit of Peter Michael Luxford for Applicant (Respondent)

1st November 1971

- continued

and an enquiry from a third trader seeking information as to the background of the case in which the affidavit would be used. These letters and the unsworn answered questionnaire may be inspected at the office of the applicant's Solicitors. No communications were received from the remaining traders.

SWORN at Wellington )  
this 1st day of )  
November 1971 before )  
me :

"P. Luxford"

10

"G.E. Tanner"

A Solicitor of the Supreme Court of New Zealand

No.28

No. 28

"PML 1"

Exhibit "PML 1" to Affidavit of Peter Michael Luxford sworn 1st November 1971

A. J. PARK & SON

8 February 1971

Dear Sir

re: Trade Marks POLAROID and SOLAVOID

20

We are representing Polaroid Corporation of the United States of America in connection with a trade mark matter for which we require evidence from independent retail traders concerning the reputation and use in New Zealand of the trade mark POLAROID, and similarly of the name SOLAVOID.

The representatives in New Zealand of Polaroid Corporation, Polarizers (New Zealand) Limited, have provided us with your name and address and have suggested that you may be prepared to assist, along with a considerable number of others, by providing answers to the questions set out in the attached form of questionnaire.

30

It is our intention that the answers, when received will be embodied in a short form of affidavit verifying the truth of the answers, which then will be returned to you to be signed formally.

10 We trust that you will be prepared to provide us with assistance and we look forward to the return of the answered questionnaire in the stamped addressed envelope provided at your early convenience.

Yours faithfully,  
A.J. PARK & SON.

per:

No. 29

"PML 2"

QUESTIONNAIRE

from Messrs. A.J. Park & Son,  
P.O. Box 949, Wellington.

re: Trade Marks POLAROID and SOLAVOID

- 20
1. Do you know the trade mark POLAROID used upon and in relation to sunglasses?
  2. If so, how long have you known it?
  3. If you associate sunglasses sold under and by reference to the trade mark POLAROID with a particular company, please indicate the name of that company.
  4. If you are aware of any advertising carried out in relation to sunglasses sold under or by reference to the trade mark POLAROID, please indicate the types of advertising.
  - 30 5. Have you conducted any advertising in relation to sunglasses sold under or by reference to the trade mark POLAROID? Please give details.

In the Supreme  
Court of New  
Zealand

No.28

Exhibit "PML 1"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971

- continued

No.29

Exhibit "PML 2"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.29

Exhibit "PML 2"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971

- continued

6. Do you know the trade mark SOLAVOID used on or in relation to sunglasses?
7. Do the sunglasses known to you and sold under and by reference to the trade mark SOLAVOID have polarising lenses?
8. How long have you known the trade mark SOLAVOID?
9. If you associate sunglasses sold under or by reference to the trade mark SOLAVOID with a particular company, please give the name of that company. 10
10. If you are aware of any advertising conducted in respect of sunglasses sold under or by reference to the trade mark SOLAVOID, please indicate the types of advertising.
11. Please indicate briefly the nature of the business carried out by you or your company.
12. What would be the average number of assistants employed by you or your company who might handle sunglasses? 20
- Male \_\_\_\_\_ Female \_\_\_\_\_
13. Please provide :
- (a) your full name:
- (b) the full name of your company or firm:
- (c) your position in the company or firm:
- (d) the length of time you have held the present position: 30
- (e) the length of time you have been connected with the type of business in which you are currently engaged:

51.

No. 30

"PML 3"

A. J. PARK & SON

29 April 1971

Dear Sir,

re: Trade Marks POLAROID and SOLAVOID

10 With our letter of 8 February 1971, we forwarded to you a form of questionnaire which we asked you to complete and return to us to assist in the collection of evidence concerning the reputation and use in New Zealand of the above trade marks.

To date we have not received a completed questionnaire from you and in case this has been mislaid we enclose a further copy with a stamped addressed envelope for return.

20 We shall be most grateful if you would assist us by completing the enclosed form and returning it as soon as it is convenient to you.

Yours faithfully,  
A. J. PARK & SON.

Per:

No. 31

"PML 4"

A. J. PARK & SON

Dear Sir,

re: Trade Marks POLAROID and SOLAVOID

30 We have now prepared an affidavit verifying the information which you were good enough to provide and we enclose this, together with the questionnaire which you completed.

In the Supreme  
Court of New  
Zealand

No.30

Exhibit "PML 3"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971

No.31

Exhibit "PML 4"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971



In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.31

Exhibit "PML 4"  
to Affidavit of  
Peter Michael  
Luxford sworn  
1st November  
1971

- continued

It will be necessary for the affidavit to be signed personally before a Solicitor, who must also complete the exhibit note on the attached questionnaire. Please ensure that your full name and address are inserted in the space provided at the beginning of the form.

We shall be most grateful for your assistance in completing these documents and if it is necessary to incur costs in engaging a Solicitor to witness your signature they will be met by this firm.

10

A stamped addressed envelope is enclosed for quick return of the completed documents.

Yours faithfully,  
A. J. PARK & SON

Per:

No.32

\_\_\_\_\_  
No. 32

Third Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

THIRD AFFIDAVIT OF WALTER WILLIAM  
BRACKENRIDGE

20

I, WALTER WILLIAM BRACKENRIDGE of Wellington, Company General Manager, make oath and say as follows:

26th February  
1973

1. I am General Manager of Polarizers (N.Z.) Limited and I have made two previous affidavits which were sworn on the 20th day of January 1971 and the 29th day of November 1971 respectively and filed herein.

2. I have read the affidavits filed in these proceedings on behalf of the Respondent. 30

3. IN paragraph 4 of his affidavit Royce Langdon Barclay states that he believes the owner of the trade mark POLAROID to be Polarizers (N.Z.) Limited and in paragraph 3 of his affidavit Donald John Morrison states that he believes the

owner of the trade mark POLAROID is Polarisers International Limited. I do not know what has lead these two pharmacists into their mistaken belief but I can only assume that they have confused ownership of the trade mark with source of supply of sunglasses sold in New Zealand under the trade mark POLAROID.

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.32

10 The sunglasses themselves, all the swing tags attached thereto, all printed packaging and almost all advertising relating to POLAROID sunglasses clearly bear a statement that the trade mark POLAROID is the registered trade mark of Polaroid Corporation. There is now produced to me and marked "A" a typical swing tag that is attached to POLAROID sunglasses which clearly incorporates a statement as to proprietorship of the trade mark POLAROID. There is now produced to me and marked "B" a cardboard carton typical of those used for the packaging of POLAROID sunglasses in New Zealand which bears the same statement of proprietorship and there is now produced to me and marked "C" a vinyl pouch for sunglasses which has moulded on to it the statement concerning ownership of the trade mark POLAROID. The same statement of proprietorship appears in the advertisements for POLAROID sunglasses exhibited to my first affidavit sworn on the 20th day of January 1971.

Third Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

26th February  
1973

- continued

30 4. IN paragraph 17 of his affidavit Elder Frederick Masson states that New Zealand representatives of the "Polaroid Company" have been apt to change. It is correct that there has been one change in the New Zealand representative of Polaroid Corporation which took place upon the incorporation of my company, Polarizers (N.Z.) Limited which replaced Arthur Cocks & Company (N.Z.) Limited as New Zealand representative of Polaroid Corporation in 1956. From time to time certain wholesale distributors in New Zealand have ceased distributing POLAROID sunglasses and on some occasions subsequently recommenced distribution but these changes in wholesaling have not resulted from any change in the New Zealand representative for Polaroid Corporation.

40

In the Supreme  
Court of New  
Zealand

No. 32

Third Affidavit  
of Walter  
William  
Brackenridge  
for Applicant  
(Respondent)

26th February  
1973

- continued

5. IT is inferred in the affidavits of Donald John Morrison (paragraph 8) Peter Robinson (paragraph 14) Charles Baird Quay (paragraph 7) Royce Langdon Barclay (paragraph 10) Bryan Carroll Pearson (paragraph 7) Douglas Leslie Grant (paragraph 11) that the trade mark POLAROID in New Zealand is regarded by some people as a generic name for certain types of sun-glasses rather than a trade mark indicating the goods of one particular manufacturer. If this is the case it merely confirms to me the reputation enjoyed by the trade mark POLAROID in New Zealand and increases the likelihood of confusion arising from the use of marks similar in sound or appearance by competitors. Certainly any misapprehension as to the true significance of the trade mark POLAROID has not been caused or contributed to by the proprietor of the trade mark or by my company as the New Zealand representative of Polaroid Corporation. At all times considerable care has been exercised in correctly marking labels and packaging in order that a clear indication is given that POLAROID is a registered trade mark.

6. IN paragraphs 2 and 14 of his affidavit Peter Robinson refers to a number of brand names or trade marks used in relation to sunglasses sold by his department of the retail store of James Smith Limited and includes a reference to a word POLARFLEX. I am aware that there has been small and sporadic distribution in New Zealand of a brand of sunglasses emanating from Italy under the word or name POLARFLEX. I have never encountered these sunglasses in significant quantities in the New Zealand market but should I do so, I would be concerned at the obvious conflict with the trade mark POLAROID.

7. IN paragraph 9 of his affidavit Elder Frederick Masson makes reference to an alleged trade mark POLAREX used on sunglasses in New Zealand. I believe these are the same sunglasses as are referred to in paragraphs 19 and 20 of Ernest Leslie

10 Watson's affidavit as being sold in New Zealand under the name SPOLAREX, with the "S" represented inconspicuously. On two occasions at the request of Polaroid Corporation I have investigated the New Zealand market to ascertain the quantities of sunglasses offered under the name POLAREX or SPOLAREX but on each occasion I have not located any. I am satisfied that sales of such sunglasses have been in insignificant quantities. An application was made to register the trade mark SPOLAREX but following threatened opposition from Polaroid Corporation it is being withdrawn.

In the Supreme Court of New Zealand

—  
No.32

Third Affidavit of Walter William Brackenridge for Applicant (Respondent)

26th February 1973

- continued

SWORN at Wellington )  
this 26th day of )  
February 1973 before )  
me :

"W.W. Brackenridge"

"A.A.T. Ellis"

A Solicitor of the Supreme Court  
of New Zealand

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In the Supreme  
Court of New  
Zealand

AFFIDAVIT OF ERNEST LESLIE WATSON

I, ERNEST LESLIE WATSON of Auckland, make  
oath and say as follows :

No.33  
Affidavit of  
Ernest Leslie  
Watson for  
Respondent  
(Appellant)

30th March 1972

1. I am a Director of Hannaford & Burton  
Limited, (hereinafter called "my company")  
a New Zealand company, having its registered  
office at 705 Rosebank Road, Avondale,  
Auckland, New Zealand.

2. I am authorised by my company to make  
this affidavit.

10

3. MY company was incorporated on 31st  
March 1938 and has been continuously engaged  
in business from this date as manufacturers'  
agents, importers and optical wholesalers.

4. MY company does not engage in  
manufacturing on its own behalf but has  
products made to its order.

5. AMONG the products of my company are  
sunglasses which are sold under my company's  
trade mark SOLAVOID. The trade mark SOLAVOID  
was first used by my company in relation to  
sunglasses about January 1968. The trade  
mark SOLAVOID has been applied to the sun-  
glasses themselves, to display stands  
supplied to retailers, to the boxes and  
other forms of packaging in which they have  
been sold and to swing tickets and other  
labels used from time to time. There is  
produced to me and marked "ELW/1" an envelope  
containing a pair of SOLAVOID sunglasses and  
a selection of swing tickets and packaging  
used in connection with the sunglasses.

20

30

6. MY company has registered its trade  
mark SOLAVOID under the provisions of the  
Trade Marks Act 1953.

7. THE majority of sunglasses sold under  
the trade mark SOLAVOID are made to the order  
of my company by Optical Manufacturing Company  
Limited, a New Zealand company of 705

Rosebank Road, Avondale, Auckland, a subsidiary of my company incorporated on 1st October 1963 in which my company holds 39,999 of the 40,000 \$2.00 shares. The remainder of sunglasses sold under the trade mark SOLAVOID are manufactured by various overseas manufacturers to the order of my company. In some cases the overseas manufacturers apply the trade mark SOLAVOID to the glasses as instructed by my company. In all cases my company attaches a swing ticket carrying the trade mark SOLAVOID to each pair of glasses and also places most pairs of glasses in a box or case carrying the trade mark SOLAVOID.

In the Supreme  
Court of New  
Zealand

-----  
No.33

Affidavit of  
Ernest Leslie  
Watson for  
Respondent  
(Appellant)

30th March 1972

- continued

8. THE sunglasses of my company carrying the trade mark SOLAVOID are sold in approximately 1200 retail outlets in the main centres and country towns throughout New Zealand. The said sunglasses are sold to the public by such businesses as pharmacists, optometrists, sports goods stores, department stores. Among well known retailers of my company's sunglasses are James Smith Limited and Kirkcaldie & Stains Limited of Wellington. Farmers Trading Co.Ltd. of Auckland and other centres, and Haywrights Ltd. in the four main centres.

9. SUNGLASSES sold under the trade mark SOLAVOID are distributed to the trade by Solavoid International Limited, a subsidiary of my company incorporated on 23rd January 1968 in which my company holds 499 of the 500 \$1.00 shares, except that optometrists are supplied with SOLAVOID sunglasses directly through my company.

10. THE sunglasses sold under the trade mark SOLAVOID first went on sale to the public in September 1968.

11. THE approximate number and value of sunglasses sold under the trade mark SOLAVOID from 1968 to the present is 280,195 whose retail value is approximately \$1,000,000.

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.33

Affidavit of  
Ernest Leslie  
Watson for  
Respondent  
(Appellant)

30th March 1972

- continued

12. THE sale of sunglasses under the trade mark SOLAVOID has been assisted by advertising and promotional material issued by or on behalf of my company. The amount expended by my company in advertising and promoting in the period January 1968 to December 1971 is approximately \$21,000. There is produced to me and marked "ELW/2" some samples of this advertising and promotional material.

13. BY reason of extensive sales of sunglasses sold under the trade mark SOLAVOID and by reason of the advertising and other promotional material issued by or on behalf of my company the trade mark SOLAVOID is well and favourably known to the trade and public in New Zealand and is a valuable asset of my company. 10

14. THROUGHOUT the period that my company's sunglasses sold under the trade mark SOLAVOID have been on sale in New Zealand, sunglasses carrying the Applicant's trade mark POLAROID have been sold in New Zealand. I have never received any complaint of confusion between the goods from the trade or the public made to my company or to my company's distributors, Solavoid International Limited. Neither has any employee of my company or Solavoid International Limited informed me that he has received such a complaint. To the best of my knowledge no order for POLAROID sunglasses has ever been forwarded to my company or to my company's distributors in error rather than to the Applicant or to Polarizers (New Zealand) Limited. 20 30

15. MY company's trade mark SOLAVOID was built up by the combination and telescoping of the words "SOL", the Latin word for sun, and the English word "AVOID" meaning to shun, escape, evade. The idea suggested by my company's mark is "sun avoid" or "avoid the sun". Such an idea is completely absent in the trade mark POLAROID which suggests the idea of polarising. 40

16. BEFORE lodging application to register SOLAVOID as a trade mark my company paid a fee to the Commissioner of Trade Marks for the Commissioner's advice under Regulation 103 of the Trade Marks Regulations 1954 as to whether the mark SOLAVOID was eligible for registration in itself and also as to whether there were any trade marks already on the register likely to prevent or hinder registration of SOLAVOID. In a letter dated 28th September 1966 the Assistant Commissioner of Trade Marks advised that the trade mark SOLAVOID was eligible for registration in Part B of the Register and that there was no existing registration of trade mark likely to conflict with SOLAVOID. There is produced to me marked "ELW/3" a certified copy of the letter of 28th September 1966.

In the Supreme  
Court of New  
Zealand

\_\_\_\_\_  
No.33

Affidavit of  
Ernest Leslie  
Watson for  
Respondent  
(Appellant)

30th March 1972

- continued

17. ON 21st October 1966 application was lodged under number B82513 to register SOLAVOID and the mark proceeded to registration. No marks belonging to other traders were cited against the application as confusingly similar marks already on the Register and in particular trade marks 38381 and 42821 of Polaroid Corporation were not cited against the application. There is produced to me and marked "ELW/4" a certificate of the Assistant Commissioner of Trade Marks setting forth particulars of trade mark B82513.

18. THAT with reference to paragraph 17 of the Affidavit of Walter William Brackenridge my company acknowledges that some of the sunglasses sold under the trade mark SOLAVOID incorporate polarizing lenses and that in the past my company has made use of such descriptive terms as "polarglass", "polarplastic", and "polarclip" in relation to these goods. Polaroid Corporation has raised objection to these descriptive terms. My company has been informed by its Patent Attorneys that it is entitled to use these terms without infringing any rights of Polaroid Corporation but nevertheless as a goodwill gesture to Polaroid Corporation my company is phasing out the use of these terms



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and replacing them by fuller descriptive terms such as "sunglasses with polarised glass lenses", "sunglasses with polarised plastic lenses", "clip-ons with polarised plastic lenses".

19. IT is common practice and not a practice confined to my company to inform purchasers that sunglasses have polarizing or non polarizing lenses if such is the case. There is now produced to me and marked respectively "ELW/5" and "ELW/6" an advertisement for Zeiss Umbral Sunglasses wherein reference is made to "non polarizing glass" and a swing ticket from a pair of POLAREX sunglasses wherein reference is made to "Polarising Test Label". 10

20. MY company has caused a search to be made of the New Zealand Register of Trade Marks by my company's trade mark attorneys to ascertain if apart from the applicant's registrations for POLAROID there were any marks derived from the words "Polar" or "Polarize" registered in Class 9, the class that covers inter alia sunglasses and polarised lenses. My company's trade mark attorneys have advised that apart from POLAROID there are no other marks derived from "Polar" or "Polarize" in Class 9. However I am aware that the word POLAREX is at present in use as a trade mark in respect of sunglasses which are available in some pharmacies and department stores including Kirkcaldie & Stains Limited, Wellington. The swing ticket of a pair of POLAREX sunglasses is attached and marked "ELW/6". I draw attention to the fact that on the swing ticket there is an outline of the letter "S" before the "P" in POLAREX which is virtually invisible at distances beyond two feet. Although I have examined a number of POLAREX swing tickets I have never encountered one where the letter "S" has been printed to give it the same prominence as the word POLAREX. 20 30 40

21. A search of the British register of Trade Marks revealed the following "Polar" trade marks registered in Class 9 in the present International classification or old Class 8 both of which classes cover inter alia sunglasses.
- |    |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                |
|----|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 10 | POLASCRENE<br>Regd. 28.9.36<br>No. 571890<br>T.M.J.3063/1526 | Old Class 8<br>Photographic cameras<br>and accessories there-<br>for included in<br>Class 8                                                                                                                                                                                                                                                                                                                                             | Kodak Limited Respondent<br>Kodak House, (Appellant)<br>Kingsway 30 March 1972<br>London. W.C.2<br>- continued |
|    | POLAROID<br>Regd. 18.8.39<br>No. 608812<br>T.M.J.3245/562    | New Class 9<br>Materials specially<br>prepared for use in<br>the polarisation of<br>light                                                                                                                                                                                                                                                                                                                                               | Polaroid Corp.<br>730 Main Street,<br>Massachusetts,<br>U.S.A.                                                 |
| 20 | POLAROID<br>Regd. 19.4.50<br>No. 688363<br>T.M.J.3834/1071   | New Class 9<br>Photographic apparatus<br>and parts thereof and<br>fittings thereof<br>included in Class 9;<br>television screen filters,<br>stereoscopic viewing<br>devices, eyeshades,<br>goggles, eyeglasses,<br>sunglasses, light filters<br>for optical apparatus,<br>polariscopes and variable<br>density viewing devices;<br>cases for cameras; but not<br>including lenses or any goods<br>of the same description as<br>lenses. | Polaroid Corp.                                                                                                 |
| 30 | POLARVITE<br>Regd. 23.10.52<br>T.M.J.3887/1102               | New Class 9<br>Optical lenses and<br>optical filters                                                                                                                                                                                                                                                                                                                                                                                    | Amector Limited<br>76 Cross Street,<br>Manchester                                                              |
| 40 | POLAROTRACE<br>Regd. 9.8.56<br>No. 756481<br>T.M.J.4116/558  | New Class 9<br>Electric apparatus and<br>instruments included<br>in Class 9; calculat-<br>ing machines, checking<br>(supervision) apparatus;<br>and parts of all these<br>goods included in<br>Class 9.                                                                                                                                                                                                                                 | Southern<br>Instruments Ltd.,<br>Frimley Road,<br>Camberley,<br>Surrey                                         |

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POLAROID	New Class 9	Polaroid
Regd. 25.11.57	Signal genera-	Electronics
No. 798385	tors, microwave	Corp.,
T.M.J.4326.989	receivers,	43-20, 34th
	spectrum analy-	Street,
	sers, power-	Long Island,
	measuring	New York,
	devices,	U.S.A.
	attenuators	
	klystron tubes	
	and signal analyzing	10
	devices, all being	
	electronic testing	
	and measuring	
	apparatus and	
	instruments; and	
	parts and fittings	
	therefor included in	
	Class 9.	

There is now produced to me and marked "ELW/7" 20  
a certified copy of the Trade Mark 3887/1102  
above referred to.

22. THAT in paragraph 3 of the Affidavit  
of Walter William Brackenridge it is stated  
that a South African company, Polarizers  
International Limited was granted a licence  
in 1949 to manufacture and market sunglasses  
under the trade mark POLAROID outside the  
United States of America and that Arthur  
Cocks & Company (N.Z.) Limited was appointed 30  
marketing agent of this company and that  
Arthur Cocks & Company (N.Z.) Limited  
continued to import sunglasses and distribute  
sunglasses in New Zealand until 1955.  
The Certificates of the Commissioner of Trade  
Marks identified as WWB/1 and WWB/2 attached  
to the said affidavit show that in the period  
1949 to 1955 Polarizers International Limited  
was not entered as a permitted user of trade  
marks 38281 or 42821. 40

23. IN paragraph 6 of the Affidavit of  
Walter William Brackenridge it is stated that  
in 1964 his company, Polarizers (New Zealand)  
Limited, commenced assembling sunglasses  
from POLAROID lenses manufactured by the  
Applicant and other component parts manufactured

in Australia and New Zealand. This continued for a period of two years until an agreement terminated. The Certificates of the Commissioner of Trade Marks identified as WWB/1 and WWB/2 attached to the said affidavit show that in the period above mentioned when Polarizers (New Zealand) Limited were making sunglasses, which I assume to have carried the trade mark POLAROID, partly from materials obtained from others, the said Polarizers (New Zealand) Limited was not entered as a permitted user pursuant to Section 37 of the Trade Marks Act of the Applicant's trade marks Nos. 38281 and 42821 referred to in Clause 9 of the affidavit of Walter William Brackenridge.

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10 24. I am informed by my company's Patent Attorneys that subsequent to the date of issue of the certificates of the Commissioner of Trade Marks, referred to as WWB/1 and WWB/2 in the affidavit of Walter William Brackenridge, there is the following entry on the Register of Trade Marks in respect of Trade Marks Nos. 38281 and 42821 -

"Request No. 8960 Registered User.

20 POLARIZERS (NEW ZEALAND) LIMITED, of 5-7 Willeston Street, Wellington, New Zealand, Manufacturers and Merchants, registered 22nd January 1971 as a registered user in respect of light  
30 polarizing sunglasses and sungoggles."

25. ON 13th October 1971 applications were lodged with the Commissioner of Trade Marks to have my company's two subsidiaries, Solavoid International Limited and Optical Manufacturing Company Limited, entered as permitted users of my company's trade marks including trade mark B82513.

40 26. THAT as already stated in paragraph 9 of this affidavit some of my company's goods have been distributed by Solavoid International Limited since the incorporation of the latter company in 1968. It is common practice in trade to have goods distributed by a person other than either the manufacturer of the

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goods or the person who is entered on the Register of Trade Marks as the proprietor of the Trade Mark which is used on or in relation to the goods. There is produced to me and marked "ELW/8" advertisements which appeared in newspapers and other publications circulating in New Zealand and wherein reference is made to the distributor of goods and not to the manufacturer of the goods nor the owner of the trade mark registered in respect of the goods. These advertisements are referred to as (a) to (h) hereunder. 10

(a) In the advertisement for TIMEX watches the goods are stated to be distributed by "British Products Limited", of Glen Innes, Auckland. The proprietor of New Zealand Trade Mark 42988 for the word TIMEX in respect of horological instruments including watches is United States Time Corporation, Waterbury, Connecticut, U.S.A. There is produced to me and marked "ELW/9" a Certificate of the Commissioner of Trade Marks for New Zealand on which is set out the entries on the Register of Trade Marks in respect of trade mark 42988 as evidence that no permitted user has been recorded. 20

(b) In the advertisement for SEAGRAMS 100 PIPERS DELUXE SCOTCH WHISKY the distributor is stated to be Gollin & Co.Ltd. The proprietor of New Zealand Trade Mark 74369 for the word SEAGRAMS in respect of Whisky is Joseph E. Seagram & Sons Inc., 375 Park Avenue, New York, U.S.A. There is produced to me and marked "ELW/10" a Certificate of the Commissioner of Trade Marks for New Zealand on which is set out the entries on the Register of Trade Marks in respect of trade mark 74369 as evidence that Gollin & Co.Ltd. is not recorded as a permitted user. 40

- (c) In the advertisement for JOHNNIE WALKER SCOTCH WHISKY T.G. Macarthy Ltd. is stated to be distributors for Wellington and several other areas. The proprietor of New Zealand Trade Mark 8875 in respect of "whisky" is John Walker & Sons Limited, St. James' Street, London, England. I am informed by my company's trade mark attorneys and believe that T.G. Macarthy Ltd., is not recorded as a permitted user of New Zealand Trade Mark 8875 for the words JOHNNIE WALKER and the device of a man.
- (d) In the advertisement for OLD CROW Whisky the goods are stated to be distributed by W. & R. Smallbone Limited. I am informed by my company's trade mark attorneys and believe that W. & R. Smallbone is not recorded as a permitted user of Trade Mark 89121 for the words "OLD CROW" for "wines, spirits and liquors".
- (e) In the advertisement for DUX Toilet Fittings the New Zealand distributors are stated to be "Plumbers Agency Division (Div Plumbers Ltd)". The proprietor of trade mark 93968 for the word DUX in respect of building and plumbing supplies in Class 19 is DUX Engineers Limited, Lower Hutt. I am informed by my company's trade mark attorneys and believe that Plumbers Agency Division (Div Plumbers Ltd.) is not recorded as a permitted user.
- (f) In the advertisement for SKIL SHER Power Tools the goods are stated to be distributed by "The Steel and Tube Company of New Zealand Limited". The proprietor of New Zealand Trade Mark 68218 for the word SKIL in respect of power driven tools etc. is Skil Corporation of Chicago, Illinois, U.S.A. I am informed by my company's trade mark attorneys and believe that Skil-Sher Pty. Limited of Melbourne, Australia, is entered as a permitted user. The Steel and Tube Company of New Zealand is not entered as a permitted user.

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(g) In the advertisement for PEUGEOT cars the cars are stated to be distributed by Campbell Motor Imports Ltd. I am informed by my company's trade mark attorneys and believe that the word PEUGEOT is not registered as a trade mark in New Zealand. It is my belief that it is the trade mark of a French manufacturer of motor vehicles. Since there is no registered trade mark there can be no permitted user of the trade mark under the Trade Marks Act 1953. 10

(h) In the advertisement for SCANIA trucks the sole New Zealand distributor is stated to be Swedish Motors Ltd. I am informed by my company's trade mark attorneys and believe that the word SCANIA is not registered as a trade mark in New Zealand. It is my belief that it is the trade mark of a Swedish manufacturer of motor vehicles. Since there is no registered trade mark there can be no permitted user of the trade mark under the Trade Marks Act 1953. 20

27. I am aware that the word GLAREAVOID, which like my company's trade mark SOLAVOID employs the syllable "AVOID", is in use as a trade mark in Australia in respect of sun-glasses. There is produced to me and marked "ELW/11" an envelope containing a card of one of the representatives of Optical Manufacturing Co. Pty. Ltd., showing user of the mark. 30

SWORN at Auckland )  
this 30th day of )  
March 1972 before ) "E.L. Watson".  
me : )

"R.A. Fisher" 40

A Solicitor of the Supreme Court  
of New Zealand

AFFIDAVIT OF DENNIS BRYANT ALLEN

In the Supreme  
Court of New  
Zealand

I, DENNIS BRYANT ALLEN, of Waitara, make oath  
and say as follows :

—  
No.34

1. I am a principal shareholder in Allen  
& Budden Limited, Chemists, 20 McLean Street,  
Waitara, hereinafter called "my pharmacy".

Affidavit of  
Dennis Bryant  
Allen for  
Respondent  
(Appellant)

2. I have been qualified as a pharmacist  
for 31 years.

10 3. MY pharmacy employs a staff of 5 and  
is patronised by approximately 1500 customers  
each week.

17th April 1972

4. SUNGLASSES carrying the trade mark  
POLAROID have been sold in my pharmacy for  
25 years, that is since 1946.

5. SUNGLASSES carrying the trade mark  
SOLAVOID have been sold in my pharmacy for  
five years.

20 6. ALL Polaroid sunglasses that I have sold  
have polarised lenses which lenses are almost  
exclusively made of plastic. Most Solavoid  
sunglasses that I have sold do not have  
polarised lenses. Solavoid sunglasses  
having polarised lenses mainly have glass  
rather than plastic lenses.

30 7. IN my pharmacy all sunglasses including  
Polaroid sunglasses, Solavoid sunglasses and  
sunglasses sold under various other trade  
marks or brands are displayed on three separate  
display stands from which customers may select  
the sunglasses suited to their requirements.  
It is my practice to mix the various brands  
on the stands.

8. I have never experienced any confusion  
between the trade marks Polaroid and Solavoid.  
To me these identification marks are quite  
different. Polaroid suggests a scientific  
process of splitting light with prisms.



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Allen for  
Respondent  
(Appellant)

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Solavoid conjures up the Latin word of "sun" and the word "avoid". In all cases Polaroid and Solavoid sunglasses are received from the distributors with a swing ticket which is coloured green, white and blue in the case of Polaroid sunglasses and in no way resembles the swing tickets attached to Solavoid sunglasses. In many cases the respective trade marks Polaroid and Solavoid are also written on the temple of the sunglasses.

10

9. NO member of the public has ever complained to me that he or she has been confused between the words Polaroid and Solavoid. No member of my staff has ever mentioned to me that he or she had received a complaint from a member of the public regarding alleged confusing similarity between the words Polaroid and Solavoid.

10. IN the last 3 years my pharmacy has sold about 552 pairs of sunglasses each year. The majority were sunglasses having non-polarised lenses and most were sold in the period extending between November and March.

20

11. I am aware the Polaroid sunglasses are advertised on television but I am not aware of any advertising of Solavoid sunglasses in newspapers, periodicals or on radio or television.

30

12. FROM serving customers in my shop I believe that most purchase sunglasses more especially because the style appeals to them rather than because the sunglasses carry a particular trade mark.

13. MOST of the sunglasses sold by my pharmacy over the last five years have been those having non-polarised lenses. However among sunglasses having polarised lenses my pharmacy sells more Polaroid sunglasses than Solavoid sunglasses.

40

14. POLAROID sunglasses are distributed to my company by J. Yock & Co. Auckland, and Sharland & Co. Auckland. Solavoid sunglasses are distributed to my company by Solavoid International Limited. I associate the trade mark Solavoid with Solavoid International Limited and the trade mark Polaroid with Polaroid Company.

In the Supreme Court of New Zealand

No.34

Affidavit of Dennis Bryant Allen for Respondent (Appellant)

17th April 1972

- continued

10 SWORN at Waitara )  
this 17th day of )  
April 1972 before ) "D.B. Allen"  
me : )

"H.N. Brownlie"

A Solicitor of the Supreme Court of New Zealand

No. 35

No.35

AFFIDAVIT OF ROYCE LANGDON BARCLAY

I, ROYCE LANGDON BARCLAY of Hawera, make oath and say as follows :

Affidavit of Royce Langdon Barclay for Respondent (Appellant)

5th May 1972

20 1. I am a qualified Pharmacist employed by Barclay Rowlands Limited trading as Central Pharmacy of 158 High Street, Hawera; (hereinafter called "my company").

2. I have been a qualified pharmacist for 22 years and have been Manager of my Company for 17 years.

3. THAT approximately 500 customers enter the shop of my company each week, being both regular and casual shoppers.

30 4. POLAROID brand sunglasses have been sold by my company for approximately 10 years. I believe the owner of the trade mark POLAROID to be Polarisers (N.Z.) Limited.

5. SOLAVOID brand sunglasses have been sold by my company for approximately 5 years. I believe the owner of the trade mark SOLAVOID to be Solavoid International Limited.

In the Supreme  
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Zealand

No.35

Affidavit of  
Royce Langdon  
Barclay for  
Respondent  
(Appellant)

5th May 1972

- continued

6. BESIDES POLAROID brand and SOLAVOID brand sunglasses my company sells many other brands of sunglasses. They are sold from individual display stands.

7. MY company sells approximately 400 pairs of sunglasses a year most of the sales being in the period November to May.

8. I have at no time experienced confusion between the trade marks POLAROID and SOLAVOID. I consider that the names have some small similarity but name confusion is one thing that chemists particularly watch and to my knowledge I have not encountered or been informed of any confusion or complaints by the public as to any similarity of the marks POLAROID and SOLAVOID as used for sunglasses. The term polarised is the main point of confusion as many think that all good sunglasses are polarised. 10

9. THAT I am aware that the sale of both POLAROID and SOLAVOID sunglasses is promoted by advertising. I am aware of television and magazine advertising of POLAROID brand sunglasses and of radio and television advertising in respect of SOLAVOID sunglasses. 20

10. THAT in dealing with purchasers of sunglasses it has been my experience that while some consider POLAROID to be a trade mark for a specific brand of polarised sunglasses, some members of the public are ignorant of the fact that "polarised" refers to a process and not a trade mark. This ignorance is proven by the fact that customers ask for polaroids and frequently add that they prefer the glass type. In fact most Polaroid brand sunglasses have plastic not glass lenses. 30

11. SOLAVOID sunglasses can be purchased with both polarised and non polarised lenses. Those with polarised lenses can be clearly distinguished by an attached test label. The majority of sunglasses sold by my company are those with non polarised lenses. 40

12. IT has been my experience that POLAROID brand and SOLAVOID brand sunglasses are sold in approximately equal quantities by my company. I consider however that the majority of my customers who purchase sunglasses purchase mainly for style and price reasons rather than for the reason that they are of a particular trade brand.

In the Supreme Court of New Zealand

No.35

Affidavit of Royce Langdon Barclay for Respondent (Appellant)

5th May 1972

- continued

10 SWORN at Hawera this )  
5th day of May 1972 ) "R.L. Barclay"  
before me : )

"Gordon D. Smart"

A Solicitor of the Supreme Court of New Zealand

No. 36

AFFIDAVIT OF BRYANT GOLDSBURY

No.36

I, BRYANT GOLDSBURY make oath and say as follows :

Affidavit of Bryant Goldsbury for Respondent (Appellant)

17th April 1972

1. I have been qualified as a pharmacist for 34 years.  
20 2. I am the Manager of Goldsbury's Pharmacy Limited, 185 Victoria Avenue, Wanganui, hereinafter referred to as "my pharmacy". A staff of seven is employed in my pharmacy.

3. SUNGLASSES sold under the trade mark POLAROID have been stocked in my shop since before World War II. Sunglasses sold under the trade mark SOLAVOID have been stocked in my shop for five years. In this affidavit I shall refer to these sunglasses as  
30 "Polaroid" and "Solavoid" sunglasses respectively.

4. APART from Polaroid and Solavoid sunglasses various other brands of sunglasses are sold in my pharmacy.

In the Supreme  
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No. 36

Affidavit of  
Bryant  
Goldsbury for  
Respondent  
(Appellant)

17th April 1972

- continued

5. POLAROID and Solavoid sunglasses and the various other brands of sunglasses are displayed on a display stand in my pharmacy from which purchasers may select their requirements.

6. MOST sunglasses are sold by my pharmacy in the summer months.

7. I am aware of advertising promoting Polaroid sunglasses in newspapers and on television and in the form of point of sale display material but I am unaware of any advertising of Solavoid sunglasses apart from point of sale display material.

10

8. I am aware that all Polaroid sunglasses have polarised lenses. Some Solavoid sunglasses have polarised lenses but the majority sold in my pharmacy have non-polarised lenses. Polaroid sunglasses may be identified by the label attached to the sunglasses when they are displayed for sale. Solavoid sunglasses having polarised lenses may be identified by the label attached to the sunglasses which refers to the polarised lenses and sometimes includes a tester disc. To me the labels attached to Polaroid sunglasses on the one hand and Solavoid sunglasses on the other hand are quite different and I have never experienced any difficulty distinguishing the labels. No purchaser of sunglasses has ever complained to me that he or she was confused between the labels used on Polaroid and Solavoid sunglasses. There is produced to me and marked "BG/1" a Polaroid label and three Solavoid labels.

20

30

9. THE majority of sunglasses sold by my pharmacy have non-polarised lenses. It has been my experience in selling sunglasses that most persons appear to purchase sunglasses mainly because the style and price appeals to them rather than because the sunglasses carry a particular trade mark.

40

10. MY pharmacy sells more Solavoid sunglasses than Polaroid sunglasses or any other brand. I attribute this to the fact that

Solavoid sunglasses have a wider range of frames and lenses.

In the Supreme Court of New Zealand

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Affidavit of Bryant Goldsbury for Respondent (Appellant)

17th April 1972

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10 11. I have never experienced confusion between the trade marks POLAROID and SOLAVOID. My familiarity with the trade mark POLAROID derives from having stocked and sold these sunglasses over such a long period so that it is unlikely that I would be confused by the word SOLAVOID which to me gives a different visual, aural and mental impression from POLAROID. No member of the public has ever mentioned to me that he or she was confused between the words POLAROID or SOLAVOID, neither has any member of my staff mentioned to me that anyone had complained about confusion between the trade marks POLAROID and SOLAVOID.

20 SWORN at Wanganui this )  
17th day of April 1972 ) "Bryant Goldsbury"  
before me :

"A.W. Mazengarb"

A Solicitor of the Supreme Court of New Zealand

No. 37

No. 37

AFFIDAVIT OF DOUGLAS LESLIE GRANT

Affidavit of Douglas Leslie Grant for Respondent (Appellant)

I, DOUGLAS LESLIE GRANT, of Havelock North, make oath and say as follows :

20th April 1972

30 1. I am a qualified pharmacist and manager and principal shareholder of Grant Pharmacy Limited, Hastings, (hereinafter called "my business").

2. I have carried on the business of pharmacist at a shop (hereinafter called "my shop") at Heretaunga Street, Hastings, which is the main street of Hastings, for approximately 21 years.

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Affidavit of  
Douglas Leslie  
Grant for  
Respondent  
(Appellant)

20th April 1972

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3. A staff of 2 including 1 qualified pharmacist is employed in my shop. I believe my shop has one of the largest sales turnovers in Hawkes Bay and is classified in "Neilsen Drug Index" as "a large pharmacy". "Neilsen Drug Index" lists most pharmacies in New Zealand as small, medium or large according to sales turnover.

4. ALL the goods normally obtainable in a chemists shop including sunglasses are sold in my shop.

10

5. SUNGLASSES carrying the trade mark SOLAVOID have been sold in my shop for approximately 5 years. Sunglasses carrying the trade mark Zeiss are also sold in my shop.

6. SUNGLASSES carrying the trade mark Polaroid have not been sold in my shop for over 5 years as I was dissatisfied with the limited quantity of sunglasses the distributors of Polaroid sunglasses were able to make available for sale in my shop.

20

7. OVER the last five years sunglasses to the value of approximately \$2,000 retail have been sold in my shop each year. The value of Solavoid sunglasses has been approximately \$1,000 each year.

8. THE sunglasses offered for sale in my shop are displayed on a wire frame display so that a purchaser can see at a glance the complete range available. It is my normal practice to remove swing tickets from sunglasses having non-polarised lenses as these are bulky and get in the way and are in my opinion of no interest to purchasers, who buy sunglasses because the style and appearance pleases them. In the case of glasses having polarised lenses I retain the tag to demonstrate the effect of polarisation. There is produced to me and marked DLG/1 the tag attached to Solavoid sunglasses to demonstrate the effect of Polarisation.

30

40

9. MOST of the sunglasses sold in my shop including most of the sunglasses sold under the trade mark Solavoid have lenses that are not polarised. I estimate that approximately 95 per cent of all glasses sold in my shop have non-polarised lenses.

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10. MOST purchasers appear to select sunglasses on the basis of their appearance rather than on the basis that they carry a particular trade mark or have a particular type of lenses but I make it a practice to ascertain the purpose for which the sunglasses are to be worn such as driving, fishing and so on and then explain to purchasers the advantages in each case of polarised or non-polarised lenses and I endeavour to ensure that my staff is also in a position to advise customers in this way.

Affidavit of  
Douglas Leslie  
Grant for  
Respondent  
(Appellant)

20th April 1972

- continued

20. OCCASIONALLY shoppers specifically ask for Polaroid sunglasses and in such cases I immediately point out that Polaroid brand sunglasses are not stocked in my shop. My staff are instructed to do the same. Conversation with such shoppers sometimes indicates that they have an erroneous impression as to the significance of Polaroid and regard it as a generic name for all sunglasses having polarised lenses. Such  
30 shoppers may be satisfied with a pair of sunglasses other than Polaroid brand sunglasses. In other cases the shopper is quite clear that Polaroid is the trade mark of one manufacturer among others who make sunglasses having polarised lenses and that he wishes to purchase this Polaroid brand and in this case I direct the shopper to the nearest chemist who sells Polaroid brand sunglasses.

40. I became aware of Solavoid sunglasses through meeting a representative of Hannaford and Burton Limited at the rooms of my brother who is an optician in Hastings and I have always identified the trade mark Solavoid with Hannaford and Burton Limited even though I order supplies of sunglasses



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from the distributor, Solavoid International Limited. In the same way I am aware that the word Polaroid is the trade mark of Polaroid Corporation of U.S.A., even though in the past when Polaroid brand sunglasses were sold in my shop they were distributed to me by wholesale houses such as Sharland & Company Limited.

13. I have never experienced any confusion between the trade marks Polaroid and Solavoid and until I was informed about the present proceedings I was unaware that there was any question of confusion between the two words. Polaroid to me indicates a lens of polarised plastic. Solavoid does not indicate a polarised lens but a brand although some Solavoid sunglasses do have polarised lenses which are made of glass not plastic.

10

14. NO member of the public has ever complained to me he or she has experienced confusion between the words Polaroid and Solavoid. Neither has any member of my staff mentioned to me that any member of the public complained of being confused between the words Polaroid and Solavoid.

20

15. THE sale of Solavoid sunglasses is promoted in the summer months by radio advertising on the local radio station.

SWORN at Hastings )  
this 20th day of )  
April 1972 before )  
me :

"D.L. Grant"

30

"L.M. Smith"

A Solicitor of the Supreme Court  
of New Zealand

No. 38

AFFIDAVIT OF PETER JAMES MARDONIn the Supreme  
Court of New  
Zealand

I, PETER JAMES MARDON of Wellington, make oath and say as follows :

No.38

1. I am a qualified chemist and also the Managing Director of Mardon Pharmacy Limited (hereinafter called "my company").

Affidavit of  
Peter James  
Mardon for  
Respondent  
(Appellant)

2. THAT my company employs a staff of 4 including 2 qualified pharmacists and carries on business in a shop (hereinafter called "my shop") at 240 Lambton Quay, Wellington, which business includes the supply of drugs and medicines under medical prescription, the sale of proprietary medicines and drugs, cosmetics, perfumery, films, and in general all lines normally obtainable in a chemists shop.

4th February  
1972

3. THAT my shop is situated opposite the D.I.C. department store about the middle of Lambton Quay, which is one of the busiest shopping thoroughfares in Wellington. By reason of its situation my shop is visited by regular and casual customers who would I believe represent a cross section of the general public in Wellington including housewives, working people, business and professional people and civil servants.

4. SUNGLASSES have been sold in my shop since the commencement of business in 1964. Over the last five years I estimate that my shop has sold about three hundred pairs of sunglasses a year. The majority are sold in the period between October and February in each year.

5. THROUGHOUT the period 1964 to the present, sunglasses sold under the brand or trade mark POLAROID have constituted at least one half of all sunglasses sold in my shop over this period have carried a number of trade marks including ZEISS, UVEZ, SOLFLEX and ANDRY.

In the Supreme  
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Affidavit of  
Peter James  
Mardon for  
Respondent  
(Appellant)

4th February  
1972

- continued

6. ON the basis of my experience POLAROID sunglasses are probably the best known brand of sunglasses and are well advertised in newspapers and periodicals circulating in New Zealand particularly in the summer months. I believe this advertising assists the sale of POLAROID sunglasses and helps to make the public familiar with the trade mark POLAROID.

7. THE trade mark POLAROID appears to be well known to customers of my shop since many purchasers of sunglasses ask for POLAROID sunglasses by name. 10

8. SUNGLASSES sold under the trade mark SOLAVOID have been sold in my shop from about December 1971. Nevertheless I was previously aware of SOLAVOID sunglasses from having seen them on display in other chemists shops and from having received order forms and promotional material from the distributors of SOLAVOID sunglasses. To the best of my recollection my company first received promotional material and order forms for SOLAVOID sunglasses in the latter half of 1970. 20

9. THE first time that promotional material and order forms were received I experienced no confusion between the trade marks SOLAVOID and POLAROID. I was conscious that the word SOLAVOID was a trade mark different from the trade mark POLAROID with which I was already familiar. I had no reason to think and did not think that there was some connection between the owners of the trade marks SOLAVOID and POLAROID. 30

10. IN my shop the full range of sunglasses currently available is displayed on a rectangular wire grill located near the front of the shop measuring approximately 5 ft. high by 3 ft. wide on which approximately 80 sunglasses can be displayed. The purpose of this is to enable a prospective purchaser to see at a glance the full 40

range of sunglasses available and to select the pair preferred since it would take too long for the sales persons to produce the full range of sunglasses available from behind the counter.

In the Supreme Court of New Zealand

No.38

10 11. IN the case of POLAROID sunglasses each pair of sunglasses has attached a square or circular tri-colour swing ticket employing the colours white, blue and green. In the white portion there is a disc to enable the purchaser to make a test to satisfy himself that the glasses have polarising lens. To the best of my recollection POLAROID sunglasses have employed a similar tri-colour swing ticket as long as POLAROID sunglasses have been sold in my shop. When glasses are displayed in my shop on the grill already referred to POLAROID sunglasses are readily identified and distinguished from other sunglasses by the tri-colour swing ticket. There is produced to me and marked PJM/1 a POLAROID swing ticket.

Affidavit of Peter James Mardon for Respondent (Appellant)

4th February 1972

- continued

20 SWORN at Wellington )  
this 4th day of )  
February 1972 ) "P.J. Mardon"  
before me : )

"H.S. Gajadhar"

A Solicitor of the Supreme Court of New Zealand

No. 39

No.39

30 AFFIDAVIT OF ELDER FREDERICK MASSON

Affidavit of Elder Frederick Masson for Respondent (Appellant)

I, ELDER FREDERICK MASSON of New Plymouth, make oath and say as follows :

27th April 1972

1. I am a Pharmacist and the majority shareholder in Teeds Chemists Ltd., 56 Devon Street West, New Plymouth.

2. I qualified as a Pharmacist in March 1939 and have managed Teeds Chemists Ltd., hereinafter called "my shop", for 24 years.

In the Supreme  
Court of New  
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\_\_\_\_\_  
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Affidavit of  
Elder Frederick  
Masson for  
Respondent  
(Appellant)

27th April 1972

- continued

3. MY shop is situated in the main shopping thoroughfare of New Plymouth. A staff of 24 including 3 qualified chemists is employed. I estimate that about 2,800 persons enter the shop each week for the purpose of purchasing or examining goods.

4. SUNGLASSES carrying the trade mark POLAROID embossed on the temple and/or on a swing ticket attached to the sunglasses have been sold in my shop for approximately 12 to 15 years. In this affidavit I shall refer to such sunglasses as "Polaroid sunglasses".

10

5. SUNGLASSES carrying the trade mark SOLAVOID embossed on the temple and/or on a swing ticket attached to the sunglasses have been sold in my shop for 4 years. In this affidavit I shall refer to such sunglasses as "Solavoid sunglasses". In addition to Polaroid and Solavoid sunglasses a wide selection of sunglasses representing all the major brands available for sale in chemists shops are sold in my shop.

20

6. IN my shop there is a special sunglasses section wherein is displayed a minimum of 360 sunglasses and in addition to this general display there are individual stands on which are displayed a particular range of sunglasses coming in a wide range of styles such as Polaroid sunglasses and Solavoid sunglasses. Consequently there are in my shop mixed displays wherein are displayed sunglasses carrying the trade marks of different manufacturers and solo displays wherein are displayed the sunglasses of one particular manufacturer.

30

7. OVER the last three years I believe my shop has sold a minimum of 3000 sunglasses each year. There is now a year round demand for sunglasses by the public but the peak period of sales is from September to April.

40

8. I have never experienced any confusion between the trade marks POLAROID and SOLAVOID. To my mind there has always been a very clear division between the words POLAROID and SOLAVOID. The word SOLAVOID has the suggestion of "avoiding the sun" and this is emphasised in some Solavoid labels where the word "Sol" is surrounded by a stylised representation of the sun making it a separate entity from the word "avoid". To me it represents a very clever play on words that has an immediate and direct impact on the mind. There is produced to me and marked "EFM/1" the Solavoid label above referred to.

In the Supreme  
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No.39

Affidavit of  
Elder Frederick  
Masson for  
Respondent  
(Appellant)

27th April 1972

- continued

9. THAT the syllable SOL indicating the sun, and POLA indicating polarising, are familiar to me from other products that are or have been sold in my shop such as SOLARCAINE which is a trade mark used on sunburn and antiseptic cream, SOLARSTICK which is a trade mark used on a lip sunscreen lipstick, SOLFLEX and SOLAREX which are trade marks used on sunglasses and POLAREX which is a trade mark used on sunglasses.

10. TO my conscious knowledge I have never received a complaint from a member of the public that he or she was deceived or confused by reason of similarity between the trade marks POLAROID and SOLAVOID or had purchased SOLAVOID sunglasses in error for POLAROID sunglasses. To the best of my recollection no member of the staff of my shop has ever mentioned to me that he or she had received such a complaint.

11. WHILST I am not aware of any confusion by the public between the trade marks POLAROID and SOLAVOID, I am aware that some members of the public tend to be confused about the qualities of polarised lenses as opposed to tinted lenses. I believe that myself and my staff have been able to inform the public purchasing sunglasses about the different characteristics of polarised and tinted lenses. In the case of Solavoid sunglasses, the type of lenses is clearly stated on the swing ticket attached to the sunglasses.

In the Supreme  
Court of New  
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No.39

Affidavit of  
Elder Frederick  
Masson for  
Respondent  
(Appellant)

27th April 1972

- continued

12. WHILST the trade mark POLAROID is closely associated with glasses having polarised lenses, I have never been aware of any difficulty on the part of the public in appreciating that there are other brands of sunglasses having polarised lenses such as SOLAVOID, POLAREX and so forth.

13. THE trade mark SOLAVOID was associated with tinted sunglasses for at least a full year before the introduction of Solavoid sunglasses with polarised lenses. It is my belief that at no time have the makers of Solavoid Sunglasses tried to associate their polarised lenses with those of the Polaroid company but on the contrary they have created their individual identity with the label "Genuine Glass Polarised lenses". There is produced to me and marked "EFM/2" a sample of the label referred to.

14. IN buying sunglasses members of the public appear to be mainly influenced by fashion trends and personal choice rather than by brand names or trade marks. Purchasers with eye problems tend to ask for "a good quality sunglass".

15. MY shop sells more sunglasses having non-polarised lenses than those having polarised lenses. I believe this is due to the wider range of sunglasses available with tinted, that is non-polarised lenses, particularly in the lower price brackets.

16. AT present my shop sells more Solavoid sunglasses than Polaroid sunglasses. One reason for this is that Solavoid sunglasses come in a range that includes both tinted and polarised lenses whereas all Polaroid sunglasses have polarised lenses.

17. I believe that the owner of the trade mark SOLAVOID is Hannaford & Burton Limited whose principal place of business is at Auckland, New Zealand. Apparently the

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owner of the trade mark POLAROID is the Polaroid Company of U.S.A., though the situation has never been entirely clear to me as the New Zealand representatives of the Polaroid Company have been subject to change.

SWORN at New Plymouth )  
this 27th day of April ) "E.F. Masson"  
1972 before me : )

In the Supreme  
Court of New  
Zealand

No.39

Affidavit of  
Elder Frederick  
Masson for  
Respondent  
(Appellant)

27th April 1972

- continued

10

"R.N. Chilcott"

A Solicitor of the Supreme Court  
of New Zealand

No. 40

AFFIDAVIT OF DONALD JOHN MORRISON

I, DONALD JOHN MORRISON, of Wanganui, make oath and say as follows :

Affidavit of  
Donald John  
Morrison for  
Respondent  
(Appellant)

29th March 1972

20

1. THAT I have been qualified as a pharmacist for 20 years and am Manager of D.J. Morrison Chemists Limited, of 167 Victoria Avenue, Wanganui, (hereinafter referred to as "my company").

2. I have been Manager of my company for 15 years. At present I employ a staff comprising one qualified pharmacist and three girls.

3. THAT POLAROID brand sunglasses have been sold by my company for 15 years. I believe that the owner of the trade mark POLAROID is Polarisers International Limited.

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4. MY company has sold SOLAVOID sunglasses for approximately 5 years and I believe the owner of the trade mark SOLAVOID is Solavoid International Limited.

5. THAT in addition to SOLAVOID and POLAROID brand sunglasses my company stocks various other brands of sunglasses.



In the Supreme  
Court of New  
Zealand

—  
No. 40

Affidavit of  
Donald John  
Morrison for  
Respondent  
(Appellant)

29th March 1972

- continued

6. I have never experienced any confusion between the trade marks POLAROID and SOLAVOID and to my knowledge have never received complaints from the public directly or through my staff that any member of the public has been confused by the similarity of the trade marks POLAROID and SOLAVOID of that they have purchased SOLAVOID sunglasses in error for POLAROID sunglasses. Polaroid has always brought to mind Polarized light, an association which cannot be gained from the trade mark Solavoid. The prefix "Sol" brings to my mind only the thought of "sun". 10

7. THAT I am aware that both POLAROID and SOLAVOID sunglasses are promoted by advertising and have knowledge of POLAROID brand sunglasses being advertised in magazines and television and of SOLAVOID sunglasses being advertised on the radio. 20

8. ON the basis of my experience I consider that some members of the general public are aware of the precise significance of the word POLAROID as a trade mark while others consider POLAROID as a generic name for sunglasses having Polarized lenses, irrespective of who manufactures them.

9. THAT my company sells SOLAVOID sunglasses with both polarized and non polarized lenses. The polarized lens sunglasses are clearly labelled to indicate the fact that they have polarized lenses. The majority of sunglasses sold by my company have non polarized lenses. 30

10. ON the basis of my experience, I believe that the general public purchase sunglasses not by virtue of the fact that they carry a particular trade name but mainly because the style appeals to present fashion. 40

11. IT has been my experience that SOLAVOID sunglasses have enjoyed a

larger quantity of sales by my company than any other brand. The reason for this I believe is that they offer a wider range of styles and a lower price.

SWORN at Wanganui )  
 this 29th day of )  
 March 1972 before ) "D.J. Morrison"  
 me : )

"F.F. Latham"

A Solicitor of the Supreme Court  
of New Zealand

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In the Supreme  
 Court of New  
 Zealand

No.40

Affidavit of  
 Donald John  
 Morrison for  
 Respondent  
 (Appellant)

29th March 1972

- continued

No. 41

AFFIDAVIT OF BRYAN CARROLL PEARSON

I, BRYAN CARROLL PEARSON, of Napier, make oath and say as follows :

1. I am a qualified pharmacist and am employed as Manager of "Hobsons Ltd.", chemists, Napier.

2. I qualified as a pharmacist in 1958 and have been employed by Hobsons Ltd. (hereinafter called "my company") for about 8 years.

20 3. THE shop of my company is situated at Hastings Street, one of the main business thoroughfares of Napier. My company employs a staff of 1 man and 3 women including 1 qualified pharmacist and carries on the normal business of a retail pharmaceutical chemist including the supply of pharmaceutical preparations under prescription, the supply of proprietary pharmaceuticals and medicines, cosmetics, toiletries, films and sunglasses.

30 4. POLAROID brand sunglasses have been sold by my company to my knowledge for as long as I have been employed by my company and I believe were sold by my company for many years prior to this.

No.41

Affidavit of  
 Bryan Carroll  
 Pearson for  
 Respondent  
 (Appellant)

5th May 1972

In the Supreme  
Court of New  
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No.41

Affidavit of  
Bryan Carroll  
Pearson for  
Respondent  
(Appellant)

5th May 1972

- continued

5. SOLAVOID brand sunglasses have been sold in my company's shop for approximately two years. At present POLAROID and SOLAVOID sunglasses are the main brands on sale in the shop.

6. FROM the time SOLAVOID sunglasses were first displayed in my company's shop they have sold well and at present my company sells more SOLAVOID sunglasses than POLAROID sunglasses. However POLAROID sunglasses appear to me to have long been well known to the public interested in purchasing sunglasses since they are often asked for by name.

10

7. THAT in my experience the majority of purchasers of sunglasses are aware that POLAROID is the brand or trade mark of a particular manufacturer. In a few cases however I have formed the impression that a purchaser has used the word POLAROID as a general term for any brand of sunglasses having polarized lenses or even as a general term for sunglasses.

20

8. WHEN a person asks for POLAROID sunglasses I draw their attention to the distinctive swing ticket that is coloured white, blue, and green and has a disc of plastic material to enable the polarising qualities of the lenses to be verified as evidence that the glasses are genuine POLAROID glasses and I make any explanation that seems called for.

30

9. OVER the last 10 years it has become common practice for sunglasses to be displayed on display stands that are either free standing or able to be placed on a counter or shelf rather than kept behind a counter. This enables the complete range of sunglasses to be inspected by shoppers. In my company's shop SOLAVOID sunglasses are displayed on a free standing stand purchased from Solavoid International Limited, the distributor of SOLAVOID sunglasses. POLAROID sunglasses are displayed on this stand as well in a special Polaroid box which is shown to anyone asking for POLAROID sunglasses.

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10. BOTH POLAROID sunglasses and SOLAVOID sunglasses carry a characteristic swing ticket by which the respective brands can be readily identified. Additionally the words POLAROID and SOLAVOID may be embossed on some part of the glasses. The swing ticket used in respect of POLAROID sunglasses consists of a rectangular ticket in the colours white, blue and green and having near one corner a disc of plastic material to enable the polarizing qualities of the lenses to be tested. To the best of my knowledge such colours have been employed on the same or similar ticket for many years. SOLAVOID sunglasses have differently shaped tickets. There is produced to me and marked BCP/1 three swing tickets used to identify SOLAVOID brand sunglasses. These swing tickets provide a means by which POLAROID and SOLAVOID sunglasses may be quickly recognised. I draw attention to the fact that the large ticket with the word SOLAVOID in yellow and the smaller yellow and black ticket with the tester disc are attached to glasses having polarized glass lenses whilst the large ticket with the word SOLAVOID in orange is attached to glasses with non-polarized lenses.

11. FROM the time I first received promotional literature for SOLAVOID sunglasses and was requested to place an order for SOLAVOID sunglasses I never experienced any confusion between the brand names POLAROID and SOLAVOID which to me look and sound different and suggest different ideas. To me the idea suggested by the word POLAROID is the Polarised Sunglasses made by Polaroid Corporation whilst SOLAVOID suggest sunglasses of different types sold to us by Hannaford & Burton Limited not necessarily of the Polarised variety.

12. I have never received any complaint from a purchaser of sunglasses that he or she had been confused or deceived between the brand names POLAROID and SOLAVOID.

In the Supreme  
Court of New  
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—  
No.41

Affidavit of  
Bryan Carroll  
Pearson for  
Respondent  
(Appellant)

5th May 1972

- continued

In the Supreme  
Court of New  
Zealand

No.41

Affidavit of  
Bryan Carroll  
Pearson for  
Respondent  
(Appellant)

5th May 1972

- continued

13. NO member of my staff has ever brought to my attention that he or she had received a complaint from a purchaser of sunglasses that the purchaser had been confused or deceived between the brand names POLAROID or SOLAVOID.

SWORN at Napier )  
this 5th day of May ) "B.C. Pearson"  
1972 before me : )

[Signature Illegible]

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A Solicitor of the Supreme Court  
of New Zealand

No.42

No. 42

AFFIDAVIT OF CHARLES BAIRD QUAY

Affidavit of  
Charles Baird  
Quay for  
Respondent  
(Appellant)

12th April 1972

I, CHARLES BAIRD QUAY, of New Plymouth, make oath and say as follows :

1. I have been a qualified pharmacist for 27 years and I am the main shareholder in Quays Pharmacy Limited, of 93 Devon Street, New Plymouth, hereinafter called "my pharmacy". My pharmacy employs a staff of three.

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2. SUNGLASSES bearing the trade mark Polaroid have been sold in my pharmacy for at least ten years. Sunglasses bearing the trade mark Solavoid have been sold in my pharmacy for four years. In addition my pharmacy sells a large range of sunglasses under various other brands and trade marks.

3. I associate the trade mark Polaroid with the goods of Polarizers (New Zealand) Limited and the trade mark Solavoid with the goods of Hannaford and Burton Limited. Polaroid sunglasses are distributed to my pharmacy by J. Yock & Co.Ltd. and Sharland Co.Ltd. Solavoid sunglasses are distributed to my pharmacy by Solavoid International Limited.

30

4. I have never experienced any confusion between the trade marks Polaroid and Solavoid. To my mind the word Polaroid suggests the idea of polarisation which is absent from the word Solavoid. Solavoid suggests to me avoidance of the sun's rays or glare. Further the presentation of Polaroid and Solavoid sunglasses is different. Polaroid sunglasses are labelled with a green, white and blue disc on which is prominently written the word Polaroid whereas Solavoid sunglasses employ labels on which is prominently written the word Solavoid. To me the trade mark Solavoid is associated with a large variety of sunglasses which include glass merille lenses, CR 39 hardened plastic safety lenses and polarised glass lenses.

In the Supreme  
Court of New  
Zealand

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No. 42

Affidavit of  
Charles Baird  
Quay for  
Respondent  
(Appellant)

12th April 1972

- continued

5. NO member of the public has ever complained to me that he or she had been deceived by similarities in the trade marks Polaroid and Solavoid, so as, for example, to have purchased Solavoid sunglasses when it was intended to purchase Polaroid sunglasses or complained that he or she had been in any way confused between the respective trade marks. Neither has any member of the public complained that the similarities between Polaroid and Solavoid are such as might be likely to deceive or cause confusion. No member of the staff of my pharmacy has ever mentioned to me that such complaints had been received from a member of the public.

6. I am aware that Polaroid sunglasses have been advertised on television and on commercial radio and that Solavoid sunglasses have been advertised on commercial radio.

7. FROM many years experience speaking to and dealing with purchasers of sunglasses I have concluded that the majority of purchasers of sunglasses consider that the word Polaroid is a generic word rather than the trade mark or brand name of sunglasses of a particular manufacturer.

In the Supreme  
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Zealand

No.42

Affidavit of  
Charles Baird  
Quay for  
Respondent  
(Appellant)

12th April 1972

- continued

8. THAT apart from sunglasses sold under the trade marks Polaroid and Solavoid there are several brands of sunglasses imported from overseas that have polarised lenses. Whilst all Polaroid sunglasses that I have encountered have polarised lenses, not all Solavoid sunglasses have polarised lenses. Solavoid sunglasses which have polarised lenses have the following identification marks :

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- (a) Sticker on one of the lenses stating that it is polarised.
- (b) One large swing ticket stating that the sunglasses have polarised lenses.
- (c) A small swing ticket which has a disc of polarising material which enables the polarising qualities of the lenses to be tested.

9. IN my pharmacy more Solavoid sunglasses are sold than Polaroid sunglasses. This is presumably because Solavoid sunglasses are available in a greater range than Polaroid sunglasses and Solavoid sunglasses are more readily available from the distributors for sale in my pharmacy.

20

10. FROM many years experience selling sunglasses I am aware that the trade mark on a pair of sunglasses has little effect in inducing a sale. The major factors that induce most persons to buy a particular pair of sunglasses are price, style and appearance and fashion demands of that particular point of time.

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SWORN at New Plymouth )  
this 12th day of April ) "Charles B. Quay"  
1972 before me : )

[Signature Illegible]

A Solicitor of the Supreme Court  
of New Zealand

AFFIDAVIT OF PETER ROBINSON

I, PETER ROBINSON, of Wellington, make oath  
and say as follows :

-----  
No.43

10 1. I am a watchmaker by trade and have been  
employed by James Smith Limited, Wellington,  
for a period of 3½ years as buyer of the  
watch and clock department (hereinafter called  
my department) which is located on the ground  
floor of the department store at the Corner  
of Cuba and Manners Street, Wellington.  
Besides myself the department is at present  
staffed by two sales ladies.

Affidavit of  
Peter  
Robinson for  
Respondent  
(Appellant)

10th March 1972

20 2. IN addition to watches and clocks my  
department sells sunglasses. During the  
period I have been employed in my department  
the department has sold sunglasses made in  
New Zealand, Australia, Germany, France,  
Italy and Japan. Among the brand names  
or trade marks used on or in relation to  
sunglasses sold by my department are the  
following - POLARFLEX, POLAROID, ZEISS,  
SAPPHO, SAMCO and SOLAVOID. Throughout my  
affidavit I shall use the expression  
"Polaroid sunglasses" and "Solavoid sun-  
glasses" to indicate sunglasses sold under  
the trade marks POLAROID and SOLAVOID  
respectively, which trade marks are embossed  
on some portion of the sunglasses such as  
the temple and/or written on a swing ticket  
30 attached to the glasses.

40 3. I believe the owner of the trade mark  
POLAROID is New Zealand Optical Company  
Limited of Wellington, and that the owner of  
the trade mark SOLAVOID is Hannaford &  
Burton Limited of Auckland and Wellington.  
Supplies of Polaroid sunglasses are  
distributed to my company by J. Yock & Co.  
Ltd. of Auckland and Wellington, but I am  
aware that Sharland & Co.Ltd., of Wellington  
also distribute Polaroid sunglasses. I  
order supplies of Solavoid sunglasses from  
Hannaford & Burton Limited, Wellington, and  
the goods are received from Solavoid  
International Limited.



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Affidavit of  
Peter  
Robinson for  
Respondent  
(Appellant)

10th March 1972

- continued

4. MY department has sold Polaroid sunglasses throughout the period that I have been employed by James Smith Limited. Solavoid sunglasses have been sold in my department for approximately 2½ years.

5. THE number of sunglasses sold by my department has steadily increased year by year from when I joined my department. In the twelve month period covering the summer of 1970/71 my department sold approximately 1800 pairs of sunglasses. If sales over the twelve month period covering the summer of 1971/72 continue at the present rate I estimate that my department will sell 2600 pairs of sunglasses in the period. 10

6. ONE factor that I believe has contributed to increased sales of sunglasses are two free standing display stands obtained from Hannaford & Burton Limited. These display stands are located in front of the counter where the public have access to them and may readily view the complete range of sunglasses available and select their requirements. 20

7. OVER the period covering the summers 1969/70 and 1970/71 my department has sold more Solavoid sunglasses than any other brand. The majority of the Solavoid glasses sold have non-polarised lens.

8. I am aware that the sale of both Polaroid and Solavoid sunglasses are promoted by advertisement. Most and possibly all of this advertising takes place in the summer months when there is most demand for sunglasses although there is a smaller demand for sunglasses in other seasons of the year by such persons as skiers, climbers, and those who wear sunglasses as an item of fashion. I have seen advertisements for Polaroid sunglasses in newspapers and periodicals circulating in New Zealand and I have heard advertisements for Polaroid and Solavoid sunglasses over commercial radio. Additionally, the distributors of both Polaroid and Solavoid sunglasses distribute 30 40

brochures giving details of their sunglasses and point of sale advertising material. For instance the distributors of Polaroid sunglasses give to retailers a small cardboard display stand prominently featuring the word Polaroid for placing on a counter.

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No.43

10 9. I have never been confused between the trade marks POLAROID and SOLAVOID or in any way deceived by these trade marks. I was well aware that there were two different trade marks, POLAROID and SOLAVOID immediately before Solavoid sunglasses were first sold in my department because I had noted Solavoid sunglasses on sale in the premises of other retailers and I approached Hannaford & Burton Limited with a view to stocking and selling Solavoid sunglasses.

Affidavit of  
Peter  
Robinson for  
Respondent  
(Appellant)

10th March 1972

- continued

20 10. THE main basis on which I distinguish the trade mark POLAROID from the trade mark SOLAVOID is that the word POLAROID in relation to sunglasses strongly suggests glasses having polarised lenses. Such an idea is absent in the word SOLAVOID.

30 11. NO member of the public has ever mentioned to me that he or she had been confused between the trade marks POLAROID and SOLAVOID or had purchased solavoid sunglasses in error for Polaroid sunglasses or vice versa. Neither has any member of the staff of my department ever informed me that a member of the public has complained or mentioned that he or she had been confused or deceived between the trade marks POLAROID and SOLAVOID.

40 12. BOTH POLAROID and SOLAVOID sunglasses are clearly marked with the respective trade marks. All sunglasses are received with a swing ticket attached. Polaroid sunglasses employ one standard swing ticket on which is prominently written the trade mark POLAROID. Solavoid sunglasses employ four different swing tickets on all of which is prominently written the trade mark SOLAVOID. In addition most Polaroid and Solavoid sunglasses have the respective

In the Supreme Court of New Zealand

No.43

Affidavit of Peter Robinson for Respondent (Appellant)

10th March 1972

- continued

trade marks embossed on the temple, the main exceptions to this being clip on types of sunglasses where the wire frame is too narrow to emboss wording, and glasses having translucent frames.

13. ON the basis of my experience of selling sunglasses and discussing sunglasses with customers most purchasers of sunglasses buy sunglasses because the style appeals to them rather than because they carry a particular trade mark. Nevertheless a minority of purchasers, possibly fifteen per cent of persons purchasing sunglasses from me ask for a particular brand by name, the most frequently requested brands being POLAROID, SOLAVOID and ZEISS in that order. 10

14. ON the basis of talking to customers I have formed the opinion that a number of purchasers of sunglasses are not aware of the significance of the word POLAROID, that is that the word POLAROID is the trade mark of one particular manufacturer. I would estimate that among the customers who have asked me for a pair of Polaroid sunglasses about twenty per cent have been aware that POLAROID is the trade mark of one particular manufacturer. The remainder of customers requesting a pair of Polaroid sunglasses used the term to cover any sunglasses having polarised lenses and even as a general term for a pair of sunglasses. Although all Polaroid sunglasses have polarised lenses not all sunglasses having polarised lenses are Polaroid sunglasses. For example sunglasses sold under the trade mark POLARFLEX have polarised lenses and so do some but not all Solavoid sunglasses. There is produced to me and marked PR/1 a swing ticket from a pair of Polarflex sunglasses having on it a disc to enable the polarizing effect of the sunglasses to be established. 20 30 40

SWORN at Wellington this )  
10th day of March 1972 ) "P. Robinson"  
before me : )

[Signature Illegible]

A Solicitor of the Supreme Court of New Zealand

REASONS FOR JUDGMENT OF BEATTIE J.

This is an application under s.41 of the Trade Marks Act 1953 by the Polaroid Corporation of Massachusetts to seek rectification of the Trade Marks Register by removal of Registration No. B82513 of the trade mark "SOLAVOID" registered in Class 9 in respect of the goods "sun glasses".

10 The respondent, who is so registered, is an Auckland based company which since 1938 has been continually engaged in business as manufacturers' agents, importers and optical wholesalers. In September 1966 the respondent requested a search of the Register but was advised that there was no registration likely to conflict with the mark "SOLAVOID" for sunglasses in Class 9. It therefore seemed eligible for registration in Part B of the Register. Registration was effected  
20 on the 21 October 1966 and is current until the 21 October 1973 when it may be renewed subject to the outcome of this matter.

The applicant from 1938 until 1955 has had its sunglasses distributed in New Zealand through Arthur Cocks & Company (N.Z.) Limited. The glasses were sold by reference to the trade mark "POLAROID". From 1964 until 1966 a new company, Polarizers (New Zealand) Limited of Wellington, distributed the sun-  
30 glasses which had been imported to New Zealand but in 1964, that company commenced assembling sunglasses for sale incorporating Polaroid lenses manufactured by the applicant in the United States and other component parts manufactured in Australia and New Zealand. Recently, Polarizers (New Zealand) Limited entered into a licence agreement with the applicant for the manufacture and marketing of Polaroid sunglasses in New Zealand. An  
40 application was filed to enter the New Zealand company as a Registered User of the trade mark "POLAROID". The trade mark "POLAROID"

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was first used in New Zealand in 1938 and has been continuously used in this country in relation to sunglasses since at least 1950. The mark has been applied to the sunglasses themselves, to the boxes and other forms of packaging in which they have been sold, and to swing tickets and other labels used from time to time. It is estimated that there are probably about 200,000 Polaroid sunglasses currently in use in this country. They are available from some 1,200 retail outlets. 10

Sunglasses sold in New Zealand under the trade mark "POLAROID" have been regularly and extensively advertised by means of brochures, the daily Press, magazines and periodicals and point of sale displays. Undoubtedly, Polaroid sunglasses have acquired a wide and high reputation among members of the trade and the general public.

Late in 1968 or early 1969, Mr Brackenridge, the General Manager of Polarizers (New Zealand) Limited, became aware that there were sunglasses on the New Zealand market which were offered for sale mainly through chemist shops and departmental stores under the name "SOLAVOID". Mr Watson, a Director of the respondent company, confirms that the trade mark "SOLAVOID" was first used by his company in relation to sunglasses about January 1968. The mark has been applied to the sunglasses themselves, the display stands supplied to retailers, to the boxes, and other forms of packaging in which they have been sold and to swing tickets and other labels used from time to time. Most of the sunglasses sold under the trade mark "SOLAVOID" are made to the order of the respondent company by a subsidiary, the balance are manufactured by various overseas manufacturers to the order of the respondent. In all cases, the respondent attaches a swing ticket carrying the trade mark "SOLAVOID" to each pair of glasses and also places most pairs of them in a box or case carrying the trade mark. 20  
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Like the applicant's product, the respondent sells through approximately 1,200 retail outlets being pharmacists, optometrists, sports goods and department stores, and particularly through the well-known retailers in the four main centres of New Zealand. The glasses sold under the trade mark "SOLAVOID" are distributed to the trade by Solavoid International Limited, another subsidiary of the respondent except that optometrists are supplied with the glasses directly through the respondent. The sunglasses first went on sale to the public in September 1968 while the approximate number of sunglasses sold under the trade mark "SOLAVOID" from 1968 to March 1972 is 280,195 whose retail value is approximately \$1,000,000. Advertising and promotional material for a period of four years to December 1971 cost approximately \$21,000. Consequently, it is also fair to say that "SOLAVOID" is a well-known sunglass in this country. As the applicant has sold 750,000 Polaroid glasses over a twenty-one year period, it seems as though its average is approximately 36,000 a year as contrasted with the respondent's sales of approximately 80,000 a year. This is, therefore, not a case of insignificant competition and the Court could fairly expect an energetic prosecution of allegations of confusion or deception. Mr Watson has said that he has never received any complaint of confusion over the two types of sunglasses, nor to the best of his knowledge has any order for Polaroid sunglasses ever been forwarded to his company or his company's distributors in error rather than to the applicant or its New Zealand distributor. The respondent's trade mark "SOLAVOID" was built up by the combination and telescoping of the words "SOL", the Latin word for sun, and the English word "AVOID" meaning to shun, escape or evade. Therefore, the idea suggested is "sun avoid" or "avoid the sun". It is claimed that such an idea is completely absent in the trade mark "POLAROID" which suggests the idea of polarizing. Before

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lodging the application to register "SOLAVOID", as I have mentioned, the Commissioner's advice was taken under Regulation 103 of the Trade Marks Regulations 1954 as to whether the mark "SOLAVOID" was eligible for registration in itself and also whether there were any trade marks already on the Register likely to prevent or hinder registration. The response being favourable, the application was lodged and the mark proceeded to registration; no marks belonging to other traders were cited against it as confusingly similar marks already on the Register, and, in particular, Trade Marks 38381 and 42821 of the Polaroid Corporation were not cited against the application. 10

As stated, Mr Brackenridge was concerned because of the extensive reputation enjoyed by the trade mark "POLAROID" with the close phonetic similarity of "SOLAVOID" and the possibility of confusion. He ascertained that the Solavoid sunglasses incorporated polarizing lenses while on the cases in which they were sold, the material attached to the sunglasses at the time of retail sale and in price lists etc. had frequent use of such words as "Polarglass", "Polarplastic" and "Polarclip". Because the applicant has objected to these descriptive terms, and although the respondent has been advised it is able to use them without infringing any rights of the applicant, nevertheless as a goodwill gesture, the respondent is phasing out the use of these terms and replacing them by expanded descriptive terms such as "sunglasses with polarized glass lenses", "sunglasses with polarized plastic lenses", and "clip ons with polarized plastic lenses". I understand it is a practice not confined to the respondent to inform purchasers that sunglasses have polarizing or non-polarizing lenses if such is the case. I have examined proof of such an assertion. 20 30 40

The respondent has adduced in evidence some twenty-four affidavits primarily from watchmakers and chemists from all over New Zealand. The general effect of the evidence is that none of these firms really experiences confusion between the two trade marks nor have they been informed of complaints. I shall deal with this evidence in more detail later in the judgment.

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10           The general power to rectify the entries in a Register under s.41 gives any person aggrieved by any entry made in the Register without sufficient cause or by any entry wrongly remaining on the Register power to apply to the Court. The grounds upon which this application is based are now restricted as follows :

20           "That the said trade mark registered number B82513 is a mark wrongly remaining on the Register having been wrongly entered for the following reasons :

- (a)       At the date of registration the trade mark was not and could not have been distinctive of the goods of the proprietor.
- (b)       At the date of registration the mark was likely to deceive or cause confusion and otherwise dis-
- 30           entitled to protection.
- (c)       At the date of registration there existed on the Register a trade mark belonging to the applicant, registered for the same goods or description of goods which the trade mark "SOLAVOID" so nearly resembled as to be likely to deceive or cause confusion."

Ground (d) was abandoned at the hearing.



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The first ground, (a), would be established if the subsequent grounds resting on similarity of marks is made out because then "SOLAVOID" cannot be distinctive of the trade mark of the respondent. It is then argued that if it is found that the two trade marks are distinguishable because of the meanings they convey, then it must follow that "SOLAVOID" is a word which is descriptive in relation to the goods, and therefore, insufficiently distinctive to justify registration. Ground (b) relates to the provision in s.16 of the Act, while ground (c) finds its basis in s.18(1) relating to the prohibition against registration of identical and resembling trade marks. It also alleges that the similarity between the marks is such that there is likely to be deception or confusion. Paragraph 2 of the Notice of Motion was abandoned at the hearing while paragraph (3) that the applicant is a person aggrieved in terms of s.41 is conceded.

I turn to the principal grounds on which the applicant relies, namely, that the registration should not have been granted as to do so was contrary to ss.16 and 17(1) of the Act. Before dealing with these matters I first adopt the reasoning of McGregor J. in New Zealand Breweries Limited v. Heineken's Bier Browerij Maatschappij N.V. [1964] N.Z.L.R. 115 when he stressed the experience of the Commissioner as being of extreme value and importance in weighing the facts and when he said :

"That the necessary starting point is therefore, to attach great weight to the Commissioner's conclusions."

I also turn to the onus and standard of proof required of the applicant to discharge the onus which lies upon it in proceedings for rectification of the Trade Marks Register. In this connection I am obliged to counsel for detailed memoranda they furnished following the hearing because I was concerned with a statement in the judgment

of Skerrett C.J. in R. Jamieson & Co. Limited v. J. & J. Abel Limited [1926] N.Z.L.R. 565, 581-2 :

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10 "It has been held in this Court that in  
the case of an application for registra-  
tion of a trade-mark the Court should  
act on a different principle from that  
on which it acts in the case of an  
action to restrain the use of a trade-  
mark similar to one already on the  
register. In the former case not only  
is the onus of proof that the trade-mark  
sought to be registered is not calculated  
to deceive shifted to the person seeking  
registration, but the onus is not  
discharged if there is any reasonable  
doubt or possibility that the new trade-  
mark will be calculated to deceive. It,  
of course, does not follow that because  
20 an application to register a trade-mark  
is refused the applicant will be  
restrained from using that trade-mark  
at the suit of an owner of a mark  
already registered: See Lever Bros. v.  
Newton & Sons 26 N.Z.L.R. 856; 9 G.L.R.  
157; Morley v. Macky, Logan, Caldwell  
Ltd. [1921] N.Z.L.R. 1001; G.L.R. 583.  
These cases followed the dictum in Eno v.  
Dunn 15 A.C. 252, and are in accord  
30 with the decisions in many English cases:  
See In re Guttapercha and Rubber Co.  
of Toronto 26 T.P.C. 84; In re Sandow  
31 R.P.C. 205. See also Robert Harper  
& Co.Ltd. v. A. Boake, Roberts & Co.Ltd.  
17 C.L.R. 514. The applicant for  
registration is therefore considered as  
in petitorio, and must establish beyond  
reasonable doubt that his mark is not  
liable to be confused with any other  
40 mark. If the Court is in dubio it  
ought to refuse registration: See  
In re Sandow. The question whether the  
applicant has discharged this onus is a  
pure question of fact, and it is to  
this question we must direct our  
attention."

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Skerrett C.J. appears to have contemplated a standard of proof beyond reasonable doubt, as in criminal proceedings, but because these are in the nature of civil proceedings, I have to consider s.16 which makes it unlawful to register a mark the use of which "would be likely to deceive". S.17 prohibits the registration of a mark which so nearly resembles any mark already on the Register "as is to be likely to deceive or cause confusion". A basis different from that in Jamieson's (supra) case is expressed by Chapman J. in Lever Bros. v. Newton & Sons [1907] 26 N.Z.L.R. 856, 874 :

"The question then arises whether in this case we ought to treat this trade-mark as calculated to deceive in the sense used by the majority of the House of Lords in Eno v. Dunn 15 A.C. 252 - in other words, whether we ought to take the resemblance to the appellants' trade-mark seriously, or whether we should treat the objection as, practically speaking, frivolous. In dealing with such a question in the "White Rose" case 30 Ch.D. 505, Kay J., says, "If the mark now sought to be registered were altogether a new mark I should think it better not to allow it to be registered, for I cannot say that if both marks are upon the Register there will be no chance of the one being mistaken for the other, not perhaps by dealers in the trade, but by members of the public who are ignorant of the marks used in the trade." This treats the question of allowance as one of judicial policy, the act of granting registration being in effect an act quasi of legislation, as it affects the whole State."

In this case a Court of Appeal of five Judges reversed a decision of Stout C.J. on the ground that the respondents had not shown affirmatively that their trade mark fairly used was not calculated to deceive the purchasing public, and as there was a

possibility that it was so calculated to deceive, the application should not have been granted. Williams J. at 868 said :

"The true principle is stated by Lord Watson in Eno v. Dunn 15 A.C. 252, 257, that the applicant must justify the registration of his trade-mark by showing affirmatively that it is not calculated to deceive, and that if there is any doubt whether it is so calculated or not his application ought to be disallowed."

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Cooper J. at 872 said :

"If the matter is in doubt, then the respondents have not satisfied the onus which lies upon them."

Similar statements were expressed by the Court of Appeal in I. & R. Morley v. Macky, Logan, Caldwell Ltd. (supra). The High Court of Australia in Robert Harper & Co. Pty. Ltd. v. A. Boake Roberts & Co. Ltd. (supra) also followed the rule in Eno v. Dunn (supra). Griffiths C.J. at 520 held that the onus lies on the applicant in cases of doubt to show "that there is no possibility of deception". Isaacs J. at 521 said :

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"That is a very distinct onus, and if after considering all of the relevant circumstances a doubt remains, the mark is not to be registered."

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In Aristoc Limited v. Rysta Limited (1944) 62 R.P.C. 65, Viscount Maugham in the House of Lords at 73 referred to the onus of proving that there was "no reasonable probability of deception or confusion". That test was adopted by Haslam J. in New Zealand Breweries Limited v. Heineken's (supra) where at 142 he said :

"In the Aristoc case, their Lordships affirmed Luxmoore L.J.'s definition of the quantum of proof as casting on the applicant the burden of establishing that there was no reasonable probability of deception."

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North P. referred to Lord Watson's "in dubio"  
statement in Eno v. Dunn (supra) and to  
Aristoc's case and at 133 said :

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"I interpret this (i.e. the section) to  
mean that there must be no reasonable  
probability that any considerable  
section of the public will be deceived  
or confused by the presence of the two  
marks."

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I should mention that J.& J. Abel Limited v.  
J.R. Jamieson & Co. Limited (supra) was not  
mentioned by the Court of Appeal in  
Heineken's case on the issue of onus of proof.  
The Court there adopted the concept "of no  
reasonable probability". I have considered  
a large number of authorities as well as those  
already cited and consider that the use of  
the expression "proof beyond reasonable doubt"  
is not an apt one to be adopted as it may lead  
to a consideration of a criminal standard.  
Denning J. (as he then was) in Miller v.  
Minister of Pensions [1947] 2 All E.R. 372,  
374 said :

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"This means that the case must be  
decided in favour of the man unless  
the evidence against him reaches the  
same degree of cogency as is required  
to discharge a burden in a civil case.  
That degree is well settled. It  
must carry a reasonable degree of  
probability but not so high as is  
required in a criminal case. If the  
evidence is such that the tribunal  
can say: "we think it more probable  
than not" the burden is to the decision,  
but, if the probabilities are equal,  
it is not."

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With respect, I therefore intend to follow  
North P.'s and Haslam J.'s interpretation in  
the New Zealand Breweries Limited case.

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That then brings me to decide whether  
the standard of proof required in an applica-  
tion for rectification of the Register  
differs from that required on registration  
of a trade mark. There are few reported

cases, but in In re A Trade Mark of the United Chemists' Association Ltd. (1923) 40 R.P.C. 219, the issue was considered. This was a case where the Registrar of Trade Marks at first instance had refused to rectify the Register. At 220 he said :

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10 "First, I think it is clear that far stronger evidence would be required in the case of the removal of a mark from the Register than in the case of a successful opposition to register. In the case of opposition, the Registrar has a wide discretion, and where the case is doubtful the recognised principle is to refuse the mark on the ground that the onus is upon the applicant for registration. In the case of rectification the onus is upon the person attacking the mark and proof that deception will occur or is likely to occur must, I think, be strong and conclusive; it is not enough to suggest the mere possibility or likelihood of deception or confusion. In the present case there is no direct evidence that any confusion has, in fact, occurred and the evidence that it may or will occur does not appear to me to be clear and conclusive."

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30 But on appeal Eve J. mitigates the effect of the Registrar's decision by saying at 223 :

40 "I do not altogether adopt the view of the learned Registrar as to the difference between the evidence to be adduced by a person seeking to rectify the Register and that to be adduced by an applicant for registration. I think the burden which the person seeking to rectify the Register has to discharge is this: that he must satisfy the Court that there is a reasonable prospect of confusion if the mark attacked is allowed to remain on the Register. On the other hand, the person seeking to register a trade mark that is opposed has to satisfy the

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Court that there is no reasonable prospect of confusion arising. I think the one is very much the alternative of the other."

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The Courts nevertheless have regarded the onus on an applicant for rectification as no light one particularly where registration had remained unaffected for some time. In In re Chesebrough Manufacturing Company's Trade Mark (1902) 19 R.P.C. 342, Cozens-Hardy L.J. in the Court of Appeal at 355 observes that :

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"having regard to the fact that "Vaseline" has been on the register for nearly a quarter of a century, I feel that the burden of proof rests strongly upon anyone who seeks to disturb such a long standing position."

In the view I take of this case and having regard to s.59 of the Act where registration is prima facie evidence of validity, I think there is a great deal of substance in Mr McKay's contention that it is implicit in the registration of a trade mark that the holder can rely on it and invest substantial sums in promoting it to the public. Trade competitors are given an opportunity to object before registration is completed and, although they may subsequently apply for rectification, it seems to me that a relatively high standard of proof is required before expunging a mark already registered. I therefore consider that the onus on an application for rectification is of the same standard as that imposed on an original applicant for registration; that is to show there is a reasonable probability of deception having regard to the circumstances under which registration was obtained and the time it has been on the Register.

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The latest decision applicable to rectification is that of the House of Lords in General Electric Co. v. The General Electric Co.Ltd. [1972] 2 All E.R. 507 where Lord Diplock at 526 said :

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10 "As respects the main ground of appeal, the legal status under the Act of 1938 of a registered trade mark the use of which is likely to cause confusion can be summarised as follows: (1) The fact that the mark is entered on the register is prima facie evidence of the validity of the original registration and of the right of the registered proprietor to the exclusive use of the mark, subject however to the rights of concurrent user by any registered proprietor of an identical mark or one nearly resembling it. (2) If the mark was likely to cause confusion at the time when it was first registered it may be expunged from the register as an 'entry made in the register without sufficient cause' unless the

20 proprietor of the mark at that time would have been entitled to have it entered on the register by reason of his honest concurrent use of the mark as a trade mark before the original registration of the mark. (3) If the likelihood of causing confusion did not exist at the time when the mark was first registered, but was the result of events occurring between that

30 date and the date of application to expunge it, the mark may not be expunged from the register as an entry wrongly remaining on the register, unless the likelihood of causing deception resulted from some blameworthy act of the registered proprietor of the mark or of a predecessor in title of his as registered proprietor. (4) Where a

40 mark is liable to be expunged under (2) or (3) the court has a discretion whether or not to expunge it and as to any conditions or limitations to be imposed in the event of its being permitted to remain on the register."

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That law is based on the interpretation of the English Act of 1938. Its counterparts to ss. 16 and 17 of the New Zealand Act are ss. 11 and 12. The applicant here



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claims that a likelihood of confusion did exist at the date of registration of the trade mark "SOLAVOID" but even if it did not, the evidence shows that such a likelihood was brought about by the manner in which the respondent used the mark. The differences between the grounds in ss. 16 and 17(1) have been the subject of considerable judicial comment but it now seems generally accepted that the tests for application of those sections are laid down by Evershed J. (as he then was) in the Smith Hayden & Co., Limited application (1946) 63 R.P.C. 97. The words concerned were "OVAX" and "HOVIS". At 101 he said :

"In these circumstances, the questions for my decision under the two sections of the Act have been formulated, and I think accurately formulated, as follows:

(a) (under Sec.11) "Having regard to the reputation acquired by the name 'Hovis', is the Court satisfied that the mark applied for, if used in a normal and fair manner in connection with any goods covered by the registration proposed, will not be reasonably likely to cause deception and confusion amongst a substantial number of persons".

(b) (under Sec.12) "Assuming user by Hovis, Ld., of their marks 'Hovis' and 'Ovi' in a normal and fair manner for any of the goods covered by the registration of those marks (and including particularly goods also covered by the proposed registration of the mark 'Ovax') is the Court satisfied that there will be no reasonable likelihood of deception or confusion among a substantial number of persons if Smith Hayden & Coy. Ld., also use their mark 'Ovax' normally and fairly in respect of any goods covered by their proposed registration?"

The Judge was able to say, tested visually the onus was discharged and likewise with reference to the ear and not the eye. This decision reminds me of my function because it refers to the statement by the House of Lords in

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Aristoc Limited v. Rysta Limited 62 R.P.C.

65 that the question is one of first impression, on which no doubt different minds may reach different conclusions. It is not profitable in such a case to indulge in minute comparisons notoriously productive of confusion in regard to words. A gloss on Lord Evershed's statement was given by Lord Upjohn in the House of Lords in the "Bali"  
 10 Trade Mark case (1969) R.P.C. 472 when at 496 he considered that Judge was wrong to use the words "reputation acquired by"; they should have been "the user of". Each section also requires consideration of the notional use of the mark being placed on the Register, that is in normal and fair use in relation to the goods. What the registered proprietor actually does is not the sole  
 20 consideration, but what he might normally and fairly do also comes into play. In the General Electric case Lord Diplock said at 514 :

"Where the question of the likelihood of deception or confusion arises on an application to expunge a registered mark which has already been the subject of substantial use, the absence of evidence of actual confusion having occurred is  
 30 a potent factor in determining whether or not the court should exercise its discretion to expunge the mark from the register. But it does not decide the relevant hypothetical question which must be answered in the affirmative before any question of discretion to expunge the mark arises: would any normal and fair future use of the mark in the course of trade be likely to cause  
 40 deception or confusion? If actual confusion in the past is proved, this is a strong indication that continued confusion is likely; but the absence of evidence of past confusion may be accounted for by the small extent to which the mark has been used or by special circumstances affecting its past use which may not continue to operate to prevent confusion in the future."

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Mr Gault submitted that at the date the trade mark "SOLAVOID" was registered, there was a reasonable likelihood that confusion would arise among a substantial number of persons between the mark "SOLAVOID" used notionally in a normal and fair manner and the trade mark "POLAROID" as used and established in New Zealand and additionally as used normally and fairly by the applicant. On the matter of likelihood of confusion (or confusion similarity) the matters to be taken into account include first, the distinction between goods sold in a specialized market and those sold to the general public. In the latter case, as Lord Diplock said in the G.E.C. case, it is a "Jury question". His Lordship meant by that, that the jury as potential buyers would be required not only to consider any evidence from other members of the public, but also to use their own commonsense and consider whether they would themselves be likely to be deceived or confused. A Judge's approach to the question he said should be the same as that of a jury and, therefore, the Judge is not confined to the evidence adduced at the hearing. 10 20

The second matter arises from the decision of Parker J. in In re Pianotist Co.'s Application (1906) 23 R.P.C. 774, 777, in a passage that was cited with approval by Turner J. in the New Zealand Breweries Limited case at 139 and summarised by him as follows : 30

"1. You must take the two words and judge of them both by their look and by their sound; 2. You must consider the goods to which they are to be applied and the nature and kind of customer who is likely to buy these goods; and 3. You must consider all the surrounding circumstances and what is likely to happen if each of the marks is used in a normal way as a trade mark for the goods of the respective owners of the marks." 40

Parker J. did not find confusing similarity between "PIANOLA" as contrasted with "NEOLA".

The third factor is the doctrine of "imperfect recollection" referred to by Luxmoore L.J. in his dissenting judgment in In re Rysta's application (1943) 60 R.P.C. 87, 108. This judgment was upheld by the House of Lords, [1945] A.C. 68. Luxmoore L.J. said :

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10 "The answer to the question whether the sound of one word resembles too nearly the sound of another so as to bring the former within the limits of section 12 of the Trade Marks Act, 1938, must nearly always depend on first impression for obviously a person who is familiar with both words will neither be deceived nor confused. It is the person who only knows the one word, and has perhaps an imperfect recollection of it, who is likely to be deceived or confused.

20 Little assistance, therefore, is to be obtained from a meticulous comparison of the two words, letter by letter and syllable by syllable, pronounced with the clarity to be expected from a teacher of elocution. The Court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part

30 not only of the person seeking to buy under the trade description, but also of the shop assistant ministering to that person's wants."

40 The fourth point is that the applicant claims there are many points of confusing similarity in the evidence. There is some evidence that the trade mark "POLAROID" suffered to some extent from its known notoriety, in that to some members of the public it was taken as meaning sunglasses generally, or sunglasses with polarized lenses. This occurred notwithstanding careful marketing and advertising. Undoubtedly all of the independent chemists whose affidavits were filed seem to concur that Polaroid sunglasses are probably the best known brand of sunglasses. Consequently it was against this background of reputation with applicant's mark, almost meaning sunglasses to a large number of people, that

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respondent sought to introduce a new mark which it is claimed has a general overall similarity to the other trade mark and as a result confusion was likely. It is said that this familiarity with the Polaroid mark was, therefore, a perfect background against which careless encounters with the new mark would lead to persons concluding that this was the same mark. On the aspect of long user and extensive reputation contrasted with a substantially new mark, counsel referred to In re Koyo Seiko Kabushki application (1958) 75 R.P.C. 112, 130. The trade marks there were "IKF KOYO" compared with "S.K.F." and "SKEFKO". The applicant then mentioned the circumstances which prevail in the trade which are relevant in view of the decision in the Pianotist's case. In this connection, I do not think the comparison really assists the applicant's case because each of the parties have a comparable number of retail outlets and both spend a great deal on advertising, including shop displays. Furthermore, there is a substantial body of evidence suggesting that purchasers of sun-glasses are guided in their selection by style and price rather than by the trade mark. In saying this, I appreciate that the applicant is not required to show there will always be confusion but a likelihood of confusion amongst a substantial number of persons. However, the applicant further contended that the manner in which the trade marks have been and are used increases the likelihood of confusion beyond that which might normally occur, because they are directly competitive goods with the marks applied to them in almost exactly the same way. One particular similarity extends from the trade itself referring to the capacity of the lenses to polarize lights. Indeed the word "polarized" appears on these same labels and swing tickets which bear the trade mark "SOLAVOID". It is for that reason I am sure that the respondent has wisely decided to desist from references to "polar glass", "polar plastic" and "polar clip" in connection with its mark. Although it is not material to this decision, perhaps the

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various traders who refer to the phenomenon of "polarizing" could consider an alternative term. Likewise, respondent has used for some of its material a form of lettering very similar to that which had formed a feature of the applicant's 1968 advertising campaign. Apparently quite frequently, retail traders keep together sunglasses of different brands, including those under the marks in issue here.

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I now deal with the construction of the two marks themselves. It is true both are eight letter words having only two letters of difference. Undoubtedly they are of an equal number of syllables and at least on the pronunciation of some people they have identical vowel sounds. While the cases do not permit a side by side analysis of the marks, when clearly heard or when read and properly assimilated, the opening parts of the words and consonants thereof are, in my opinion, a means of distinguishing between them. The initial syllables which are obviously important, namely, "pol" and "sol", in my opinion, look and sound dissimilar. "p" to my mind is a dominant letter and there is a clear transition to the "s".

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Mr Watson's evidence is that a search was made of the New Zealand Register of Trade Marks to ascertain if apart from the applicant's registrations for "POLAROID" there were any marks derived from the words "polar" or "polarize" registered in Class 9, the class that covers sunglasses and polarized lenses. Apparently there are none. However, the word "polarex" is at present in use as a trade mark in respect of sunglasses available in various pharmacies and stores. I have seen an exhibit of a swing ticket of a pair of Polarex sunglasses. On that ticket there is an outline of a letter "s", before the "p" in Polarex, which is virtually invisible at distances beyond 2 feet. It seems to me the word "avoid" is clearly recognisable in the mark "SOLAVOID" whether spoken or printed but in considering "POLAROID" and "POLAREX", the suffixes "oid" and "ex"

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convey no meaning and do not really register on the eye or ear. Looking at the words as a whole, I agree with Mr McKay that the "avoid" part of "SOLAVOID" is recognisable and it does tend to register itself as such. In making my comparisons I have not forgotten the comments of Haslam J. in the New Zealand Breweries Limited case at 143 when he refers to the possibility of slurred pronunciation as an ever present likelihood in the speech of New Zealanders but, in my opinion, the initial syllable, together with the "avoid" militates against real confusion. The importance of the first syllable has been accepted in several reported cases collected in Kerly's Law of Trade Marks and Trade Names, Tenth Edition, paragraphs 17-20. I therefore cannot agree that the average New Zealand purchaser on encountering either of these marks would not closely examine or analyse them as to arrive at a difference in idea. To my mind on first impression, the word "POLAROID" conveys the idea of polarized lenses, whereas "SOLAVOID" conveys the idea of avoiding the sun and is, therefore, appropriate to all types of sun-glasses whether polarized or not. This means that I cannot agree the marks are visually and phonetically too close or that any idea which they might convey would not so readily occur as to enable purchasers to distinguish between them.

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It is appropriate that I deal with the next argument which is directed to the motive of the respondent in selecting its mark. Here, the applicant claims that the cumulative effect of the manner in which the mark "SOLAVOID" was introduced to the trade and has been used, contrasted with the notoriety of the "POLAROID" mark, plus the fact that there were in common use words referring to the principle of polarizing such as "polar clip" (and I have already commented on this), together with the somewhat similar type of advertising printing, is such as to entitle the applicant to say that the respondent has

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sailed as close to the wind as possible to the well-known "POLAROID" mark and thereby attracted goodwill from the well established benefit in that mark. In In re Kidax (Shirts) Limited's application (1960) 77 R.P.C. 117, 118 Lord Evershed M.R. posed the question in relation to "DAKS" :

10           "Why have they chosen "Kidax"? Let me say at once that if the answer had been, "Because the Respondents wish to get some advantage from the considerable reputation belonging to the Appellant's mark" that would not conclude the matter, though it is also true to say that the Court would not be astute to say that the Respondents would be unsuccessful in what they set out to achieve."

20           Roxburgh J. in the Koho application (supra) considered the same point of some importance at 131. Mr Gault submitted that in this case the respondent had a full range of languages to select from yet it evolved a mark which bears considerable similarity to an established and famous one. Was it therefore on the face of it adopted for the purpose of appropriating the applicant's goodwill? As I have said, I consider the ideas conveyed are dissimilar. In my  
30           opinion, people will readily identify the prefix "sol" with the sun. It is used in words such as "solar", "solstice" and in the expression "solar energy". Mr Masson, a chemist in New Plymouth, sells products in his shop such as Solarcaine which is a trade mark used on sunburn and antiseptic cream; Solarstick which is a trade mark used on a lip sunscreen lip stick; Solflex and Solarex which are trade marks used on sunglasses,  
40           and Polarex which is a trade mark used on sunglasses. He is not aware of any confusion and believes that he and his staff have been able to inform the public purchasing sunglasses about the different characteristics of polarized and tinted lenses. In the case of "SOLAVOID" sunglasses, the type of lenses

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is clearly stated on the swing ticket attached to the sunglasses. When dealing with the large body of evidence as to the lack of actual confusion in the use of these two marks side by side, I appreciate that while it is clear that evidence of instances of confusion is the best evidence of the likelihood of confusion, nevertheless the absence of such evidence does not entirely conclude the matter, but, in my opinion, it does impose some obligation on the applicant to explain why there is no such evidence. In this respect the applicant relied on the notional use of the marks. It is submitted that notwithstanding factors to date may not have produced confusion, they may not necessarily continue. In In re Electrolux Ltd. v. Electrix Ltd. application (1953) 70 R.P.C. 127, Lloyd-Jacob J. pointed out that there might well be no evidence of confusion as this would flow from some differentiation in get-up or presentation which for the time being had obscured the brandname similarity. Here a large number of retailers have stated they would not be confused because of the swing tickets of different colours or because the marks conveyed to them different ideas. It must be accepted that the average purchaser would not be as perceptive as a retail pharmacist, each of whom has said he knows both marks. They are, of course, not really the right people to ask. As Diplock L.J. (as he then was) said in the "Bali" Trade Mark application (1968) R.P.C. 426, 435 :

"The Bali Company, between the date of the hearing by the Registrar and the appeal to the judge, filed evidence by a number of buyers at retail shops which stocked Bali brassieres who said that they themselves were not confused and that they did not know of any instances of confusion in the minds of customers at their shops. I should not in any event expect buyers who are responsible for ordering the goods from their respective manufacturers to be confused

by a phonetic similarity in trade marks, and it may well be a natural result of confusion in the minds of customers that they are not aware that they have not received the goods which they intended to order."

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However, Salmon L.J. (as he then was) at 442 said :

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10 "As I have already indicated the Bali  
Company's unchallenged evidence showed  
that in normal user of the mark BALI  
during a period of many years in many  
countries in which BERLEI goods were  
sold, there had never been any  
suggestion of confusion or deception  
anywhere. There was also positive  
evidence from the buyers of leading  
London stores dealing in both parties'  
goods that no deception or confusion  
20 had occurred. Against this there was,  
it is true, the Berlei Company's  
uncontradicted evidence of the trap  
orders, to which I have already referred,  
but which I do not think in reality  
diminishes the weight of the Bali  
Company's evidence as to what has in  
practice occurred over years of  
concurrent honest user. To my mind this  
30 is the best evidence of what is or is  
not likely to occur in the future and  
also of what was the likelihood at the  
date of the application."

I cannot therefore entirely close my eyes to  
the fact that there has been no positive  
evidence that deception or confusion has  
occurred. In fairness to the applicant, I  
do not place any great reliance on the use of  
the words "POLARFLEX" and "POLAREX", the  
latter which seems to be the same mark as  
40 "SPOLAREX" with the "S" represented  
conspicuously because that mark has been  
investigated and sales of each are not in  
significant quantities. In any event,  
Mr Brackenridge has said that he would be  
concerned with the obvious conflict with the

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trade mark "POLAROID". Indeed, an application was made to register "SPOLAREX", but following threatened opposition from the applicant it has apparently been withdrawn.

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Even if the grounds for removal are established, there is still a discretion to leave the trade mark on the Register in view of the wording of s.41, but counsel for the applicant was not aware of the exercise of the discretion in any reported case. He asked that the trade mark be expunged because the activities of the respondent coming as close as possible to the applicant's mark and in encouraging confusion by promotion and activities in labelling, have no proper claim to have the mark remain.

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In coming to my conclusion that there is no reasonable likelihood of confusion, I have also had regard to the nature of the market in which the goods are sold, namely, at pharmacies and by opticians, sports goods dealers and department stores. I observe that some twenty brands of sunglasses are sold. I take into account that some sunglasses are polarized, including all the "POLAROID" range, but some only of the "SOLAVOID". Indeed there are a number of references in the affidavits demonstrating that polarized lenses are used in various brands on the market. Furthermore, sunglasses as a general practice appear to be displayed side by side so the customer can observe the combined range and make a selection. The labels can, therefore, be seen together, reducing the chance of mistake or confusion. Retailers also state that sunglasses sell on style and price and not generally on trade name or manufacture. The evidence satisfies me that a buyer does not ask for the article from a shelf or behind a counter, as he is confronted with a range clearly displayed, the articles being in juxtaposition to one another. I therefore take into account the strong body of evidence that with this particular commodity, brandname is apparently of minor significance.

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The fact there is no evidence of confusion despite five years where the marks have been circulating side by side, is also, in my opinion, very material. The applicant has been aware of the marketing of Solavoid glasses all that time. I therefore assume that if there has been confusion in fact, every endeavour would have been made to provide evidence of it. No evidence of any complaint of confusion has been received by the respondent.

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It would seem that such confusion as does exist is really not between the two marks but between "POLAROID" and "POLARIZED". Many of the chemists referred to this confusion on the part of customers who have an erroneous impression that Polaroid is a generic name for all sunglasses having polarized lenses. One such chemist was Mr Grant of Hastings who estimates that approximately 95 percent of all glasses sold in his shop have non-polarized lenses while Solavoid sales are half of his total sunglasses sales.

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Delay in this case is also a factor, although not a bar. In In re Talbots Trade Mark (1894) 11 R.P.C. 77, Stirling J. criticised the applicants for a three year delay after being aware of the other mark. No evidence was given of confusion during the seven years after the mark was registered. The Judge having regard to these matters, could not come to a conclusion that the mark was calculated to deceive. In McCaw, Stevenson & Anco. Limited (1908) 23 R.P.C. 1 where the owners of a trade mark consisting of the word "glacier" registered for transparencies sued for infringement by the use of the word "glazine" and they had known of the defendant's use for at least four years, and no case of deception was proved, the action was dismissed. Here, the applicant from early 1969 was aware of the sale of Solavoid glasses, but this application for rectification was not filed for two years. All of the respondent's affidavits were filed by May 1972. This sequence leads to the conclusion that it is inconsistent with

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the claim of deception and confusion, when having regard to the large volume of sales, the situation called for promptitude.

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Applicant alternatively submitted that if the marks were not held to be confusingly similar because of the different ideas they convey, it would follow "SOLAVOID" was descriptive of the goods and thus insufficiently distinctive. Ss. 14 and 15 of the Act respectively refer to distinctiveness, requisite for registration in Part A and secondly, capability of distinguishing, requisite for registration in Part B. Here we are concerned with Part B. At the date of registration, there was no prior user of "SOLAVOID" so that the capacity of that mark to describe the goods must be judged on the word itself. Mr McKay rightly concedes there is an element of descriptiveness in the word. The question is, is it such as prevents the mark being capable of distinguishing the goods? I consider that there is no attempt to monopolize an ordinary English word; I hardly think anyone would ask for "SOLAVOIDS". The principles to be applied emerge from examples in a series of cases. In the Rotolok application (1968) R.P.C. 227, registration was refused as the word was not inherently capable of distinguishing a quick-release fastener. Again in the Rotorake case (1968) R.P.C. 36, it was held the word did not qualify as an invented word. It simply meant a rotary rake, which is a descriptive and not a distinctive term. The capability of the word for distinguishing was not a self-evident proposition. Likewise in the Autoanalyzer case (1970) R.P.C. 201, the word was not acceptable as it was in substance the name of the goods. On the other hand, the American Screw Co. application (1959) R.P.C. 344 concerned the mark "TORQ-SET". It was conceded the mark could not be regarded as an invented word. It was thus considered as the phonetic equivalent of the words "torque" and "set". Lloyd-Jacob J. decided registration was proper because Part V of the Register is intended to comprise

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marks which in use can be demonstrated as affording an indication of trade origin without trespassing upon the legitimate freedom of other traders. Again In re Dundas Limited application (1955) 72 R.P.C. 151 involved an objection to the word "Dustic" for adhesives. The Comptroller held it was an inventive word having no reference to the quality or character of the goods and not likely to be confused with "Bostik". Lloyd-Jacob J. upheld the Comptroller's decision. By analogy I consider this an important case; "tic" and "tik" after all, have a common suffix which is not the position here. Finally, in Smitsvonk N.V.'s application (1955) 72 R.P.C. 117 where the application to register "Smitsvonk" for electrical spark apparatus was initially refused under both Parts A and B, Lloyd-Jacob J. allowed registration under Part B. He mentioned that the Hearing Officer had not considered whether or not in its conjoined or combined form the mark would be capable of distinguishing.

Bearing these decisions in mind, it is my opinion that "SOLAVOID" was properly registered under Part B and any element of descriptiveness is not such as to prevent the mark being capable of distinguishing the goods. It follows I consider the word does not trespass on the freedom of trade competitors.

If I am wrong in my judgment that there is no reasonable probability of deception, for myself, I would not lightly remove from the Register a mark that has, as I find, been in bona fide use for approximately five years and around which obvious goodwill in commerce has been established by substantial expenditure. It could be in any event that if the mark was removed on the grounds of close resemblance, a fresh application could be based on honest concurrent use invoking the unfettered discretion in s.17(2).

The application is refused.

Costs are reserved.

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ORDER OF THE SUPREME COURT  
DISMISSING THE MOTION

No.45

Order of  
Supreme Court  
Dismissing  
Motion

14th August 1973

UPON READING the Notice of Motion of the Applicant dated the 22nd day of January 1971 and the Affidagits of Herbert S. Kassman, Walter William Brackenridge, Lindsay Douglas Beck, John Rowe Bradburn, Colin Henry Brittain, Richard Neal Carpenter, Frederick Thomas Castle, Gerard Alfred Davidson, Kenneth Hugh McGuire, David Charles Manson, Leonard Talford Mitchell, Robert William Pollok, Ian Francis Scott and Peter Michael Luxford in support and the Affidavits of Ernest Leslie Watson, Dennis Bryant Allen, Royce Langdon Barclay, Bryant Goldsbury, Douglas Leslie Grant, Peter James Mardon, Elder Frederick Masson, Donald John Morrison, Bryan Carroll Pearson, Charles Baird Quay and Peter Robinson in opposition AND UPON HEARING Mr T.M. Gault for the applicant and Mr I.L. McKay and Mr S.S. Williams for the Respondent THIS COURT DOTH ORDER that the application under Section 41 of the Trade Marks Act 1953 for rectification of the trade marks register by the removal of registration Number B82513 be refused AND IT IS ORDERED THAT costs be reserved.

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By the Court

"V.R. Harrison" (Mrs)

L.S.

DEPUTY REGISTRAR

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123.

No. 46

IN THE COURT OF APPEAL OF NEW ZEALAND

No. C.A. 98/73

In the Court  
of Appeal of  
New Zealand

—  
No. 46

IN THE MATTER of the Trade  
Marks Act 1953

Notice of  
Motion of  
Appeal

A N D

IN THE MATTER of Trade Mark  
Registered  
Number B82513

7th November  
1973

BETWEEN POLAROID CORPORATION  
a corporation  
organised and  
existing under the  
law of the State  
of Delaware, United  
States of America,  
of 730 Main Street,  
City of Cambridge,  
State of  
Massachusetts,  
United States of  
America

Appellant

A N D HANNAFORD & BURTON  
LIMITED a New  
Zealand company,  
of 25 Rutland  
Street, Auckland,  
New Zealand

Respondent

NOTICE OF MOTION OF APPEAL

TAKE NOTICE that this Honourable Court WILL  
BE MOVED by Counsel for the abovenamed  
Appellant on Monday the 3rd day of December  
1973 at ten o'clock in the forenoon or so  
soon thereafter as Counsel may be heard  
ON APPEAL from the whole of the judgment  
of the Supreme Court of New Zealand  
delivered at Wellington by the Honourable



In the Court  
of Appeal of  
New Zealand

—  
No. 46

Notice of  
Motion of  
Appeal

7th November  
1973

- continued

Mr Justice Beattie on the 14th day of August 1973 refusing an application made by the abovenamed Appellant under Section 41 of the Trade Marks Act 1953 for rectification of the trade marks register by removal of registration Number B82513 in the name of the abovenamed Respondent UPON THE GROUNDS that the said judgment is erroneous in fact and in law.

DATED this 7th day of November 1973.

"T.M. Gault"

Solicitor for the Appellant

TO The Registrar of this Honourable Court  
and to the abovenamed Respondent and  
its Solicitor.

REASONS FOR JUDGMENT OF THE COURT  
(DELIVERED BY RICHMOND J.)

In the Court  
of Appeal of  
New Zealand

This is an appeal from an order of the Supreme Court refusing an application by Polaroid Corporation, the appellant, for rectification of the Trade Marks Register by the removal therefrom of trade mark no. B82513 SOLAVOID in the name of the respondent, Hannaford and Burton Limited.

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10           The appellant is a United States corporation and uses on a world-wide basis the trade mark POLAROID. In particular the mark is associated with sun glasses manufactured and sold by the Polaroid Corporation in the United States since 1936 and extensively in 150 or more countries including New Zealand after that date. The trade mark POLAROID was first used in this country in relation to sun glasses in 1938 and has been continuously  
20 used here in relation to sun glasses since at least 1950. The mark has been registered in New Zealand since 1940. It is estimated that there are probably about 200,000 POLAROID sun glasses currently in use in New Zealand; and they are sold from about 1,200 retail outlets.

30           In New Zealand and throughout the world the trade mark POLAROID has been the subject of regular and extensive advertising in relation to sun glasses. It is not in dispute that POLAROID sun glasses have acquired a wide and valuable reputation among members of the trade and the general public.

40           On 21 October 1966 the respondent company applied to register the word SOLAVOID as a trade mark after receiving from the Assistant Commissioner of Trade Marks a letter indicating that the mark appeared to be available for registration. In the result

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the mark was registered on 21 October 1966  
in Part B of the Register in class 9 in  
respect of sun glasses.

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The respondent began selling sun glasses  
in New Zealand under the trade mark SOLAVOID  
in September 1968. This use of the trade  
mark came to the attention of the appellant  
late in 1968 or early in 1969 and in due  
course the existence of the registration was  
discovered by the appellant. There was some  
communication between the two organisations  
as the result of which the respondent agreed  
to discontinue the use in conjunction with the  
trade mark SOLAVOID of certain words that had  
been associated with the mark such as polar-  
glass, polarplastic and polarclip - but the  
inference is that the respondent was not  
prepared to abandon the mark SOLAVOID although  
there is no express evidence that it was  
requested to do so. Proceedings for  
rectification of the Register were later  
initiated in the Supreme Court by the  
appellant on 22 January 1971.

The application was made under s.41 of  
the Trade Marks Act 1953, the relevant part of  
subs.(1) being :

"Any person aggrieved by ... any entry  
made in the Register without sufficient  
cause, or by entry wrongly remaining on  
the Register, ... may apply in the  
prescribed manner to the Court and the  
Court ... may make such order for ...  
expunging, ... the entry as the Court  
... may think fit."

Two principal grounds for the application  
were put forward. They were first that the  
trade mark was wrongly entered on the  
Register because at the date of registration  
it offended against ss.16 and 17(1) of the  
Trade Marks Act by virtue of the fact that  
the mark SOLAVOID so nearly resembled the  
appellant's established trade mark POLAROID  
as to be likely to deceive or cause  
confusion. A second ground was that the  
mark wrongly remained on the Register because

even if at the date of registration there was not a likelihood of deception or confusion, the subsequent use of the mark by the respondent had created that likelihood.

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10 Beattie J. in a reserved judgment, refused the application for an order expunging the respondent's mark. We shall deal presently with the reasons which influenced the learned Judge but before doing so it is necessary to consider two preliminary submissions which were made by Mr Gault.

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20 The first related to a conclusion expressed by Beattie J. that he should adopt as applicable to the circumstances of the present case the reasoning of McGregor J. in New Zealand Breweries v. Heineken's Bier Browerij Maatschappij N.V. [1964] N.Z.L.R. 115. McGregor J. stressed the experience of the Commissioner as being of extreme value and importance and said - "The necessary starting point is, therefore, to attach great weight to the Commissioner's conclusions." Mr Gault pointed out that in the present case all that had happened was that the respondent, before applying for registration of its mark, had asked for a search to be made. This was not a case where the Commissioner looked fully into the matter on the basis of evidence as to market conditions and other relevant matters.

30 Nor indeed does it even appear from the evidence that the applicant's mark was considered in relation to the mark of the present appellants. We accept Mr Gault's submission and conclude that on this particular point Beattie J. misdirected himself.

40 The next submission made by Mr Gault related to the Judge's views as to the onus of proof resting on a person who seeks to obtain removal of a registered mark from the register. Beattie J. first of all dealt with some New Zealand authorities including the judgment of Skerrett C.J. in R. Jamieson & Co.Ltd v. J.& J. Abel Ltd [1926] N.Z.L.R. 565 where that learned Judge made certain comments suggesting that proof beyond reasonable doubt would be required. Beattie J. concluded,

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and we agree, that all that is required is the ordinary civil standard of proof. It was of course common ground that, whereas on an application to obtain registration of a mark the onus is on the applicant, in the case of an application to obtain removal of a mark the onus is on the person seeking such removal. The Judge referred to In The matter of a Trade Mark of the United Chemists' Association Limited (1923) 40 R.P.C. 219, a decision of Eve J. In that case the Registrar of Trade Marks at first instance had expressed the view that in a case of rectification proof that deception would occur or was likely to occur must be strong and conclusive. On appeal Eve J. said (p.223) -

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"I do not altogether adopt the view of the learned Registrar as to the difference between the evidence to be adduced by an applicant for registration. I think the burden which the person seeking to rectify the Register has to discharge is this: that he must satisfy the Court that there is a reasonable prospect of confusion if the mark attacked is allowed to remain on the register. On the other hand, the person seeking to register a trade mark that is opposed, has to satisfy the Court that there is no reasonable prospect of confusion arising. I think the one is very much the alternative of the other."

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Beattie J. set out the foregoing passage in his judgment but then went on to observe by reference to In re Chesebrough Manufacturing Company's Trade Mark (1902) 19 R.P.C. 342 that "Courts nevertheless have regarded the onus on an applicant for rectification as no light one, particularly where registration had remained unaffected for some time". He referred to a passage in the dissenting judgment of Cozens-Hardy, L.J. (p.355) and eventually concluded that "a relatively high standard of proof is required before expunging a mark already registered".

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He considered that the onus on an applicant in such a case was to show that "there is a reasonable probability of deception having regard to the circumstances under which registration was obtained and the time it has been on the Register". The Judge evidently regarded the words which we have placed in italics as important because he had earlier commented that there was a great deal of substance in the contention that it is implicit in the registration of a trade mark that the holder can rely on it and invest substantial sums in promoting it to the public. With respect, we do not think that the case of In re Chesebrough Manufacturing Company's Trade Mark is authority for any general proposition that in applications for rectification the onus of proof varies according to the time that the mark has been on the Register. The Chesebrough case was concerned with an application to rectify the register in respect of a mark which had been registered as an old mark in 1877. The registration of the mark was attacked many years later on the ground that the mark had not been used as a trade mark before 13 August 1875 and thus should not have been registered. It was in this particular context that Cozens-Hardy L.J. observed - "Having regard to the fact that 'Vaseline' has been on the Register for nearly a quarter of a century, I feel that the burden of proof rests strongly upon anyone who seeks to disturb such a longstanding position". Stirling L.J. at p.353 had already commented on the fact that the burden lay on the applicant for the removal of the trade mark to satisfy the Court that the mark was not in fact used in England as a trade mark before 13 August 1875, being the date of the commencement of the Act of 1875. He said - "In my judgment this rule ought to be firmly adhered to. It is manifestly unreasonable to expect that the owners of a registered trade mark should preserve evidence of the way in which it was used at, and prior to, the time of registration for a long period - in this case more than 20 years subsequently to registration."

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We would read the comment made by Cozens-Hardy L.J. as expressing in a somewhat different way what had already been said by Stirling L.J. We can however see no good reason for applying what was said in that case to the ordinary type of situation such as exists in the present case unless through the passage of time it has somehow become difficult for the proprietor of the registered mark to produce evidence relevant to the matters in issue on the application for rectification. That is not so in the present case. In our view the matter was correctly put by Eve J. in the passage of his judgment in the United Chemists' case which we have already cited. On this point also we are of opinion that Beattie J. misdirected himself. 10

In these circumstances it would appear to be the duty of this Court to approach the factual questions in issue de novo although naturally giving due regard to the views which Beattie J. expressed. 20

This brings us to a consideration of the first ground on which the application for rectification was based, namely that the respondent's mark was originally wrongly entered on the Register because at the date of registration it so nearly resembled the appellant's established trade mark as to be likely to deceive or cause confusion. 30

It is common ground that as at the date of registration of the SOLAVOID mark the appellant's mark had been extensively used and publicised and had acquired a wide and established reputation. The mark SOLAVOID on the other hand had not been used. It is against that background that the Court must decide whether at the time of registration of the SOLAVOID mark the latter so nearly resembled the POLAROID mark as to be likely to deceive or cause confusion. 40

There is no dispute between counsel as to the general legal principles upon which the Court should proceed. Indeed these

principles were all reviewed by Beattie J. in his judgment and in this Court in the New Zealand Breweries v. Heineken's case (supra). For present purposes it is sufficient to refer to the summary of the rules for comparison of word marks which is found In re Pianotist Co's Application (1906) 23 R.P.C. 774, 777:

10 "1. You must take the two words and judge of them both by their look and by their sound; 2. You must consider the goods to which they are to be applied and the nature and kind of customer who is likely to buy these goods; and 3. You must consider all the surrounding circumstances and what is likely to happen if each of the marks is used in a normal way as a trade mark for the goods of the respective owners  
20 of the marks."

It is helpful also to cite a well known passage from the judgment of Luxmoore L.J. in Aristoc v. Rysta Limited (1942) 60 R.P.C. 87, 109 -

30 "The Court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part not only of the person seeking to buy under the trade description, but also of the shop assistant ministering to that person's wants. The feature of the applicants' word "Rysta" (when pronounced rista) is plainly the syllable 'rist' (as in 'wrist') while the same syllable is a prominent part of the opponents' trade mark when pronounced Arist-oc. The tendency to slur a word beginning with 'a' is, generally speaking, very  
40 common, and the similarity between rista and rist-oc would, I think, be fairly obvious ... to my mind he (the Comptroller) has failed to take into full account the effect of careless and slurred pronunciation, imperfect recollection, and the limitation of the

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knowledge of the customer and the shop assistant to one only of the word marks and that being the one of which the other is ignorant."

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We might add that it has been emphasised more than once that little purpose is to be served by a meticulous examination of the two words letter by letter and syllable by syllable pronounced with the clarity to be expected from a teacher of elocution. The matter is one of impression and must be decided by the Judge as a "jury question" while having due regard to any relevant evidence produced. The need to deal with the matter as a "jury question" arises where goods are sold to the general public for consumption or domestic use, this point being emphasised in the judgment of Lord Diplock in The G.B. Trade Mark (1973) R.P.C. 297 at 321. 10

We turn now to consider various aspects of the present case - 20

(1) As we have mentioned, the evidence established that at the time of registration of the SOLAVOID mark the POLAROID mark enjoyed a wide reputation. Indeed there was evidence that the word POLAROID was so well known that to some members of the public it meant sunglasses generally or sunglasses with polarised lenses. There are we think a very large number of people in New Zealand to whom the word POLAROID is well known and accurately known. Many would regard the word as part of the English language. This reduces the importance of the so called "doctrine of imperfect recollection" in the present case, but it still leaves a considerable field in which that doctrine can operate. 30

(2) There is a substantial body of evidence suggesting that purchasers of sunglasses are guided in their selection by style and price rather than by the trade mark. This evidence does not remove the probability, which also is supported by the evidence, that a substantial number of customers ask for POLAROID sunglasses as such. 40

(3) There was considerable evidence as to the way in which sunglasses are displayed and sold. The general practice appears to have been for chemists and other retailers to display their full range of sunglasses of different styles and marks on one or more display stands often with the various types mixed up together. The various marks are displayed by manufacturers by means of a label attached to each pair of sunglasses and often also appear on the case in which they are contained. Thus purchases are normally made by customers selecting a pair of suitable glasses rather than by demand over the counter for glasses of a particular mark.

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(4) Although little is to be gained by making a meticulous comparison of the two marks nevertheless a commonsense comparison has to be made bearing in mind that a great body of purchasers would be quite unlikely to make any kind of careful analysis or comparison of the two marks. It is obvious that the two marks have the same number of syllables and differ from one another by two letters only. It is said that the ordinary pronunciation of the mark SOLAVOID would be with the syllable "SOL" pronounced with a short "o" whereas the first syllable of the mark POLAROID is normally pronounced with a long "o". This may be so in the case of somebody who is prepared to split up the mark SOLAVOID into the two words SOL and AVOID and is familiar with the word "SOL" in the English language. But by no means all of purchasers are likely, or indeed capable, of so analysing the SOLAVOID mark. Even by some sophisticated people the mark SOLAVOID could be understood as based on the two words SOLAR and VOID. Purchasers of sun-glasses in New Zealand must come from a wide range of age, social, cultural and ethnic groups. We would think it highly probable that a considerable percentage of persons would pronounce SOLAVOID in such a way as to make the vowel sounds completely similar to those in POLAROID. Some people would very likely pronounce POLAROID with a short "o" in the first syllable. However there are many cases

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in which emphasis has been placed on the difference between the two consonants with which otherwise similar marks begin. That matter must be given proper weight in the present case. Some importance from an aural point of view must also be attached to the consonant "v" in SOLAVOID as compared with the consonant "r" in POLAROID. These consonants appear in a position in both marks where they are likely to receive less emphasis than the initial consonants. Because the different consonants make a real difference to the sound of the two words, we are not satisfied that persons with an accurate knowledge of the word POLAROID would mistake the one word for the other. From a visual point of view the marks are different to anybody studying them with reasonable care. But although the word POLAROID is very well known, there must remain a considerable number of people to whom it is not so well known. To such people, with an imperfect recollection, we think there would be a real risk of confusion. 10

(5) Next the question arises as to whether there is a real possibility of confusion, on the part of a substantial number of buyers, not in the sense of their being deceived into the belief that the two marks are the same but rather on the principle referred to by Lord Upjohn in the Bali Trade Mark case (1969) R.P.C. 472, 496 when His Lordship said - 30

"It is not necessary in order to find that a mark offends against section 11 to prove that there is an actual probability of deception leading to a passing off or (I add) an infringement action. It is sufficient if the result of the registration of the mark will be that a number of persons will be caused to wonder whether it might not be the case that the two products come from the same source. It is enough if the ordinary person entertains a reasonable doubt, but the court has to be satisfied not merely that there is a possibility of 40

confusion; it must be satisfied that there is a real tangible danger of confusion if the mark which it is sought to register is put on the register. And so mutatis mutandis when it is sought to expunge a mark."

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10 This principle had been accepted by Romer J. in Jellinck Trade Mark (1946) 63 R.P.C. 59 p.78, and reference to that case was also made with apparent approval by Lord Morris of Borth-y-Gest in the Bali Trade Mark case at p.491.

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20 In the reported cases the evolution of the principle appears to begin with a passage in the judgment of Morton J. in Hack's Application (1940) 58 R.P.C. 91, 110. It has been accepted by the High Court of Australia: Southern Cross Refrigerating Co. v. Toowoomba Foundry Pty. Ltd. (1954) 91 C.L.R. 592, 608. As was pointed out in N.Z. Breweries Ltd. v. Heineken's [1964] N.Z.L.R. 115, 133-4, 141, 142, the expression 'or cause confusion' was introduced into the relevant sections of the trade mark legisla-  
30 tion in 1938 in the United Kingdom and in many cases not a great deal turns on the changed wording. But the new words may well have been intended to cover the kind of situation struck at by the 'caused to wonder' principle. At all events we think that that principle follows both from the authorities to which we have referred and the statutory language itself.

40 One is here dealing with the case of those purchasers who not only are familiar with the word POLAROID but also associate that word with sunglasses produced by a particular manufacturer. Would any significant number of such purchasers, having noticed that the sunglasses they have in mind purchasing are labelled SOLAVOID, really seriously wonder whether they come from the same source as POLAROID glasses?

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When both marks have been in use for several years, evidence addressed to whether or not there has been actual confusion may clearly be important, but, as was emphasised in this Court in the Steinecker case at pp.133, 139 and 142, it is ultimately for the Court to take the responsibility of deciding whether the marks are too close, as a matter of personal impression, though having regard to any relevant evidence. 10

Here both marks are for sunglasses; they have in common the relatively unusual suffix "oid"; they have the same number of syllables; they also have in common the letters "ola". The evidence is that all POLAROID sunglasses have polarising lenses but that most SOLAVOID sunglasses do not and tend to be cheaper; on the latter point see, for example, the affidavit of Mr D.J. Morrison of Wanganui, paragraph 11. 20

Bearing in mind these similarities and the fact that in our view a considerable number of buyers might well not analyse SOLAVOID in terms of the idea conveyed by SOL-AVOID, our strong prima facie impression is that there is a real tangible danger that a significant number of buyers would be caused to wonder whether the two products come from the same manufacturer and have been differently named because of differences in lenses, style or price. 30

The question then becomes whether the evidence is sufficient to offset that impression. It is true that in the numerous affidavits there is no clear evidence of an instance of actual confusion and that the tenor of the affidavits by chemists filed for the respondent is to the contrary. But one would not expect chemists to be confused. As to the general public, an important theme appearing from the respondent's affidavits is that most people select sunglasses because of style or price rather than because of the trade mark. We refer to the affidavits of Mr D.B. Allen of Waitara, para. 12; Mr R.L. Barclay of Hawera, para. 12; Mr B. Goldsbury of Wanganui; para. 9; Mr D.L. Grant of 40

Havelock North, para. 10; Mr E.R. Masson of New Plymouth, para. 14; and Mr D.J. Morrison of Wanganui, para. 10. We infer that the case lies in a field where the general public is largely indifferent to trade marks. That cannot derogate, we think, from the appellant's statutory right to protection for its registered mark or from the public importance of preserving the purity of the register. However it does go a long way towards explaining the absence of evidence of actual confusion. In the light of this consideration, our prima facie impression is not dispelled by the evidence. Looking at the matter from a jury point of view we cannot escape the conclusion that there is a real tangible danger of confusion in the sense which we have just discussed. We would add that on this particular matter, which we regard as a very important one, we have not had the benefit of any views expressed by Beattie J. It may be that confusion, in the sense of people wondering whether goods come from the same source, was not particularly emphasised in argument. However Mr Gault relied heavily on this aspect of confusion in his submissions in this Court.

Because of the view which we have just expressed, and because we also believe there to be a probability of confusion on the part of persons having an imperfect recollection of the word PCLAROID, we are of opinion that appellant has established the first ground on which the application to expunge the entry of the word SOLAVOID was based.

In these circumstances it is unnecessary for us to consider a number of further submissions which were made by Mr Gault in respect of the appeal.

There is however the question of the overall discretion of the Court to refuse to order a mark to be expunged from the register. As to this Beattie J. made the following comments -

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"If I am wrong in my judgment that there is no reasonable probability of deception, for myself, I would not lightly remove from the Register a mark that has, as I find, been in bona fide use for approximately five years and around which obvious goodwill in commerce has been established by substantial expenditure. It could be in any event that if the mark was removed on the grounds of close resemblance, a fresh application could be based on honest concurrent use invoking the unfettered discretion in s.17(2)." 10

Having regard to the conclusions at which we have arrived in this judgment we are of opinion that it would be plainly wrong for us to refuse the application in the exercise of our discretion. Beattie J. attached weight 20 to what he regarded as the bona fide use of the SOLAVOID mark for approximately five years. As earlier recorded the respondent began selling sunglasses under the SOLAVOID mark in September 1968. It seems likely that the registration of that mark was discovered by the appellant in the early part of 1969. Proceedings for rectification were begun in January 1971. This means that there was a delay in commencing proceedings of between 18 30 months and 2 years from the time when the appellant first became aware of the registration of the SOLAVOID mark. We do not know the reasons for this delay but once the proceedings were issued the respondent elected to continue the use of the SOLAVOID mark and we do not think that the user of the mark thereafter should militate against the exercise of the discretion. As to the period leading up to the issue of proceedings it 40 may well be that respondent acted in good faith in the sense that it believed it had a mark which was sufficiently distinguishable. But it is inconceivable that it was not well aware of the POLAROID mark at all times, or that it could not have noticed

10 that the two marks had several features in common. We think that the respondent must have known that it was sailing fairly close to the wind. The other matter referred to by Beattie J. was the possibility of respondent making a fresh application for registration based on honest concurrent use. Of course an application of that kind could not have been made at the time when the SOLAVOID mark was registered in October 1966. At that time there was no concurrent user. We understand Beattie J. to have had in mind the possibility of respondent now making application in the event of the SOLAVOID mark being expunged. We do not think that the possibility of a successful application of that kind is sufficiently established to warrant the refusal of the present application.

20 In the result the appeal is allowed and there will be an order to rectify the register of trade marks by expunging therefrom the trade mark registered number B82513. The appellant is entitled to its costs which we fix at \$400, together with disbursements. It will also be entitled to costs in the Supreme Court. In that Court costs were reserved and may be dealt with accordingly.

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No. 48

No.48

30 FORMAL JUDGMENT OF COURT OF APPEAL

Formal Judgment  
of Court

FRIDAY the 29th day of November 1974.

29 November 1974

Before the Right Honourable Mr Justice Richmond  
The Right Honourable Mr Justice Woodhouse  
The Right Honourable Mr Justice Cooke

This Notice of Motion of Appeal dated the 7th day of November 1973 coming on for hearing on the 9th and 10th days of September 1974 and UPON HEARING Mr Gault of Counsel for the appellant and Mr McKay



In the Court  
of Appeal of  
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No.48

Formal Judgment  
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29 November 1974

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and Mr Williams of Counsel for the  
respondent THIS COURT HEREBY ORDERS AND  
DECLARES that the appeal is allowed and  
THIS COURT FURTHER ORDERS that the register  
of trade marks be rectified by expunging  
therefrom the trade mark registered number  
B82513 and doth FURTHER ORDER that the  
respondent pay to the appellant the sum of  
\$400 for costs together with disbursements  
and doth FURTHER ORDER that the respondent  
pays the costs in the Supreme Court

10

By the Court

L.S.

'D.V. Jenkin'

Registrar

No.49

Order of the  
Court granting  
Final Leave to  
Respondent to  
Appeal to  
Her Majesty  
in Council

3rd June 1975

No. 49

ORDER OF THE COURT OF APPEAL GRANTING FINAL  
LEAVE TO RESPONDENT TO APPEAL TO  
HER MAJESTY IN COUNCIL.

TUESDAY the 3rd day of June 1975

Before : The Honourable Mr Justice McCarthy  
President  
The Honourable Mr Justice Richmond  
The Honourable Mr Justice Woodhouse

20

UPON READING the notice of motion for grant  
of final leave to appeal to Her Majesty in  
Council filed herein and the affidavit filed  
in support thereof AND UPON HEARING Mr Turley  
of Counsel for the Respondent and Mr Philpot  
of Counsel for the Plaintiff THIS COURT  
HEREBY ORDERS that the abovenamed Respondent  
be and is hereby granted final leave to  
appeal to Her Majesty in Council from the  
judgment of this Honourable Court given  
and made on the 29th day of November 1974.

30

By the Court

'D.V. Jenkin'

L.S.

REGISTRAR



"W.W.B.1"

Pat. 155

In the Supreme  
Court of New  
ZealandIN THE PATENT OFFICE,  
NEW ZEALAND. } No. 38281

This is the Certificate of the New Zealand Commissioner of Trade Marks marked "W.W.B.1" now produced and shown to WALTER WILLIAM BRACKENRIDGE and referred to in his declaration declared at Wellington the 20th day of January 1971, before me:

In the matter of the Trade Marks Act 1953  
and the Regulations thereunder;

AND

In the matter of Trade Mark Registration  
in the name of POLAROID CORPORATION.

Solicitor of the Supreme Court of  
New Zealand

Exhibit "W.W.B.1"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

### Certificate.

I CONWAY WALTER WADHAM, Commissioner of Trade Marks for New Zealand, hereby Certify that POLAROID CORPORATION, a corporation organised under the laws of the State of Delaware, of 317 South State Street, Dover, Delaware, U.S.A., manufacturers, were registered under the date of 28 May 1940, as proprietors of the trade mark POLAROID, a representation of which appears below in Class 8 (Schedule III) under No. 38281 in respect of: "composite material comprising suspensions of dichroic needle-shaped particles in a light-transmitting medium adapted to be used in connection with optical devices such as microscope eye-pieces, glare eliminators, variable density diaphragms, gem testers, cameras, lenses, wave retardation plates, microscopes, lamps, headlights, wind-shields, stereoscopic implements, sun glasses, reading lamps, and other scientific instruments, optical goods, measuring and testing instruments, and devices for the control of light intensity; microscope eye-pieces, glare eliminators, variable density diaphragms, gem testers, cameras, lenses, wave retardation plates, microscopes, lamps, stereoscopic implements, sun glasses, and other scientific instruments, optical goods, measuring and testing instruments, and devices for the control of light intensity, all the foregoing goods being goods included in Class 8".

#### I Further Certify:

- (a) that under the date of 27 March 1953, the address of the proprietor was altered to 730 Main Street, Cambridge, Massachusetts, U.S.A.
- (b) that under the date of 19 January 1954, the address for service was entered, c/o A.J. Park & Son, Wellington.

C.w.

N.S.

.../

In the Supreme  
Court of New  
Zealand

- (c) that under the date of 1 August 1956, POLARIZERS (AUSTRALIA) PTY. LIMITED, of Collins House, 239 Broadway, Sydney, N.S.W., Australia, manufacturers, were registered as users.
- (d) that under the date of 7 May 1963, POLAROID OVERSEAS CORPORATION, a corporation organised under the laws of Liberia, of Fenby House, Shirley Street, Nassau, Bahama Islands, manufacturers, were registered as user, in respect of microscope eye-pieces, glare eliminators, variable density diaphragms, gem testers, cameras, lenses, wave retardation plates, microscopes, lamps, stereoscopic implements and other scientific instruments, measuring and testing instruments, and devices for the control of light intensity, all the foregoing goods being goods included in Class 8.
- (e) that under the date of 9 August 1956, POLARIZERS (FRANCE) S.A.R.L., a corporation organised under the laws of France, of 61/63 Rue Beaubourg, Paris 3e, France, manufacturers, were registered as users.
- (f) that under the date of 10 August 1956, POLARIZERS (UNITED KINGDOM) LIMITED, of 186 Acton Lane, Harlesden, London, N.W.10, England, manufacturers, were registered as users.
- (g) that under the date of 15 August 1956, POLARIZERS (SOUTH AFRICA) LIMITED, of 318 P.E.A.C. Building, 15 de Villiers Street, Johannesburg, South Africa, manufacturers, were registered as users.
- (h) that under the date of 15 February 1965, the registered user entry in the name of POLARIZERS (SOUTH AFRICA) LIMITED, of Harland House, Loveday Street, Johannesburg, South Africa, was varied by restricting the specification of goods to: "light-polarizing sunglasses and sungoggles".
- (i) that under the date of 18 March 1965, the registered user entry in the name of POLARIZERS (UNITED KINGDOM) LIMITED, was cancelled.
- (j) that under the date of 8 April 1965, the registered user entry in the name of POLARIZERS (FRANCE) S.A.R.L., was cancelled.
- (k) that under the date of 4 May 1965, the registered user entry in the name of POLARIZERS (AUSTRALIA) PTY. LIMITED, was varied by limiting the goods to: lightpolarizing sunglasses and sungoggles.

Exhibit "W.W.B.1"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

*Crow*

*DSH* ....!

3.

- (l) that under the date of 23 August 1965, POLAROID (EUROPA) N.V., a corporation organised under the laws of the Netherlands, of 33-35 Amsterdam-2, Holland; manufacturers, were registered as user in respect of all the goods except light polarizing sunglasses and sungoggles.
- (m) that under the date of 8 August 1968, the registered user entry in the name of POLARIZERS (SCUTH AFRICA) LIMITED, was cancelled.
- (n) that under the date of 19 June 1968, NIPPON POLAROID KABUSHIKI KAISHA, a corporation organised under the laws of Japan, of Taiko Building, No.20, Skinbori-cho, Shiba, Minato-ku, Tokyo, Japan, manufacturers and merchants, were registered as user.
- (o) that under the date of 29 May 1968, POLAROID AUSTRALIA PTY. LIMITED, of 11 Smail Street, Ultimo, N.S.W., Australia, manufacturers and merchants, were registered as user.
- (p) that under the date of 7 August 1970, the conditions and restrictions of registered use by POLAROID (U.K.) LIMITED has been varied as follows:  
The trade mark is to be used by the registered user in relation to the goods only so long as the registered proprietor owns sufficient share capital of the registered user to enable the registered proprietor, directly or indirectly, to appoint or elect a majority of the Directors of the registered user.
- (q) that under the date of 25 August 1970, the conditions and restrictions of registered use by NIPPON POLAROID KABUSHIKI KAISHA has been varied as follows:  
The trade marks are to be used by the Registered user only so long as POLAROID CORPORATION owns sufficient share capital of the registered user to enable POLAROID CORPORATION to appoint or elect a majority of the Directors of the registered user.
- (r) that the registration of such Trade Mark is current until 28 May 1975, when it may be renewed.  
The representation of the Trade Mark referred to above is:

POLAROID

GIVEN under my hand and the  
 seal of the Patent Office  
 this 23rd day of December 1970.

*Cumadh...*

*A.H.*

In the Supreme  
 Court of New  
 Zealand

Exhibit "W.W.B.1"  
 to Affidavit of  
 Walter William  
 Brackenridge  
 sworn 20th  
 January 1971

- continued



"W.W.B.2"

(Pat. 155)

In the Supreme  
Court of New  
ZealandIN THE PATENT OFFICE,  
NEW ZEALAND. } No. 42821Exhibit "W.W.B.2"  
to Affidavit of

This is the Certificate of the New Zealand Commissioner of Trade Marks marked "W.W.B.2" now produced and shown to WALTER WILLIAM BRACKENRIDGE and referred to in his declaration declared at Wellington the 20th day of January 1971, before me:

In the matter of the Trade Marks Act 1953 and the Regulations thereunder;

Walter William  
Brackenridge  
sworn 20th  
January 1971

AND

In the matter of Trade Mark Registration  
in the name of POLAROID CORPORATION

*R. J. Hardy*  
Solicitor of the Supreme Court of  
New Zealand

### Certificate.

I CONWAY WALTER WADHAM, Commissioner of Trade Marks for New Zealand, hereby Certify that POLAROID CORPORATION, a corporation organised under the laws of the State of Delaware, of 730 Main Street, Cambridge, Massachusetts, U.S.A., manufacturers, were registered under the date of 29 March 1946, as proprietors of the Trade Mark POLAROID, a representation of which appears below in Class 9 (Schedule IV) under No.42821 in respect of "composite material comprising suspensions of crystalline particles in a light-transmitting medium adapted to be used in connection with optical devices such as microscope eye-pieces, glare eliminators, variable density diaphragms, gem testers; viewing devices - namely, filters, lenses, eyeglasses and goggles; stereoscopic viewers; optical bench elements; camera filters; day glasses, sun shields and visors; polariscopes; variable density windows; fixing baths; photographic processing tanks and printing rolls".

#### I Further Certify:

- (a) that under the date of 1 August 1956, POLARIZERS (AUSTRALIA) PTY. LIMITED, of Collins House, 239 Broadway, Sydney, N.S.W., Australia, manufacturers, were registered as users.
- (b) that under the date of 9 August 1956, POLARIZERS (FRANCE) S.A.R.L., a corporation organised under the laws of France, of 61/63 Rue Beaubourg, Paris 3e, France, manufacturers, were registered as users.

Cw

D. H.

....!

2.

In the Supreme  
Court of New  
Zealand

- (c) that under the date of 10 August 1956, POLARIZERS (UNITED KINGDOM) LIMITED, of 186 Acton Lane, Harlesden, London, N.W.10, England, manufacturers, were registered as users.
- (d) that under the date of 15 August 1956, POLARIZERS (SOUTH AFRICA) LIMITED, of 318 P.E.A.C. Building, 15 de Villiers Street, Johannesburg, South Africa, manufacturers, were registered as users.
- (e) that under the date of 15 February 1965, the registered user entry in the name of POLARIZERS (SOUTH AFRICA) LIMITED, of Harland House, Loveday Street, Johannesburg, South Africa, was varied by restricting the specification of goods to: "light-polarizing sunglasses and sungoggles".
- (f) that under the date of 18 March 1965, the registered user entry in the name of POLARIZERS (UNITED KINGDOM) LIMITED, was cancelled.
- (g) that under the date of 7 August 1970, the conditions and restrictions of registered use by POLAROID (U.K.) LIMITED was varied as follows:  
"The trade mark is to be used by the registered user in relation to the goods only so long as the registered proprietor owns sufficient share capital of the registered user to enable the registered proprietor, directly or indirectly, to appoint or elect a majority of the Directors of the registered user.
- (h) that under the date of 8 April 1965, the registered user entry in the name of POLARIZERS (FRANCE) S.A.R.L. was cancelled.
- (i) that under the date of 4 May 1965, the registered user entry in the name of POLARIZERS (AUSTRALIA) PTY. LIMITED, has been varied by limiting the goods to: "light-polarizing sunglasses and sungoggles".
- (j) that under the date of 23 August 1965, POLAROID (EUROPA) N.V., a corporation organised under the laws of the Netherlands, of 33-35 Amsterdam - 2, Holland, manufacturers, were registered as user in respect of all the goods except light polarizing sunglasses and sungoggles.

Exhibit "W.W.B.2"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

*Cms*

*W.W.B.*

..../

In the Supreme  
Court of New  
Zealand

- (k) that under the date of 2 May 1967, POLAROID (U.K.) LIMITED, of Rosanne House, Welwyn Garden City, Hertfordshire, England, manufacturers, were registered as user.
- (l) that under the date of 8 August 1968 the registered user entry in the name of POLARIZERS (SOUTH AFRICA) LIMITED, was cancelled.
- (m) that under the date of 19 June 1968, NIPPON POLAROID KABUSHIKI KAISHA, a corporation organised under the laws of Japan, of Taiko Building, No.20, Skinbori-cho, Shiba, Minato-Ku, Tokyo, Japan, manufacturers and merchants, were registered as user.
- (n) that under the date of 29 May 1968, POLAROID AUSTRALIA PTY. LIMITED, of 11 Small Street, Ultimo, N.S.W., Australia, manufacturers and merchants, were registered as user.
- (o) that under the date of 25 August 1970, the conditions and restrictions of registered use by NIPPON POLAROID KABUSHIKI KAISHA has been varied as follows:
- "The trade marks are to be used by the Registered user only so long as POLAROID CORPORATION owns sufficient share capital of the registered user to enable POLAROID CORPORATION to appoint or elect a majority of the Directors of the registered user.
- (p) that the registration of such Trade Mark is current until 29 March 1981, when it may be renewed.
- (q) that the Trade Mark Registration has been associated with Nos.38281 and 42820.

Exhibit "W.W.B.2"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

The representation of the Trade Mark referred to above is:

POLAROID

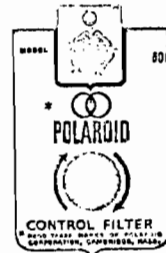
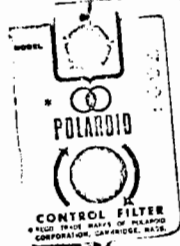
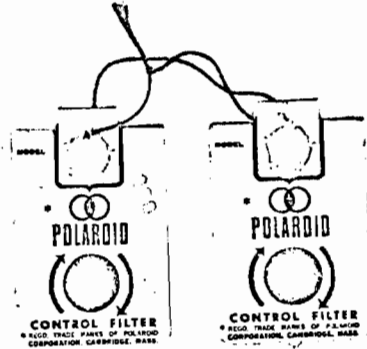
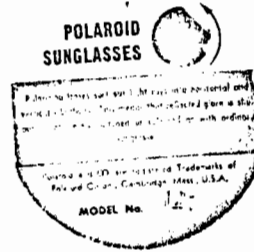
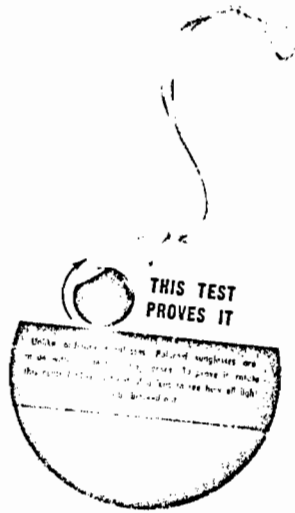
GIVEN under my hand and the  
seal of the Patent Office this  
23rd day of December 1970.

*C. W. M. D. M.*

*R.S.H.*

In the Supreme Court of New Zealand

Exhibit "W.W.B.3" to Affidavit of Walter William Brackenridge sworn 20th January 1971



"W.W.B.3"

This is the envelope marked "W.W.B.3" now produced and shown to WALTER WILLIAM BRACKENRIDGE and referred to in his declaration declared at Wellington this 20th day of January 1971, before me:

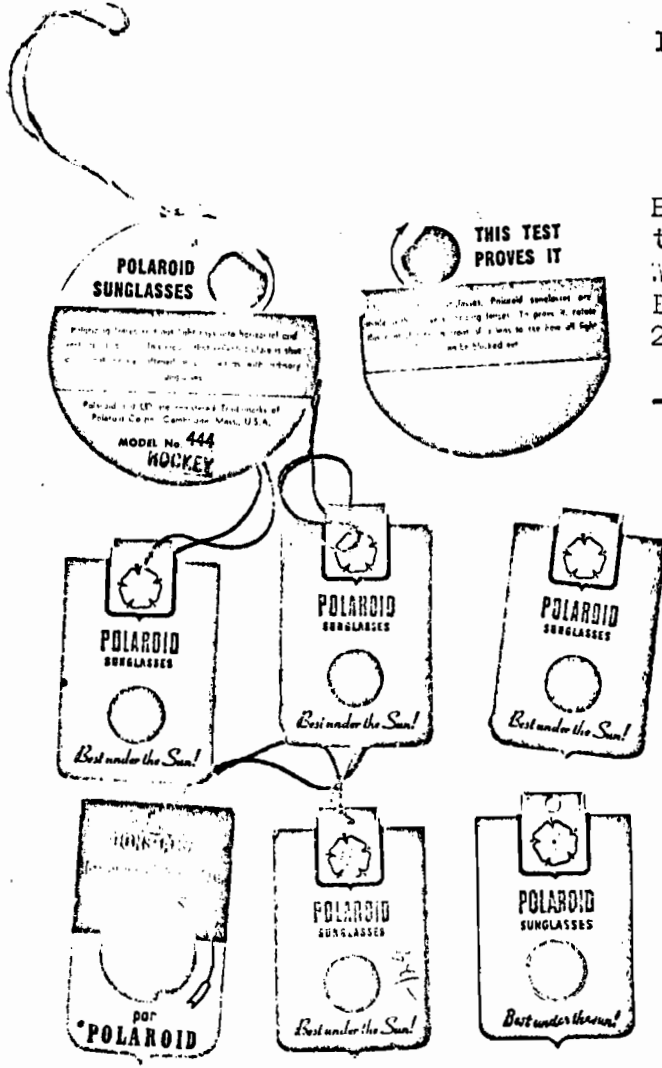
*W. S. G. Smith*  
Solicitor of the Supreme Court of New Zealand



In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.3"  
to Affidavit of  
Walter William  
Brackenridge sworn  
20th January 1971

- continued



"W.W.B.3"

This is the envelope marked  
"W.W.B.3" now produced and  
shown to WALTER WILLIAM  
BRACKENRIDGE and referred to  
in his declaration declared  
at Wellington this 20th  
day of January 1971,  
before me:

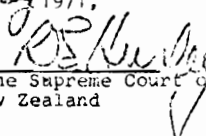
*W. S. Mackay*  
Solicitor of the Supreme Court of  
New Zealand

In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971.

This is the brochure marked  
"W.W.B.4" now produced and shown  
to WALTER WILLIAM BRACKENRIDGE  
and referred to in his declaration  
declared at Wellington this 20th  
day of January 1971,  
before me:

  
Solicitor of the Supreme Court of  
New Zealand

POVARONE  
SUNGLASSES  
CUSTOM  
RANGE 68

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

*EASY TO  
DEMONSTRATE—  
EASY TO SELL*

Polaroid sunglasses have one essential difference: unlike ordinary sunglasses, they polarize light.

This is easy to demonstrate. Simply cross two Polaroid sunglass lenses and all light is blocked out. Simple but dramatic! The test proves Polaroid sunglasses use a unique optical principle to filter out glare.

To your customers, this means annoying reflected light is stopped. It never reaches the eye.

Your customer sees with greater eye comfort and wears the most up-to-date fashion look.

*TAKE-AWAY LEAFLETS*

Use our free leaflets on the counter or mail them out with accounts. They can sell customers in a hurry and act as reminders to customers at the start of the summer season.

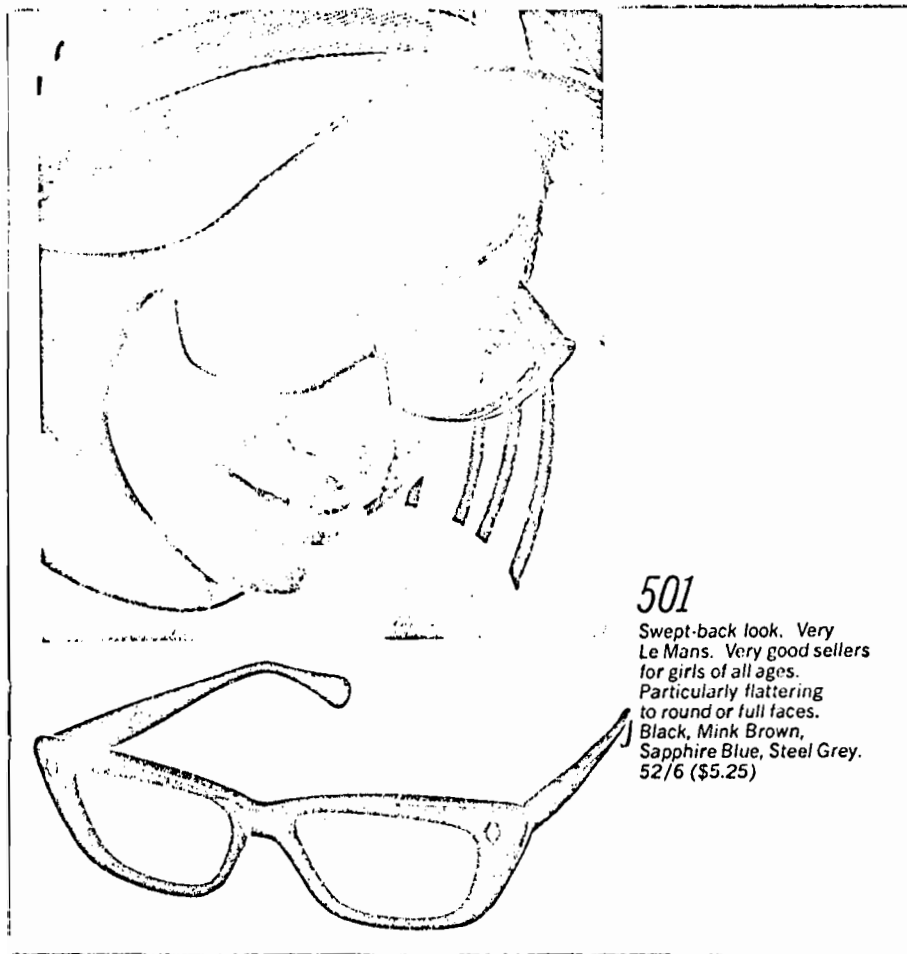
*REPAIR SERVICES*

Polaroid sunglasses can be easily repaired. Please forward repairs to our repair contractors, N.Z. Optical (Wholesale) Ltd., at any of the following addresses:  
P.O. Box 2534, Wellington;  
P.O. Box 6240, Auckland;  
P.O. Box 1476, Christchurch.  
Polaroid sunglasses are guaranteed for good workmanship. In the event of claims, sunglasses should be forwarded to:  
Polarizers (New Zealand) Ltd.,  
G.P.O. Box 2594,  
Wellington.

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

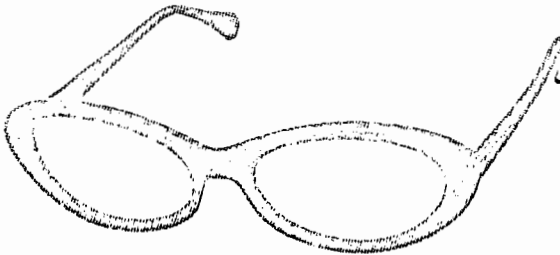


In the Supreme  
Court of New  
Zealand

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Exhibit "U.W.N.4"  
to Affidavit of  
Walter William  
Breckenridge  
sworn 20th  
January 1971

- continued



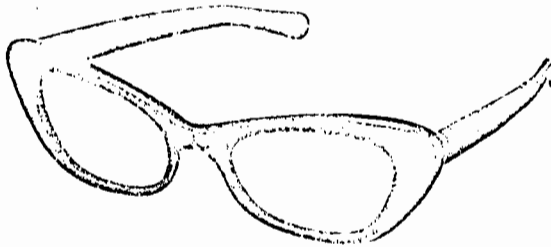
508

Oval frames soften  
the lines of wide or  
angular faces. Just  
a hint of upsweep.  
Black, Mink Brown,  
Kenya Red, Mystic Rose,  
Cinnamon.  
52/6 (\$5.25)

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.S.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**555A**

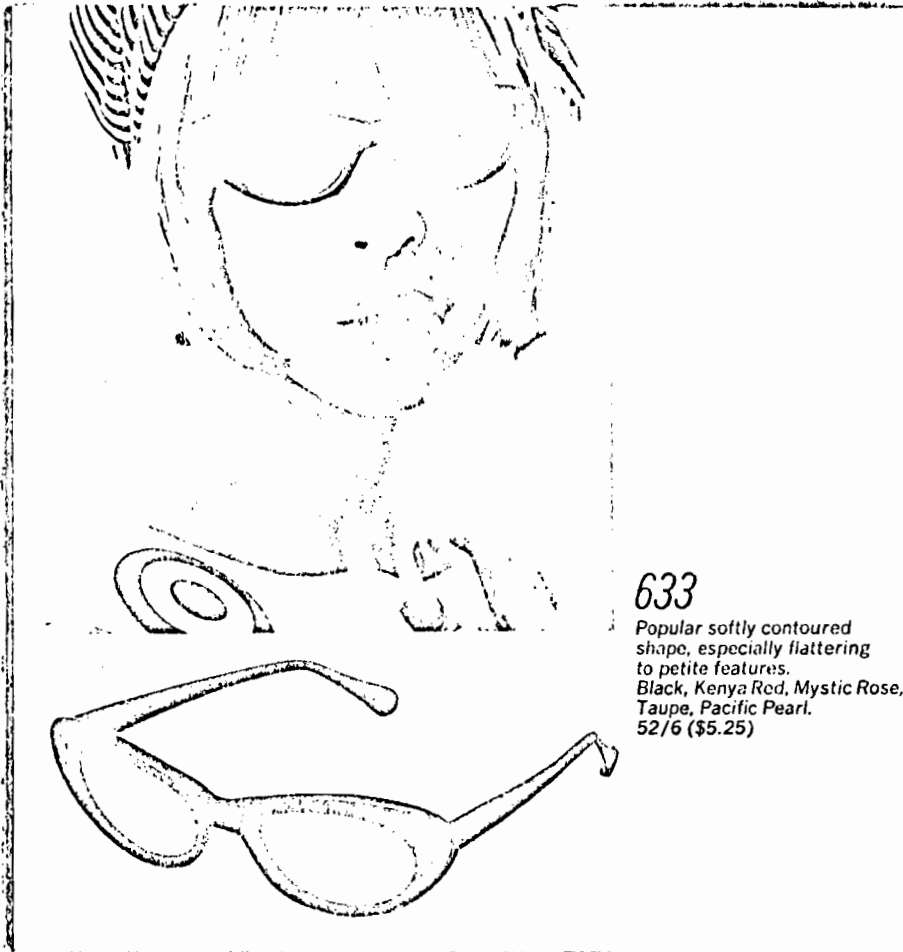
A proven best-seller,  
featuring contoured front  
styling that flatters  
every shape of face.  
Black, Honey Brown,  
Taupe, Pacific Pearl.  
52/6 (\$5.25)

In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



633

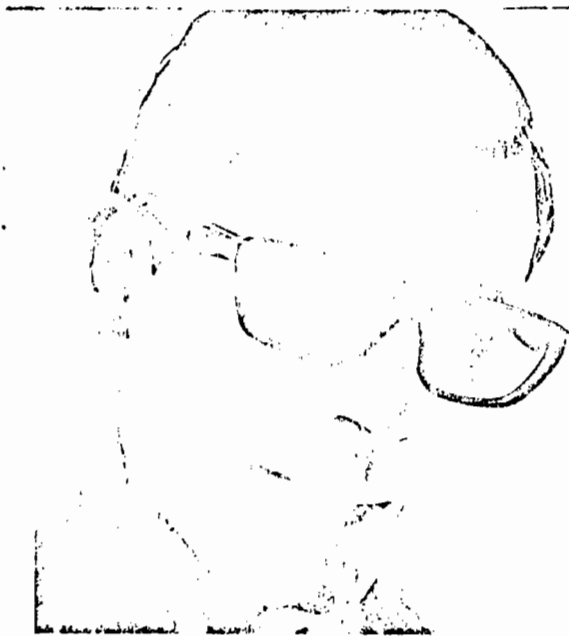
Popular softly contoured  
shape, especially flattering  
to petite features.  
Black, Kenya Red, Mystic Rose,  
Taupe, Pacific Pearl.  
52/6 (\$5.25)

In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



903

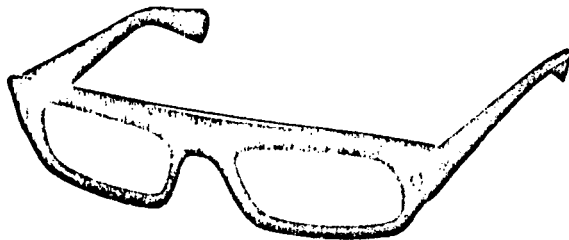
A good, versatile  
shape. Understated.  
Conservative. Confident.  
Typical male qualities.  
Black, Honey Brown,  
Char Grey.  
52/6 (\$5.25)



In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**918**

A straight man!  
Decisive. Makes quick,  
firm decisions. Instinct  
will direct him to  
this style. The line  
from ear to ear will  
appeal to him and,  
confidentially, to her.  
Black, Char Grey, Brunol.  
52/6 (\$5.25)

In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**960A**

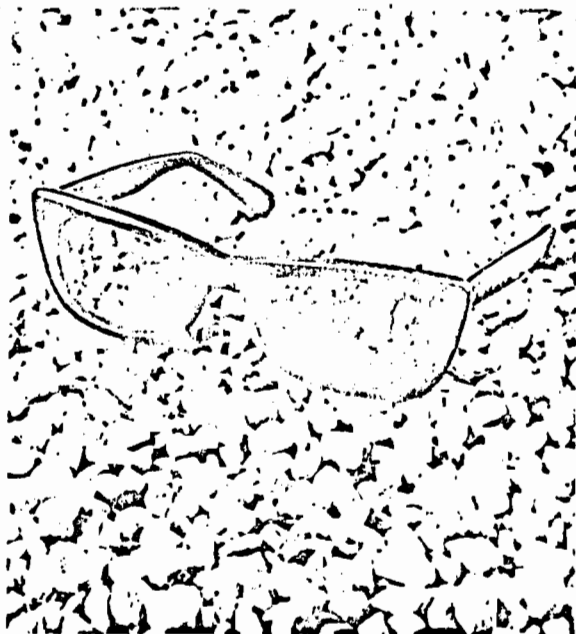
*No wonder this style is a steady top seller with all ages. Just look at the popularity point. Rather intellectual look. Extremely flattering to most face shapes. Extremely comfortable. Decisively male. Black, Honey Brown, Char Grey. 52/6 (\$5.25)*

In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**978**

The typical executive look.  
Plastic temples.  
Black, Honey Brown,  
Char Grey.  
52/6 (\$5.25)

In the Supreme  
Court of New  
Zealand

---

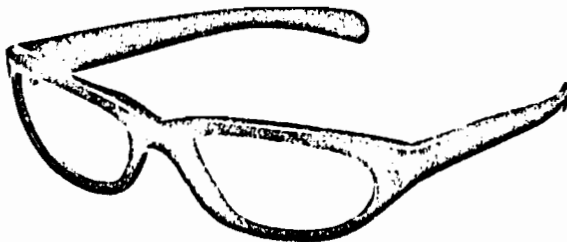
Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**677**

For the girl who'd look  
good gracing the social  
pages. High-fashion  
wrap-around frames with  
blend-in temples.  
Classic Black, Ivory.  
49/6 (\$4.95)

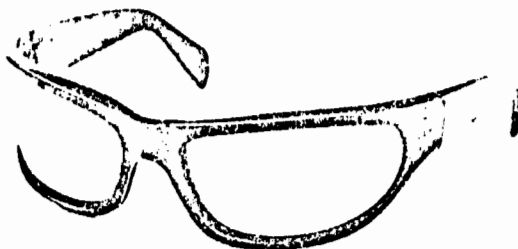


In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**738**

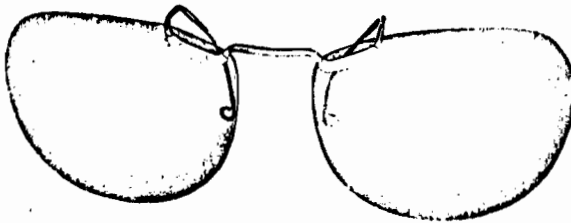
*New! The full wrap-around.  
The first true wrap.  
Essential features of its  
ski-country ancestor, in  
fact for the first time  
(and in keeping with '68  
fashion). Universal frames  
for men or women.  
Black, Ivory.  
49/6 (\$4.95)*

In the Supreme  
Court of New  
Zealand

---

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



*121*

Clip-on style. Gold-filled  
mount. Styled for men's  
spectacle frames. Clip-on  
Polaroid sunglasses to  
convert ordinary spectacles.  
37/- (\$3.70)

In the Supreme  
Court of New  
Zealand

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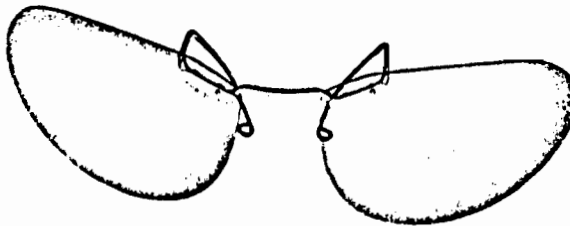
Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



141

Clip-on style. Gold-filled  
mount. Styled for ladies'  
spectacle frames.  
37/- (\$3.70)

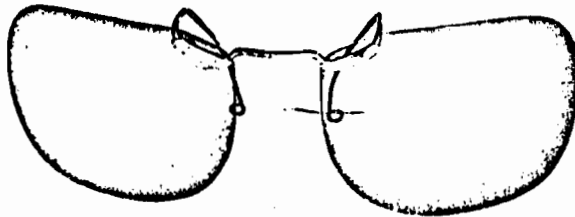


In the Supreme  
Court of New  
Zealand

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Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



*171*

Clip-on style. Gold-filled  
mount. Styled to fit all  
types of men's spectacles,  
especially the larger  
library frames.  
37/- (\$3.70)

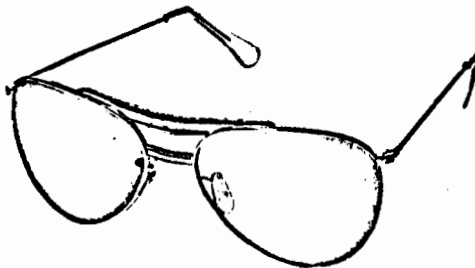


In the Supreme  
Court of New  
Zealand

---

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



939

Aviation styling with Zylor  
brow bar trim. Hockey  
temples. Frame in gold plate  
with adjustable nose pads.  
59/6 (\$5.95)

In the Supreme  
Court of New  
Zealand

---

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**445M**

New base curve to lenses  
accentuates true wrap-  
around effect. Featherlight.  
Gold plate. Hockey temples.  
Long-life, spring-bar mount.  
59/6 (\$5.95)

In the Supreme  
Court of New  
Zealand

---

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



**445L**

Feminine gender of 445M.  
Smaller, slinkier lenses.  
Same honest curve. Same  
hockey temples, spring-bar  
mount and gold plate.  
59/6 (\$5.95)

In the Supreme  
Court of New  
Zealand

---

Exhibit "W.W.B.4"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.5"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

"W.W.B.5"

Sneak a look at these peepers. Ever see anything swinger? These are Polaroid sunglasses '67—the sunglasses with the high voltage look. Optically speaking, Polaroid sunglasses have shatterproof lenses that polarize light, filter out glare, give you complete eye protection. Which translated means you get the fun and your eyes don't get the sun. Available from your Chemist, Optometrist or Optician.

NEW  
VIEW  
FROM THE  
WORLD  
OF OP  
POLAROID  
sunglasses  
'67

MODEL No. 918    MODEL No. 846L    MODEL No. 977A    127 64

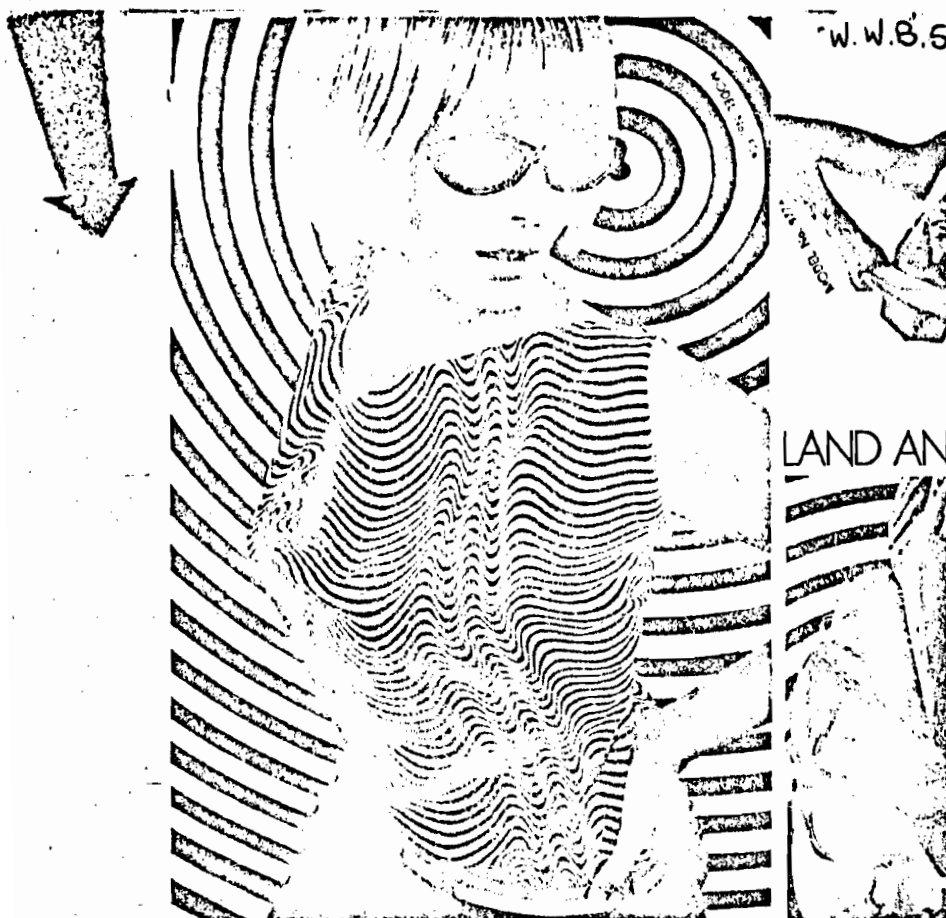
In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.5"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued



*Playdate December 1966*



In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.5"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

Patented and © are the registered trademarks of Polaroid Corp., Cambridge, Mass., U.S.A.

44434

# POLAROID SUNGLASSES MOVING IN ON A WIDE FRONT

Here they come... the new Polaroid sunglasses on the people who are up to their eyes in fashion. You only have to look at the exciting new shapes and cool colours. Now glamour and complete eye protection go together. Get behind the shatter-proof Polaroid lenses that polarize light, filter out glare. Surround yourself with the new bold styling. Start moving in Polaroid sunglasses circles now. Available from your Chemist, Optometrist or Optician.

MODEL N

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.5"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

MODEL No. 918      MODEL No. 937A      MODEL No. 938A      MODEL No. 901      **W.W.B.5**      MODEL No. 901

Sneak a look at these peepers. Ever see anything swinging? These are Polaroid sunglasses '67—the sunglasses with the high voltage look. Optically speaking, Polaroid sunglasses have shatterproof lenses that polarize light, filter out glare, give you complete eye protection. Which translated means you get the fun and your eyes don't get the sun. Available from your Chemist, Optometrist or Optician.

NEW  
VIEW  
FROM THE  
WORLD  
OF OP  
POLAROID  
sunglasses  
'67

MODEL No. 918      MODEL No. 938A      MODEL No. 937A      MODEL No. 901



In the Supreme Court of New Zealand

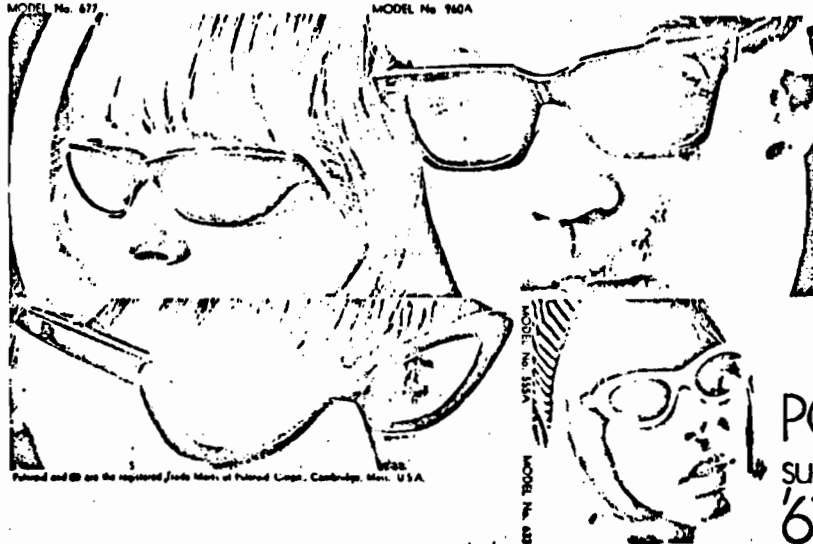
Exhibit "W.W.B.5" to Affidavit of Walter William Brackenridge sworn 20th January 1971

- continued

"W.W.B.5"



WONDERED  
WHERE  
ALL YOUR  
FRIENDS  
WERE  
LATELY?



They're all those fascinating people behind the new Polaroid sunglasses! Pardon us, but really, you're way out behind the 'in' crowd. Take off right away and pick a pair of Polaroid sunglasses. Exciting shapes, exotic colours. Polaroid sunglasses have shatterproof lenses that polarize light, filter out glare, give you complete eye protection. So your eyes find a friend, too. Available from your Chemist, Optometrist or Optician

POLAROID  
sunglasses  
'67



"W.W.B.5"

In the Supreme Court of New Zealand

Exhibit "W.W.B.5" to Affidavit of Walter William Brackenridge sworn 20th January 1971

- continued

WONDERED WHERE ALL YOUR FRIENDS WERE LATELY?



They're all those fascinating people behind the new Polaroid sunglasses! Pardon us, but really, you're way out behind the 'in' crowd. Take off right away and pick a pair of Polaroid sunglasses. Exciting shapes, exotic colours. Polaroid sunglasses have shatterproof lenses that polarize light, filter out glare, give you complete eye protection. So your eyes find a friend, too. Available from your Chemist, Optometrist or Optician

POLAROID sunglasses '67

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.6"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971.

Hong Kong and Athens. "W.W.B.6"

# SUNGLASSES

## 1968

**POLAROID**  
SUNGLASSES PRESENT  
**'THE FLIRTS'**  
*Here to flirt with everything but the sun's glare!*

The 1968 crowd of Polaroid sunglasses has arrived. Outrageous flirts the lot of them. Polaroid sunglasses flirt with fashion, with the contours of your face. Even the colours pay compliments galore to your skin and hair toning. Certainly, Polaroid sunglasses are blatant the way they attract your opposite (ssssst!)...sex.

One place Polaroid sunglasses draw the line and say NO. That's to the sun's glare! Shatterproof Polaroid lenses polarize light, filter out glare.

**LOOK FOR THIS TAG!**

Polaroid is a registered trademark of Polaroid Corporation, Cambridge, Mass., U.S.A.

©—SUNDAY NEWS, November 5, 1967

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.6"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971







- continued

W.W.B.6

# SUNGLASSES 1968

POLAROID sunglasses present

## 'THE FLIRTS'

		
<p>286. Oval frames within the lines of oval or regular face. Black, White, Brown, Copper Red, Silver, Black, Champagne.</p>	<p>278. A true wrap-around 1968 design that are fully contouring, constructed for full, unobstructed viewing. Black, Grey.</p>	<p>288. Particularly flattering to round or full faces. Black, White, Brown, Champagne, Red, Silver Grey.</p>
		
<p>287. High fashion improvement with round or square face. Grey.</p>	<p>284. Extremely flattering to most faces, very feminine. Black, Grey, Brown, Copper, Clear Grey.</p>	<p>218. Excellent wrap-around fit to the face. The lens wrap-around to ear will protect to 100% and completely to the front, around, clear Grey.</p>

## POLAROID sunglasses

Flirt with everything but the sun's glare!

New shapes that flirt with fashion, with the shape of your face, your skin toning, your hair colouring. Flirty fashion yes, but the function is serious. Shatterproof Polaroid lenses polarize light, filter out glare, really protect your eyes from the sun's glare. Buy lightweight Polaroid sunglasses today from your nearest chemist, optician, or optometrist.

Polaroid is a registered trademark of Polaroid Corp., Cambridge, Mass. U.S.A.



THIS TEST  
IS YOUR  
GUARANTEE

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.6"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

N.Z. Optical  
W.W.B.6"

- continued

# SUNGLASSES 1968

**POLAROID**  
SUNGLASSES PRESENT  
**'THE FLIRTS'**  
*Here to flirt with everything but the sun's glare!*

The 1968 crowd of Polaroid sunglasses has arrived. Outrageous flirts flirt with fashion, with the contours of your face. Even the colours pay compliments galore to your skin and hair toning. Certainly, Polaroid sunglasses are blatant the way they attract your opposite (ssssh)...sex.

One place Polaroid sunglasses draw the line and say NO. That's to the sun's glare! Shatterproof Polaroid lenses polarize light, filter out glare.

**LOOK FOR THIS TAG!**

Polaroid is a registered trademark of Polaroid Corporation, Cambridge, Mass., U.S.A.

In the Supreme Court of New Zealand

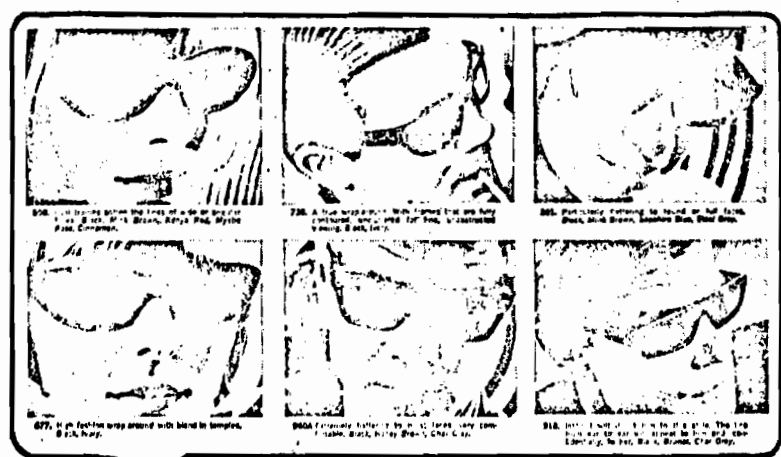
Exhibit "W.W.B.6" to Affidavit of Walter William Brackenridge sworn 20th January 1971

- continued

# SUNGLASSES 1968 W.W.B.6

POLAROID sunglasses present

## 'THE FLIRTS'



### POLAROID sunglasses

Flirt with everything but the sun's glare!  
 New shapes that flirt with fashion, with the shape of your face, your skin toning, your hair colouring. Flirty fashion yes, but the function is serious. Shatterproof Polaroid lenses polarize light, filter out glare, really protect your eyes from the sun's glare. Buy lightweight Polaroid sunglasses today from your nearest chemist, optician, or optometrist.



THIS TEST IS YOUR GUARANTEE

Polaroid is a registered trademark of Polaroid Corp., Cambridge, Mass., U.S.A.

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.6"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

- continued

FIGURE 6A, the "Chrysalis" sold in strength in the fastest rate in "let of family" etc.

# SUNGLASSES 1968

W.W.B.C



**POLAROID**  
SUNGLASSES PRESENT  
**'THE FLIRTS'**  
*Here to flirt with everything but the sun's glare!*

The 1968 crowd of Polaroid sunglasses has arrived. Outrageous flirts the lot of them. Polaroid sunglasses flirt with fashion, with the contours of your face. Even the colours pay compliments galore to your skin and hair toning. Certainly, Polaroid sunglasses are blatant the way they attract your opposite (sssssh)...see.

One place Polaroid sunglasses draw the line and say NO. That's to the sun's glare! Shatterproof Polaroid lenses polarize light, filter out glare.



**LOOK FOR THIS TAG!**

Polaroid is a registered trademark of Polaroid Corporation, Cambridge, Mass., U.S.A.

NZ LISTENING 23  
Oct. 27, 1967.

In the Supreme  
Court of New  
Zealand

Exhibit "W.W.B.7"  
to Affidavit of  
Walter William  
Brackenridge  
sworn 20th  
January 1971

**SOLAVOID**  
sunglasses have genuine polarised  
glass lenses. They selectively absorb  
glare light reflected from horizontal  
surfaces i.e. roadways, water, pave-  
ment, sand and snow.

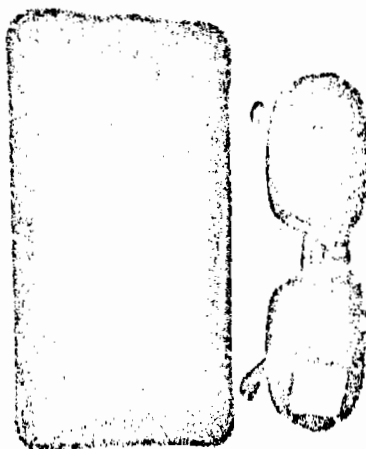
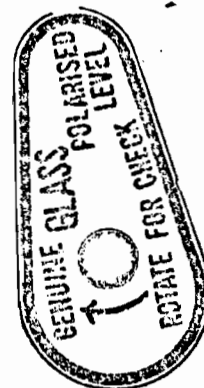
**SOLAVOID**  
Matched replacement lenses. Should  
you break a lens new ones are easily  
obtained through any Solavoid  
stockist.

**SOLAVOID**  
polar glass lenses re-establish the  
natural balance of normal light inten-  
sities and restore colour fidelity. Un-  
like plastic, they're resistant to  
scratching.

**SOLAVOID**  
frames are barrel polished then hand  
finished to eliminate rough edges.  
Reinforced temples retain shape.

Solavoid sunglasses are researched to provide the  
comfort and protection your eyes deserve.

DISTRIBUTED BY SOLAVOID INTERNATIONAL LTD., P.O. BOX 6379, AUCKLAND.



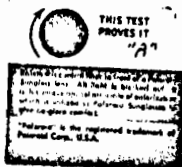
Note: The actual articles were exhibited to this  
Affidavit - this is a reproduction from a  
photograph



In the Supreme  
Court of New  
Zealand

Exhibit "A" to  
Third Affidavit of  
Walter William  
Brackenridge  
sworn 26th  
February 1973.

"A"



In the Supreme  
Court of New  
Zealand

Exhibit "B" to  
Third Affidavit of  
Walter William  
Brackenridge  
sworn 26th  
February 1973

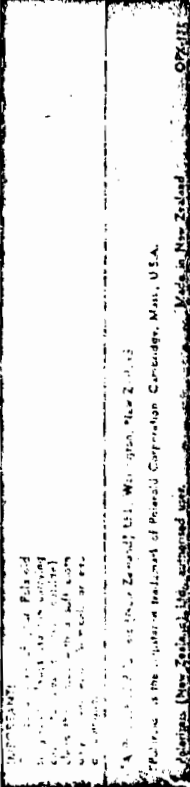
B"

POLAROID SUN GLASSES



POLAROID SUN

POLAROID SUN GLASSES



POLAROID \$ 7-75-  
SUN GLASSES

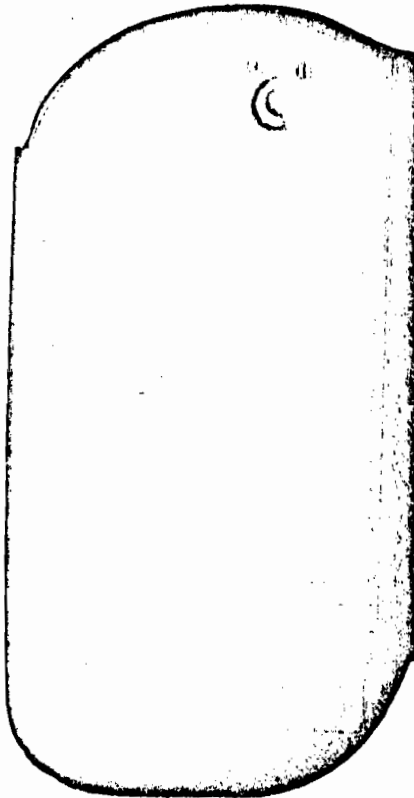


Handwritten initials or mark.

In the Supreme  
Court of New  
Zealand

Exhibit "C" to  
Third Affidavit of  
Walter William  
Brackenridge  
sworn 26th  
February 1973

"C"



This envelope contains the vinyl pouch  
for sunglasses marked "C" now produced  
to WALTER WILLIAM BRACKENRIDGE and  
referred to in his annexed affidavit  
sworn at *Wellington* on this *26th* day  
of *February* 1973,  
before me:

*A. A. O'Leary*  
A Solicitor of the Supreme Court of  
New Zealand

In the Supreme  
Court of New  
Zealand

Exhibit "Elw/1"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

This is the envelope marked  
"ELW/1" now produced and shown  
to ERNEST LESLIE WATSON and  
referred to in his affidavit  
SWORN at Auckland this 30<sup>th</sup>  
day of March 1972,  
Before me.

*M. J. ...*  
.....  
A Solicitor of the Supreme  
Court of New Zealand.



In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972.



*E.L.W.2!*

**INTERNATIONAL LTD.**

25 RUTLAND STREET  
AUCKLAND, NEW ZEALAND

TELEGRAMS  
"SOLAVOID"  
AUCKLAND

PHONE 374-388  
P. O. BOX 6329  
AUCKLAND 1

**DISTRIBUTORS OF FASHION SUNGLASSES**

Dear Sirs, "SOLAVOID" Newsletter October 31, 1969

We thank you for your support in the establishment of this relatively new brand name on the New Zealand market.

We have set out to gain your confidence by offering a range of sunglasses which we believe is unequalled for variety, up to date fashion styling, quality and value.

**RADIO ADVERTISING:**

To encourage your further efforts in promoting "SOLAVOID" Sunglasses, we have contracted with the N.Z.B.C. to advertise "SOLAVOID" Polarglass through the following commercial stations at the time and dates listed below. These, you will note, differ from area to area. On each of the days listed, repeated "SOLAVOID" commercials will attract the listener's attention and interest. Each day a minimum of TEN spots will be broadcast to obtain the desired level of saturation. Details are:

AUCKLAND:	12B	2pm - 7.30pm	Saturdays from November 1 to 22.
	12M	(9am - 2pm 2pm - 7.30pm)	Saturdays from November 1 to 22. Wednesdays from November 5 to 26.
ROTORUA:	12C	2pm - 7.30pm	Saturdays from November 1 to 29.
NAPIER:	22C	9am - 2pm	Saturdays from November 1 to 29.
NEW PLYMOUTH:	22P	9am - 2pm	Saturdays from November 1 to 29.
NELSON:	22N	9am - 2pm	Saturdays from November 29 to January 3.
CHRISTCHURCH:	32B	9am - 2pm	Saturdays from November 1 to 29.
DUNEDIN:	42B	9am - 2pm	Saturdays from November 1 to 29.

We are advising you of this promotion so that you will be able to co-ordinate your own display to the best advantage. Please note the dates carefully and we take the opportunity of wishing you a most successful sunglass selling season.

**DELIVERIES:**

We take this opportunity to apologise for delivery delays on the SV700 Series and "Double-0" Sunglasses which have been largely due to failure of overseas' suppliers to keep to schedule. Polarglass supplies have been given priority because of the radio advertising campaign and a part delivery at least should be in your hands by now. We are beginning deliveries of "Double-0" in approximately 7 days and will complete SV700 Series during November.

**RE-ORDERING:**

Attached is a set of leaflets and order forms covering all models of sunglasses and accessories that are available for delivery ex stock during November. Please note that we cannot accept any further orders for "Double-0".

Yours faithfully,  
E. L. WATSON  
Director  
SOLAVOID INTERNATIONAL LTD

Encls

In the Supreme  
Court of New  
Zealand

"E.L.W. 2"



**INTERNATIONAL LTD.**

25 RUTLAND STREET  
AUCKLAND, NEW ZEALAND



**DISTRIBUTORS OF FASHION SUNGLASSES**

24 March 1969

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

We introduce ourselves as exclusive New Zealand representatives of leading sunglass manufacturers in France, Italy and Japan.

Our comprehensive range is marketed and promoted under the registered trade name "SOLAVOID" and consists of:

- (1) Sunglasses and clipons for men and women selected from the latest overseas styles.
- (2) Pouch and button-over sunglass cases.
- (3) "SUN-SWINGER" sunglass holders.
- (4) "OPT-OFF" and "BANMIST" lens cleaners and demisters.

We provide a prompt matched replacement lens service on all our sunglasses through:

Veso Sunglass Manufacturers  
26 Killarney Ave  
Torbay  
Auckland 10

Our terms of business are payment in full by 20th month following invoice, qualifying for 2½% cash discount. Postage or freight is free.

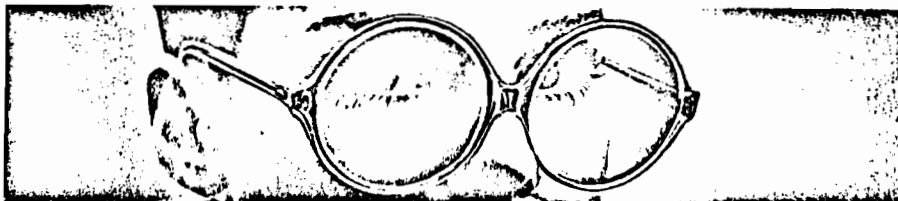
We offer you the following items for delivery August/September 1969 and invite you to complete the attached order sheet which, as supplies are limited, should be returned to us without delay.

Yours faithfully,  
**SOLAVOID INTERNATIONAL LTD.**

G.A. FORSYTH  
Sales Director

(Encl.)

SOLAVOID <sup>"ELW 2"</sup> International

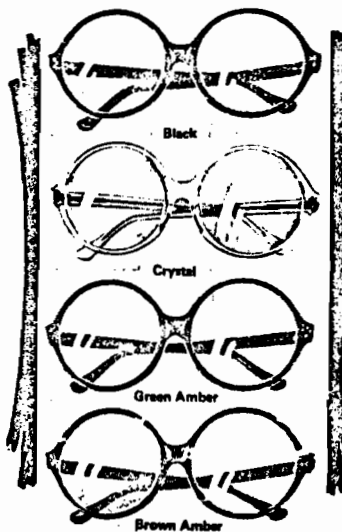


"DOUBLE-O"

Following the latest fashion trend we introduce this large roundeye sunglasses.

The optical quality frame is manufactured from sheet plastic (not injection moulded) and fitted with the highest quality metal joints and reinforced temples.

Glass lenses in the latest pale cosmetic tints of Blue, Tan, Rose and Grey are an additional feature.



ORDER FORM

TO: Solavoid International Limited,  
P.O. Box 8329,  
Auckland.

From: Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Delivery: September  
Order No. \_\_\_\_\_  
(if any)

Double O	Colour	Quantity
	Black	_____
	Crystal	_____
	Green Amber	_____
	Brown Amber	_____

© \$3.95 ex. consd.

Suggested  
Retail  
\$8.95

In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

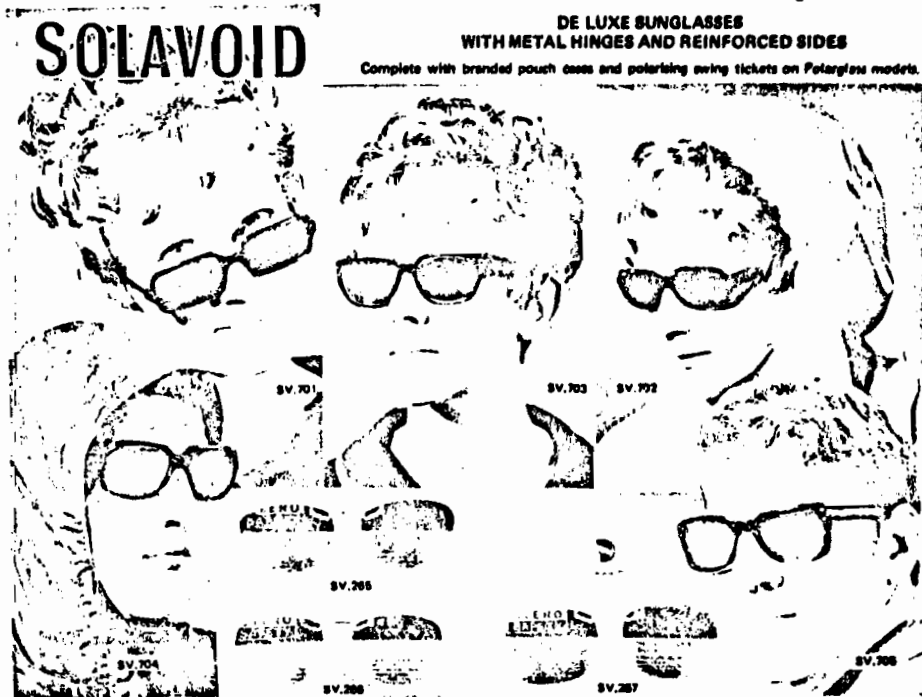
- continued

In the Supreme  
Court of New  
Zealand

"ELW2".

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972


- continued



# SOLAVOID

DE LUXE SUNGLASSES  
WITH METAL HINGES AND REINFORCED SIDES

Complete with branded pouch cases and polarising swing tickets on Polarglass models.

Model	Description	Frame Colours	Lens Tints	Trade	Suggested	PRICES Retail
SV.701	Women's Rectangular style Optical Glass Lenses Polarised Glass Lenses	Black	Grey, Brown	1.85 4.00		2.50 6.00
SV.702	Women's Regular shape - chamfered rim Optical Glass Lenses Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.00 3.00		3.00 7.50
SV.703	Universal wraparound end Mans or womens Optical Glass Lenses Polarised Glass Lenses	Black Havana Brown	Grey, Brown	1.75 4.00		2.50 6.00
SV.704	Mans - regular shape - chamfered top Optical Glass Lenses Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.00 3.00		3.00 7.50
SV.705	Mans - semi aviator, uplift bridge Optical Glass Lenses Polarised Glass Lenses	Black Havana Brown	Grey, Brown	1.75 3.00		2.50 7.50
SV.4300	Womens Modern straight top 	Blue Grain Rose Grain Green Grain Orchid grain	Grey Optical glass lenses	2.50		3.50

CLIP OVERS WITH CR.39 HARD SCRATCH RESISTANT PLASTIC LENSES - CASED

SV.205	Women's - upsweep shape	Grey, Brown	
SV.206	Universal shape - small	Grey, Brown	2.00
SV.267	Men's - large	Grey, Brown	3.00

Distributed by SOLAVOID INTERNATIONAL LTD. P.O. Box 6329 Auckland



In the Supreme  
Court of New  
Zealand

SOLAVOID International Ltd. "E.L.W.2"

900  
series

Sundwingers

de luxe  
collection

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



SV  
904

SUGGESTED RETAIL

CR39 Grey Brown	\$ 7.50
CR39 Rainbow	\$ 8.25
Polarised Glass	\$11.25

FRAME COLOURS

Grey Pink, Blue Strips	CR39 Grey
Brown Smoke, Honey Blond, Pink Strips	CR39 Brown
Blue Carise	CR39 Rainbow (Pink Blue)
Grey Pink, Blue Carise	Polarised Glass Grey
Honey Brown, Honey Blond	Polarised Glass Brown

LENS TINTS

In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

# Colour Chart

All frames in this range are manufactured from sheet material (hence colour variety) and are fitted with highest quality joints and temple reinforcing, ensuring spectacle frame quality.

## FOR EYE COMFORT

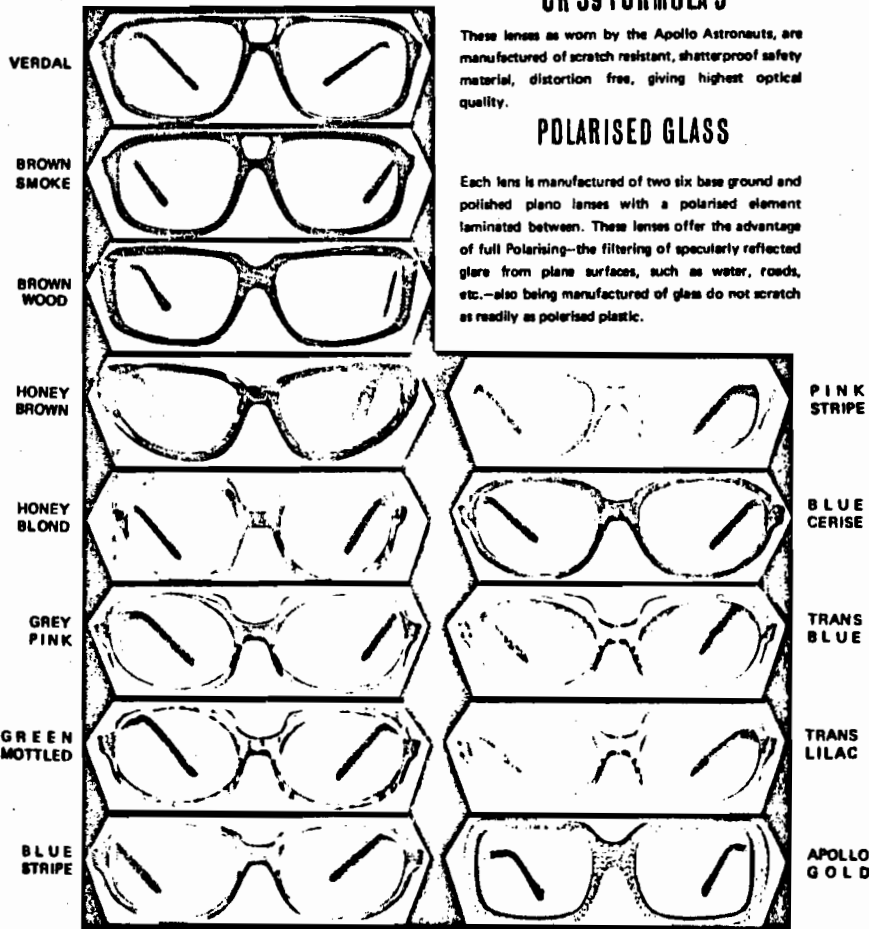
We offer two types of optically correct lenses.

### CR 39 FORMULA 5

These lenses as worn by the Apollo Astronauts, are manufactured of scratch resistant, shatterproof safety material, distortion free, giving highest optical quality.

### POLARISED GLASS

Each lens is manufactured of two six base ground and polished plano lenses with a polarised element laminated between. These lenses offer the advantage of full Polarising—the filtering of specularly reflected glare from plane surfaces, such as water, roads, etc.—also being manufactured of glass do not scratch as readily as polarised plastic.



- continued

In the Supreme  
Court of New  
Zealand

Exhibit "EDW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



**SV905**

SUGGESTED RETAIL \$ 7.50

FRAME COLOUR

LENS TINTS

Apollo Gold ..... CR39 Grey, Brown, Blue, Orange



**SV  
906**

SUGGESTED RETAIL

FRAME COLOURS

LENS TINTS

CR39 Grey, Brown \$ 7.50

Grey Pink,

CR39 Grey .....

CR39 Rainbow \$ 8.25

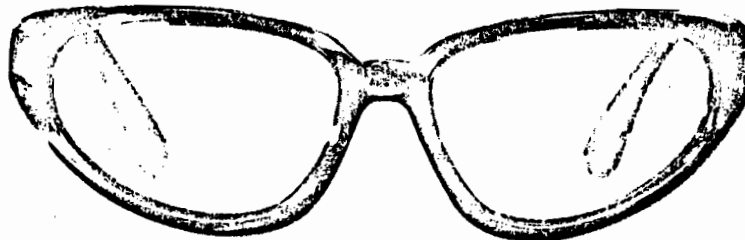
Honey Brown, Trans Lilac ..... CR39 Brown .....

Polarised Glass \$11.25

Trans Blue, Apollo Gold ..... CR39 Rainbow (Pink Yellow)  
(Blue Yellow)

Grey Pink, Green Mottled ..... Polarised Glass Grey .....

Honey Brown, Trans Lilac ..... Polarised Glass Brown .....



**SV  
907**

SUGGESTED RETAIL

FRAME COLOURS

LENS TINTS

CR39 \$ 7.50

Honey Brown, Honey Blond Apollo Gold

CR39 Brown .....

Polarised Glass \$11.25

Green Mottled, Brown Smoke ..... CR39 Brown .....

Honey Brown, Honey Blond ..... Polarised Glass .....

Green Mottled, Brown Smoke ..... Brown .....

In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



SV  
901

**SUGGESTED RETAIL**  
CR39 \$ 7.50  
Polarized Glass \$11.25

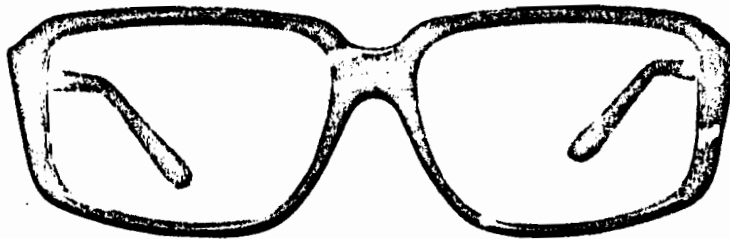
**FRAME COLOURS**  
Verdal .....  
Brown Smoke, Honey Blond .....  
Verdal .....  
Brown Smoke, Honey Blond .....

**LENS TINTS**  
CR39 Grey .....  
CR39 Brown .....  
Polarized Glass Grey .....  
Polarized Glass Brown .....

In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



**SV902**

SUGGESTED RETAIL

CR39

\$ 7.50

FRAME COLOURS

Brownwood  
Honey Brown

LENS TINTS

CR39 Grey  
CR39 Brown



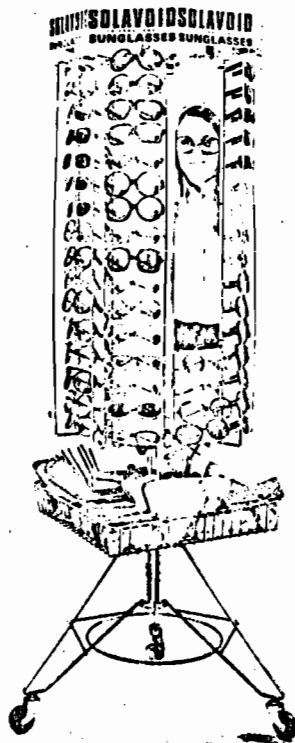
All models are supplied in a gusseted slip-in case.

In the Supreme  
Court of New  
Zealand

# SOLAVOID

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



After numerous requests we again offer a  
sunglass display stand especially designed for  
the purpose.

#### NOTE THESE FEATURES

1. Less space than the Standard 'A' frame type.  
Dimensions Height 72" Width 23"
2. Holds 112 pieces.
3. Each sunglass individually displayed showing frame  
and lens colour to advantage. Note white background.
4. Ease of removal and replacement of sunglasses on stand  
i.e. no need to fold temples.
5. Two mirrors 19" x 6".
6. Basket for spectacle cases or children's sunglasses.
7. Easily moved on two castors with one foot for stability.
8. The moving section is finished in silver, the base and  
basket in black plastic coated.
9. Guaranteed against faulty workmanship.
10. This stand is delivered to you at the subsidised price of  
\$70 each.

Delivery will be made to coincide with the  
arrival of next season's sunglasses

Phone: 885-145  
Telegrams: 'SOLAVOID'  
AUCKLAND

**SOLAVOID INTERNATIONAL LTD.** P.O. BOX 19-129  
705 Rosebank Rd. Avondale, Auckland. AVONDALE

In the Supreme  
Court of New  
Zealand

"ELW.2"

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

# SOLAVOID ◻ ◻ Sunglasses

WITH METAL HINGES AND REINFORCED SIDES



Available with CR39 Optical Plastic Lenses and Polaroid Glass Lenses

			Frame Colours	Lens Tints	PRICES	
					Wholesale	Suggested Retail
SV701CR	Women's Rectangular style	Optical Plastic Lenses	Black	Brown	2.95	4.45
SV702CR	Women's Regular shape-chamfered rim	Optical Plastic Lenses	Black Havana Brown	Grey Brown	2.95	4.45
SV703CR	Universal Wraparound end	Optical Plastic Lenses	Black Havana Brown	Grey Brown	3.20	4.80
SV704CR	Men's-regular shape-chamfered top	Optical Plastic Lenses	Black Havana Brown	Grey Brown	3.20	4.80
SV705CR	Men's-semi ovalation, unlift bridge	Optical Plastic Lenses	Black Havana Brown	Grey Brown	3.20	4.80
SV702	Women's Regular shape-chamfered rim	Polaroid Glass Lenses	Black Havana Brown	Grey Brown	5.95	8.90
SV703	Universal Wraparound end	Polaroid Glass Lenses	Black Havana Brown	Grey Brown	5.95	8.90
SV705	Men's-semi ovalation, unlift bridge	Polaroid Glass Lenses	Black Havana Brown	Grey Brown	5.95	8.90

Polaroid models supplied with branded pouch cases and polarizing seeing tickets

Delivery August/October, 1971

Distributed by SOLAVOID INTERNATIONAL LTD (P.O. Box 19429, Avondale, Auckland)

continued

In the Supreme  
Court of New  
Zealand

"ELW2"

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Walters sworn  
30th March 1972

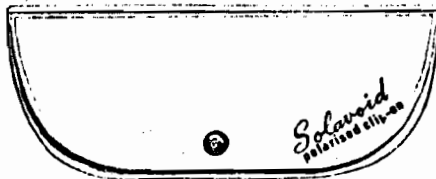
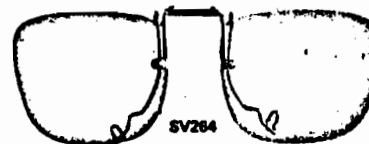
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**SOLAVOID**

*Internationally  
Styled*

**SUNGLASSES  
and  
ACCESSORIES**



Model	Description	POLARISED PLASTIC CLIPOVERS -- CASED		PRICES	
		Lens Tints	Wholesale	Suggested Retail	
SV261	Men's -- Large	Grey-Brown	2.65	3.95	
SV262	Universal-Small	Grey-Brown	2.65	3.95	
SV263	Women's Upswept	Grey-Brown	2.65	3.95	
SV264	Men's-Large Flip-up	Grey only	2.95	4.45	

Delivery August/October, 1971





"EL.W.2!"

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

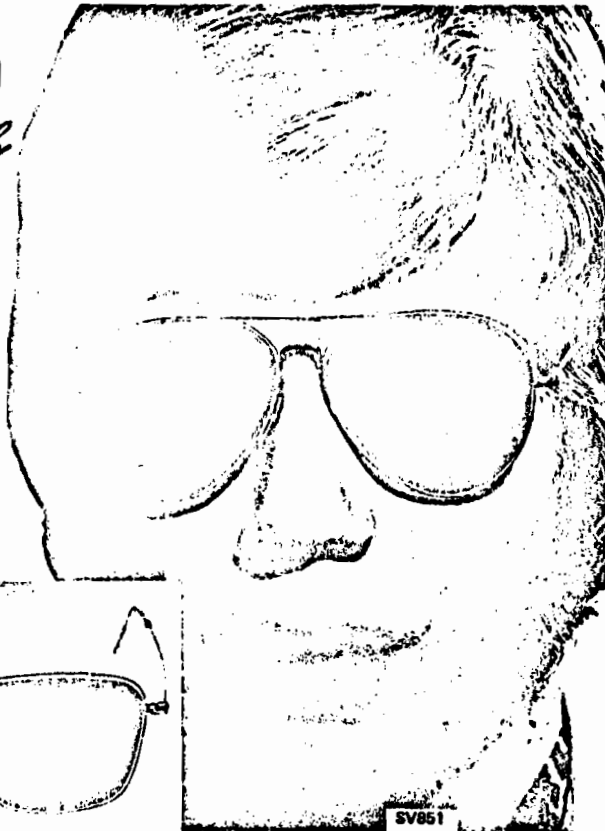
- continued

**SOLAVOID**

*Internationally  
Styled*

**Sunglasses**

gold-filled



SV850

SV851

**FRAME:** These quality, robust frames are manufactured by one of the world's leading spectacle frame manufacturers.

**LENSES:** Optical glass

**CASES:** SV850—Tough polypropylene snap lid case  
SV851—Steel, Button over case

**PRICE:** Wholesale 4.75 Suggested Retail 7.15 (case inclusive)

**DELIVERY:** October/November, 1971.

SOLELY DISTRIBUTED BY SOLAVOID INTERNATIONAL LTD., PO BOX 129, AUCKLAND, NEW ZEALAND

In the Supreme  
Court of New  
Zealand

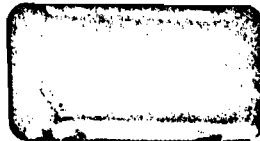
"ELW.2"

# SOLAVOID

accessories:



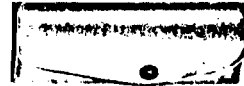
SV415



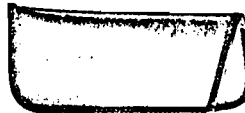
SV408



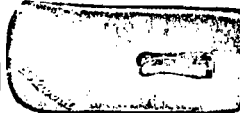
SV409



SV411



SV412



SV413



SV414

CASES			PRICES	
			Wholesale	Suggested Retail
SV408	Foam, Slip in, large size	Assorted colours	.21	.32
SV409	Foam, Slip in, Large size with gusset	Assorted colours	.33	.50
SV411	Steel, Button over "PACIFIC"	Assorted colours	.48	.88
SV412	Slip in, Small size, bound edges	Assorted colours	.36	.53
SV413	Slip in, medium size, with pocket flap	Assorted colours	.53	.95
SV414	Vinyl Spectapure	Assorted colours	.76	1.13
SV415	Polypropylene, Snap lid "ATLAS"	Assorted colours	.40	.80
"Dressit"	Sachet spot applicator lens cleaner and demister	Assorted colours	\$7.30	.88
			per card of 20	per sachet
"Sun-Mix"	19cc bottle liquid cleaner and demister		\$4.00	.80
			per card of 12	per bottle
"Sun sunglasses"	sunglass holders. Handy sun spec retaining necklet in individual bubble packs	Assorted bright colours, washable nylon	\$10.00	1.26 each
			per card of 12	

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

Delivery August/October, 1971

OPT OFF 55c  
LENS CLEANER

BAN-A-MIST 50c  
THE GLASS CLEANER AND ANTI-FOGGER

DISTRIBUTED BY SOLAVOID INTERNATIONAL LTD, P.O. BOX 118, 129 AVONDALE, AUCKLAND

In the Supreme  
Court of New  
Zealand

"ELW.2"

Exhibit ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

## Order Form

NAME \_\_\_\_\_ 197

ADDRESS \_\_\_\_\_

No. (If any) \_\_\_\_\_

Please supply the following items in accordance with your  
offer and terms of business.

SUNGLASSES	FRAME/LENS COLOUR				Total Qty.	WHOLESALE PRICES	
	Black /grey	Brown /brown	Black /brown			Per Unit	
SV701	/	/	/			2.95	CR39
SV702						2.95	CR39
SV703						3.20	CR39
SV704						3.20	CR39
SV705						3.20	CR39
SV702					(cased)	5.65	Polarised glass
SV703					(cased)	5.65	Polarised glass
SV705					(cased)	5.65	Polarised glass
SV850	Gold	/grey		/Brown		4.75	Optical glass
SV851	Gold	/grey		/brown		4.75	Optical glass
<b>CLIPOVERS</b>	<b>POLARISED PLASTIC</b>			Grey	Brown		
SV281						2.65	(cased)
SV282						2.65	(cased)
SV283						2.65	(cased)
SV284						2.95	(cased)
<b>ACCESSORIES</b>							
SV408	Slip-in cases - large			assorted colours		.21	
SV409	Slip-in cases - with gusset			assorted colours		.33	
SV411	Steel, Button over, "PACIFIC" cases			assorted colours		.45	
SV412	Slip-in cases - small, bound edges			assorted colours		.35	
SV413	Slip-in cases - medium, clip			assorted colours		.63	
SV414	Vinyl Spectapurse			assorted colours		.75	
SV415	Polypropylene "ATLAS" cases			assorted colours		.40	
OPT-OFF	Lens Cleaner, 20 sachets per display card					7.30	per card
BAN-MIST	Lens Cleaner, 12 bottles per display card					4.00	per card
SUNSWINGERS	Sunglass holders, 12 packs per display card					10.00	per card

To: SOLAVOID INTERNATIONAL LIMITED  
P.O. BOX AVONDALE 19-129  
AUCKLAND

DELIVERY: AUGUST/NOVEMBER, 1971.

SIGNATURE: \_\_\_\_\_

- continued

In the Supreme  
Court of New  
Zealand

SOLAVOID

"ELW.2"  
International Ltd

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Walters sworn  
30th March 1972

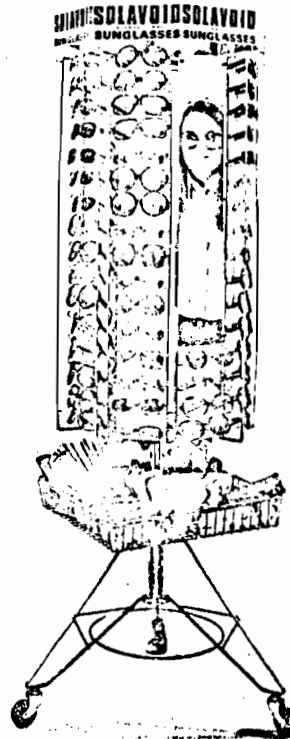
After numerous requests we can now offer  
a sunglass display stand especially designed for  
the purpose.

NOTE THESE FEATURES

1. Less space than the Standard 'A' frame type.  
Dimensions Height 72" Width 23"
2. Holds 112 pieces.
3. Each sunglass individually displayed showing frame  
and lens colour to advantage. Note white background.
4. Ease of removal and replacement of sunglasses on stand  
i.e. no need to fold temples.
5. Two mirrors 19" x 8".
6. Basket for spectacle cases or children's sunglasses.
7. Easily moved on two castors with one foot for stability.
8. The moving section is finished in <sup>Nickel</sup>Gold, the base and  
basket in black plastic coated.
9. Guaranteed against faulty workmanship.
10. This stand is delivered to you at the subsidised price of  
\$70 each.

Delivery can be made early September to coincide with the  
arrival of next season's sunglasses.

For your convenience and to ensure early delivery, we attach  
an order slip:



- continued

ORDER FORM

TO: Solavoid International Ltd  
P.O. Box 6329  
Auckland.  
Box 366 Wgtn. Box 2288 Chch.

FROM: Name .....  
Address .....  
Signature .....

Delivery: September

Order No: (if any)

In the Supreme  
Court of New  
Zealand

"ELW.2"

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

# Order Form

To: Solavoid International Ltd.,  
P.O. Box 6329, Auckland.

FROM: Name: .....

Address: .....

.....

.....

.....

.....

ORDER NO. (if any) .....

Signed

.....

- continued

## "Sundwingers 71" SERIES

							Quantity
SV 901	Men's	Assorted frame & lens colours.	Cased	at	\$4.95		.....
SV 902	Men's	"	"	"	"	at \$5.45	.....
SV 903	Women's	"	"	"	"	at \$4.95	.....
SV 904	Women's	"	"	"	"	at \$4.95	.....
SV 905	Women's	"	"	"	"	at \$4.95	.....

N.B. We are very proud to be able to offer this exceptional range, but would like to draw your attention to the masterpiece of the collection, SV 905 'Heatwave'. The colour 'Apollo Gold' with its hammered texture compliments the latest in sungless fashion design.

# SOLAVOID International Ltd.

In the Supreme Court of New Zealand

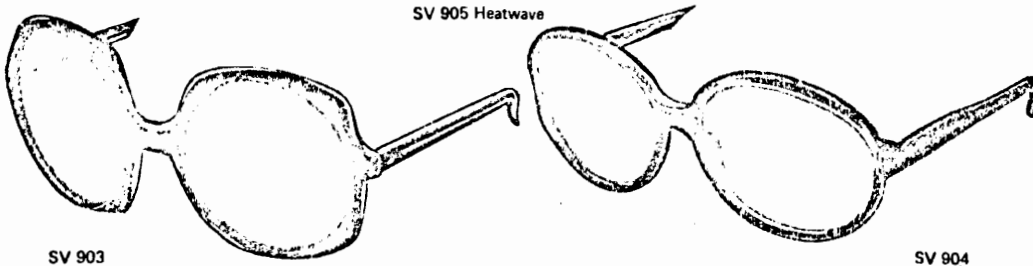
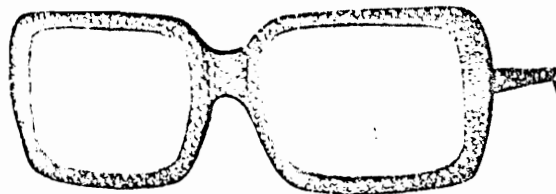
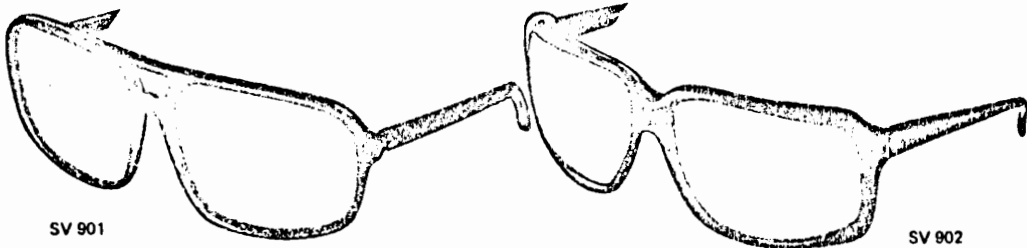
introduce their

## "Sundwingers 71"

Exhibit "ELW 2" to Affidavit of Ernest Leslie Watson sworn 30th March 197

high fashion sunglass range of five models

- continued



All models are manufactured from sheet material, are fitted with CR 39 (Formula 5) lenses to ensure the highest optical quality, and are supplied with a slip-in gusseted case.

Model Number	Frame Colours	Lens Tints & Curvature	Delivery	Price		
				Wholesale	Suggested Retail	
SV 901 Men's	Amber Verde	asstd. Grey	6 Base	October/November	\$4.95	\$7.50
	Tofuma	Brown				
SV 902 Men's	Havana	Brown	8 Base	October/November	\$5.45	\$8.20
	Brownwood					
SV 903 Women's	Striped Pink	asstd.	6 Base	October/November	\$4.95	\$7.50
	Striped Blue	Brown				
	Striped Chartreuse	Grey				
	Tofuma	Blue				
SV 904 Women's	Havana		6 Base	October/November	\$4.95	\$7.50
	Striped Pink	asstd.				
	Striped Blue	Brown				
	Striped Chartreuse	Grey				
SV 905 Women's 'Heatwave'	Tofuma	Blue	6 Base	October/November	\$4.95	\$7.50
	Havana					
	Apollo Gold	asstd. Brown				
		Grey				
		Orange				
		Blue				

SOLAVOID INTERNATIONAL LTD. PO. BOX 1000 AUCKLAND

In the Supreme  
Court of New  
Zealand

"ELW 2"

**SOLAVOID**

*Internationally  
Styled*

**Sunglasses**

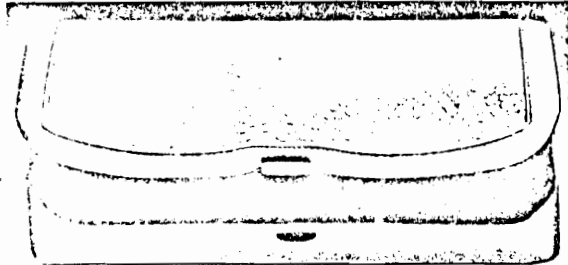
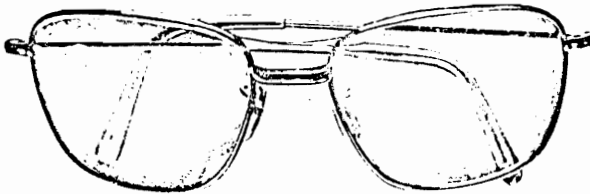


Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



SV 850 GOLD FILLED SUNGLASS

**FRAME:** This quality, robust frame is manufactured by one of the world's leading spectacle frame manufacturers.

**LENSES:** For lightness, durability and safety, this sunglass is offered with CR39 (Formula 5) lenses in grey or brown tints.

**MEASUREMENT:** 54 x 20 mm

**CASE:** Tough polypropylene snap lid case in off white colour with red velvet lining.

**PRICE:** \$4.65 (case inclusive)

**DELIVERY:** October/November, 1970

ORDER FORM

TO: Solavoid International Limited,  
P.O. Box 6329, Auckland

FROM: Name Jonias Pharmacy  
Address 359 Beach Rd,  
Maurang Bay

ORDER NO: (if any)

SV 850  
GOLD FILLED SUNGLASS

INV 5060  
Signed  
LENS COLOUR  
Grey  
Brown

19 Oct 70

QUANTITY

6

*Ledger 1/11/70*

In the Supreme Court of New Zealand

"ELW.2"

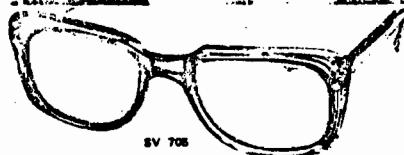


**SOLAVOID**  
deluxe SUNGLASSES  
WITH METAL HINGES  
AND REINFORCED SIDES

Complete with branded pouch cases and polarising aving tickets on Polarglam models.

Exhibit "ELW 2." to Affidavit of Ernest Leslie Watson sworn 30th March 1972

- continued



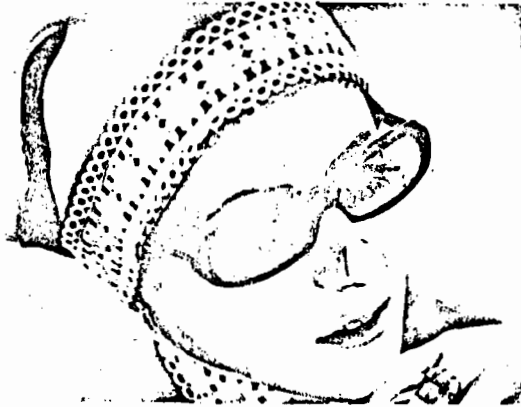
Model	Description	Frame Colours	Lens Tints	Trade	Suggested PRICES Retail
SV.701	Women's Rectangular style Polarised Glass Lenses	Black	Grey, Brown	5.00	7.50
SV.702	Women's Regular shape - chamfered rim Optical Plastic Lenses CR38 Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.80 5.25	3.90 7.90
SV.703	Universal wraparound and Men's or women's Optical Plastic Lenses CR38 Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.80 5.00	3.90 7.90
SV.704	Men's - regular shape - chamfered top Optical Plastic Lenses CR38 Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.80 5.25	3.90 7.90
SV.705	Men's - semi aviator, unflit bridge Optical Plastic Lenses CR38 Polarised Glass Lenses	Black Havana Brown	Grey, Brown	2.80 5.25	3.90 7.00

DISTRIBUTED BY SOLAVOID INTERNATIONAL LTD, P.O. BOX 6329, AUCKLAND



In the Supreme  
Court of New  
Zealand

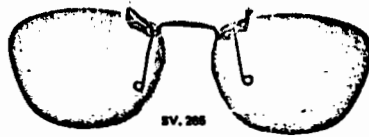
"ELW 2"



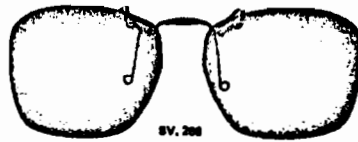
**SOLAVOID**  
de luxe  
**SUNGLASSES**  
and  
**ACCESSORIES**

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

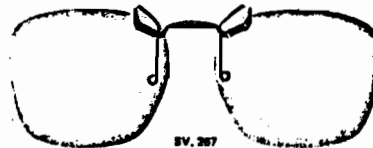
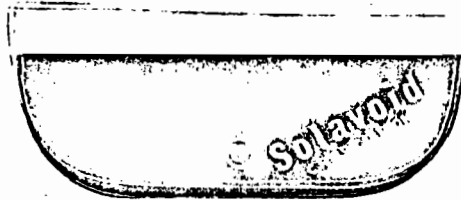
- continued



SV.265



SV.266



SV.267

CLIP OVERS WITH CR.39 HARD SCRATCH RESISTANT PLASTIC LENSES - CASED

SV.265 Women's - upwept shape  
SV.266 Universal shape - small  
SV.267 Men's - large

Grey, Brown )  
Grey, Brown )  
Grey, Brown )

Trade	Suggested PRICE	Retail
2.00	3.00	



SV.4300

SV.4300 Womens Modern straight top

Blue Grain  
Green Grain



Grey  
Optical glass lenses

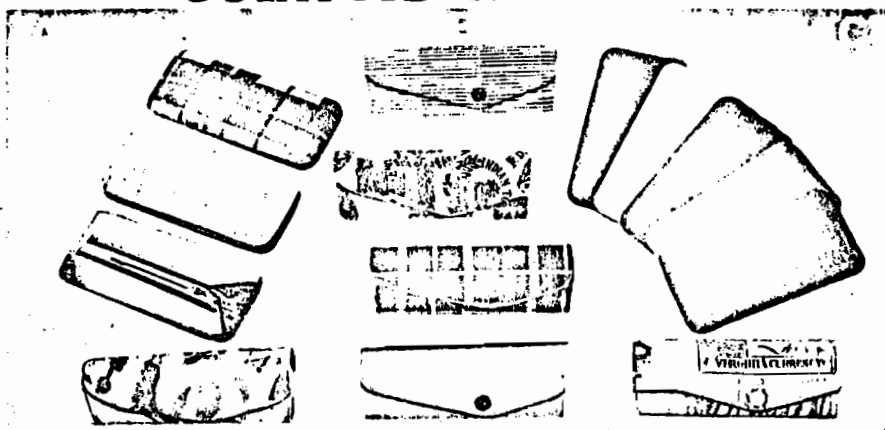
1.95 2.95

DISTRIBUTED BY SOLAVOID INTERNATIONAL LTD. P.O. BOX 266129 AUCKLAND

In the Supreme  
Court of New  
Zealand

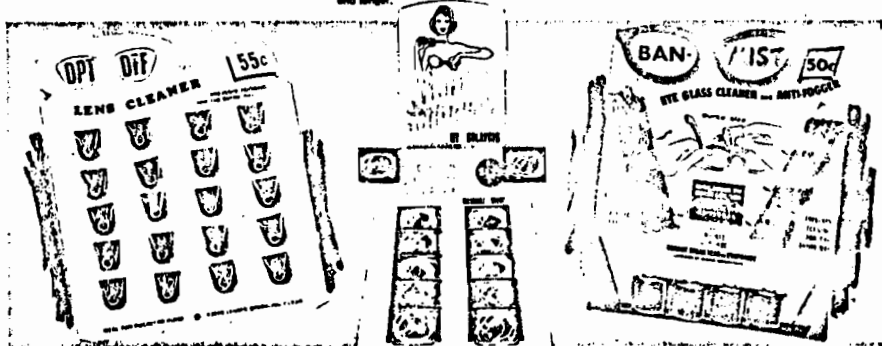
"ELW 2"

# SOLAVOID accessories:



"Ops-Off"	Brush spot applicator lens cleaner and demister	Assorted Colours	20 each to per counter display card	Trade 7.20 per card of 20	Suggested Retail .36 per each
"Ban Mir"	1 1/2oz bottle liquid cleaner and demister		12 bottles per counter display card	\$4.00 per card of 12	.50 per bottle
"Ban swipes"	Surgeon holders. Handy swapper retaining necklet in individual bubble packs.	Assorted bright colours, washable rayon	12 per counter display card	10.00 per card of 12 (83c each)	1.25 each

CABS					
A.	BV.409	Slip in case with guest	Assorted Colours	.33c	.50c
B.	BV.410	Burton over style, steel lined	Assorted colours	.43c	.65c
	BV.407	Foam slip in	Assorted Colours	.19c	.37c
C.	BV.408	Foam slip in, as BV.407 but wider and larger.	Assorted Colours	.21c	.32



Distributed by SOLAVOID INTERNATIONAL LTD. P.O. Box 6329 Auckland

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1982

- continued

In the Supreme Court of New Zealand

"ELW.2"

ORDER FORM

TO: SOLAVOID INTERNATIONAL LIMITED  
P.O. Box 6329  
AUCKLAND.

.....1969

Exhibit "ELW 2"  
to Affidavit of Ernest Leslie Watson sworn 30th March 1972

Please supply the following items in accordance with your March offer and terms of business:

SUNGLASSES		FRAME COLOURS		LENSES				TRADE PRICES	
Model:	Total Qty.	Black	Havana Brown	Optical Glass		Polarised Glass		Per Unit	
				Grey	Brown	Grey	Brown		
SV701	....		x					1.65	Optical glass
SV701	....		x					(cased) 4.00	Polarised glass
SV702	....							2.00	Optical glass
SV702	....							(cased) 5.00	Polarised glass
SV703	....							1.75	Optical glass
SV703	....							(cased) 4.00	Polarised glass
SV704	....							2.00	Optical glass
SV704	....							(cased) 5.00	Polarised glass
SV705	....							1.75	Optical glass
SV705	....							(cased) 5.00	Polarised glass
SV4300	....	Assorted grained colours Blue, Rose, Green & Orchid			Grey Optical glass only			2.65	Optical glass
<b>CLIPOVERS</b>						<b>CR.39 Hard Plastic</b>			
						Grey	Brown		
SV265	....							(cased) 2.00	
SV266	....							(cased) 2.00	
SV267	....							(cased) 2.00	
<b>ACCESSORIES</b>									
MIAMI	....	Slip-in cases,		assorted colours				.35	(approx)
RIVIERA	....	Button over cases		assorted colours				.46	
SV407	....	Slip-in cases - medium		assorted colours				.18	
SV408	....	Slip-in cases - large		assorted colours				.21	
OPT-OFF	....	Lens Cleaner, 20 sachets per display card						7.30	per card
BAN-MIST	....	Lens Cleaner, 12 bottles per display card						4.00	per card
SUN-SWINGERS	....	Sungless holders, 12 packs per display card						10.00	per card

- continued

DELIVERY AUGUST/SEPTEMBER

ORDER NO. (if any) .....

NAME: .....

ADDRESS: .....

207.

"ELW 2"

**WILLIAMSON OPTICAL CO.**

P.O. BOX 1363,  
CHRISTCHURCH

**SOLAVOID REPAIR SERVICE**

In the Supreme  
Court of New  
Zealand

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

		WHOLESALE		RETAIL	
MENILLE LENS	1 2				
POLARIZED LENS	1 2				
TEMPLES	1 2				
REPAIR JOINT	1 2				
SOLDER	1 2				
POSTAGE					
TOTAL	\$				

REMARKS

CLIENT

In the Supreme  
Court of New  
Zealand

**GLARE PROTECTION with**  
**SOLAVOID**  
**INTERNATIONALLY STYLED**  
**SUNGLASSES**

Distributed by SOLAVOID INTERNATIONAL LTD.

<sup>(Incorporated in New Zealand)</sup>  
P. O. Box 6329 - 19-129

AUCKLAND

"ELW.2"

Exhibit "ELW 2"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

In the Supreme  
Court of New  
Zealand

*ELW3*

PAT. 35

In reply please quote the  
case number of this notice

COPY

Telephone: 48-860  
Please address correspondence to:  
The Commissioner,  
P.O. Box 5052, Lambton Quay,  
WELLINGTON C.I.



DEPARTMENT OF JUSTICE

Exhibit "ELW.3"  
to Affidavit of  
Ernest Walter  
Watson sworn  
30th March 1972.

THE PATENT OFFICE,  
Departmental Building, Stout St.,  
Wellington C.I., New Zealand.

28 September 1966

The Director,  
Hannaford & Burton Limited,  
25 Rutland Street,  
AUCKLAND.

Dear Sir,

Trade Mark Enquiry SOLAVOID

A search of the Register made at your request has disclosed registrations and pending applications featuring the word Sola but no registration likely to conflict with the above mark for sunglasses in Class 9.

The mark seems eligible for registration in Part B of the Register.

... I enclose an Application for Registration form.

Yours faithfully,

Sgd. C.W. WADHAM

C.W. WADHAM  
Assistant Commissioner of Trade Marks

This is the copy of the letter certified by the Assistant Commissioner of Trade Marks of New Zealand marked "ELW/3" now produced and shown to ERNEST LESLIE WATSON and referred to in his Affidavit SWORN at Auckland this 30th day of *March* 1972

Before me

*Maister*  
.....  
A Solicitor of the Supreme Court  
of New Zealand.

210.

In the Supreme  
Court of New  
Zealand

Pat. 155



IN THE PATENT OFFICE,  
NEW ZEALAND. No. B82513

Exhibit "ELW.4"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

In the matter of the Trade Marks Act 1953  
and the Regulations thereunder;

AND

In the matter of Trade Mark  
Registration in the name of  
HANNAFORD & BURTON LIMITED.

**Certificate.**

I KENNETH SIDNEY DALEFIELD Assistant Commissioner of  
Trade Marks for New Zealand, hereby Certify that annexed hereto is a  
true copy of the official letter of 28 September 1966 issued  
to HANNAFORD & BURTON LIMITED in reply to their request for  
search and preliminary advice as to the eligibility for trade  
mark registration of the mark SOLAVOID in respect of  
sunglasses.

GIVEN under my hand and the  
seal of the Patent Office  
this 11th day of November 1971.

*K.S. Dalefield*

In the Supreme  
Court of New  
Zealand

ELW/4

Doc. 155 Exhibit "ELW.4"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972



IN THE PATENT OFFICE,  
NEW ZEALAND. No. B82513

This is the Certificate of the Assistant  
Commissioner of Trade Marks for New  
Zealand marked "ELW/4" now produced and  
shown to ERNEST LESLIE WATSON and  
referred to in his Affidavit SWORN  
at Auckland this 30th day of March 1972.

Before me

.....  
A Solicitor of the Supreme Court of  
New Zealand.

In the matter of the Trade Marks Act 1953  
and the Regulations thereunder;

AND

In the matter of Trade Mark  
Registration in the name of  
HANNAFORD & BURTON LIMITED.

- continued

### Certificate.

I KENNETH SIDNEY DALEFIELD Assistant Commissioner of  
Trade Marks for New Zealand, hereby Certify that HANNAFORD & BURTON LIMITED,  
of 25 Rutland Street, Auckland C.1., New Zealand manufacturers'  
representatives and importers, were registered under the date  
of 21 October 1966, as proprietor of the Trade Mark SOLAVOID,  
a representation of which appears below in Class 9 (Schedule IV)  
under No. B82513 in respect of "sunglasses".

I Further Certify that the registration of such Trade Mark is  
current until 21 October 1973, when it may be renewed.

The representation of the Trade Mark referred to  
above is:

SOLAVOID

GIVEN under my hand and the  
seal of the Patent Office  
this 11th day of November 1971.

*K. S. Dalefield*



In the Supreme Court of New Zealand

ELW.5


AUTOCAR 2 July 1970

Exhibit "ELW.5" to Affidavit of Ernest Leslie Watson sworn 30th March 1972.

**Why Zeiss Umbrals are the best sunglasses for drivers**

- 1 Zeiss Umbral lenses absorb irritating rays at both ends of the spectrum — ultra-violet and infra-red.
- 2 This they do without changing colour values.
- 3 Hence they cause no confusion at traffic lights.
- 4 Umbral lenses are made from non-polarising glass and so cause no disturbing patterns in a stressed windscreen.
- 5 Thus they are the best for drivers. Zeiss Umbrals, set in a most attractive range of men's and ladies' frames, cost between 79/6 to £10.15.0 complete. Zeiss tinted lenses are also available to prescription, bloomed with the famous Zeiss T-coating to prevent reflections, and always retaining even tint throughout the lens.

Illustrated brochure from the Carl Zeiss Agents:  
Degenhardt & Co Ltd, Carl Zeiss House, 31/36 Foley St, London W1 - 01-436 8030 (15 lines)



**ZEISS**  
**Umbral Sun glasses**

The perfect "back-up" to good driving

This envelope contains the advertisement marked "ELW/5" now produced and shown to ERNEST LESLIE WATSON and referred to in his affidavit SWORN at Auckland this 30th day of March 1972 Before me

*W. J. [Signature]*

.....  
A Solicitor of the Supreme Court of New Zealand.

In the Supreme  
Court of New  
Zealand

Exhibit "ELW.6"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972.



This envelope contains the  
swing ticket marked "ELW/6" now  
produced and shown to ERNEST  
LESLIE WATSON and referred to in  
his affidavit SWORN at Auckland  
this *30th* day of *March* 1972.  
Before Me

*M. J. Jones*  
.....  
A Solicitor of the Supreme Court  
of New Zealand.

In the Supreme Court of New Zealand

ELW 7

Exhibit "ELW.7" to Affidavit of Ernest Leslie Watson, sworn 30th March 1972



TRADE MARKS ACT, 1958

In the Matter of Legal Proceedings,

I, the undersigned, being an officer duly authorised, hereby certify that under date the 3rd April, 1952, Amcoet Limited, 76 Cross Street, Manchester, 2, Merchants and Manufacturers, are registered as proprietors of the Trade Mark No. 706211 in Class 9 (Schedule IV), in respect of optical lenses and optical filters.

The registration has been renewed for a period of fourteen years from the 3rd April, 1959, and may be renewed at the expiration of that period and of each succeeding period of fourteen years.

A copy of said Trade Mark appears below.

POLARVITE

Witness my hand this 1<sup>st</sup> day

of December 1971

*Leitch*

Trade Marks Registry, The Patent Office,  
25 Southampton Buildings,  
LONDON WC2A 1AY.

This is the certified copy issued by the Trade Marks Registry, The Patent Office, London, marked "ELW/7" now produced and shown to ERNEST LESLIE WATSON and referred to in his AFFIDAVIT SWORN at Auckland at Auckland this 30th day of March 1972. Before me

A Solicitor of the Supreme Court of New Zealand.



In the Supreme  
Court of New  
Zealand

**FREE**

"ELW.8"

Call in to . . .

**E. T. TAYLOR WINES & SPIRITS**

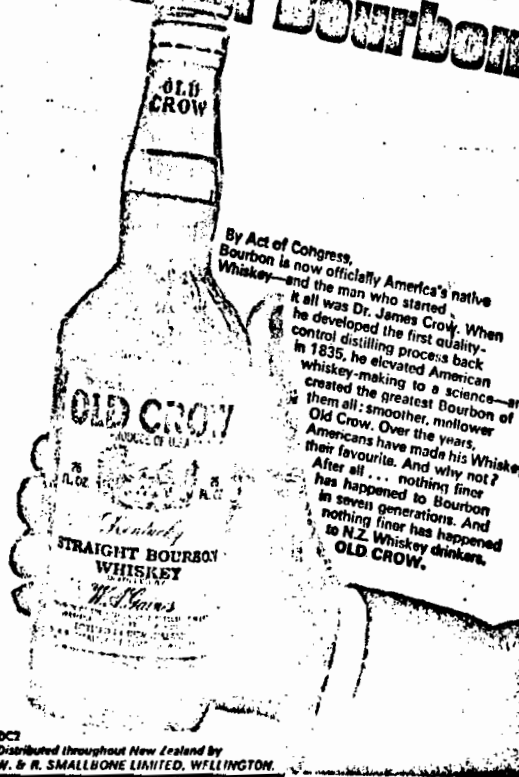
69-71 COURTENAY PLACE. TOMORROW, FRIDAY  
BETWEEN 1 p.m. and 5 p.m.

N.Z. AND AMERICA'S FAVOURITE DRINK.

**OLD CROW BOURBON**

WHY NOT ASK FOR A CROWBAR ?

**Dr. James Crow  
father of Bourbon**



By Act of Congress,  
Bourbon is now officially America's native  
Whiskey—and the man who started  
it all was Dr. James Crow. When  
he developed the first quality-  
control of distilling process back  
in 1835, he elevated American  
whiskey-making to a science—and  
created the greatest Bourbon of  
them all: smoother, milder  
Old Crow. Over the years,  
Americans have made his Whiskey  
their favourite. And why not?  
After all . . . nothing finer  
has happened to Bourbon  
in seven generations. And  
nothing finer has happened  
to N.Z. Whiskey drinkers.  
**OLD CROW.**

001  
Distributed throughout New Zealand by  
W. & R. SMALLBONE LIMITED, WELLINGTON.

EVENING POST

"ELW.8"  
DECEMBER 9K 1971

Exhibit "ELW.8"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

In the Supreme Court of New Zealand

"ELW 8"

Exhibit "ELW.8" to Affidavit of Ernest Leslie Watson sworn 30th March 1972

- continued

It's the only room you can transform for less than \$35\*

Contemporary coloured Dux cisterns and toilet seats can transform the drabest room in the house for less than \$35. The Dux Centre Flush cistern, classically shaped from tougher-than-steel polypropylene, comes in gleaming white and six pastel shades: aqua blue, turquoise green, primrose, almond-ivory, and pink. (Black not available.) The new Dux plastic toilet seats are in matching colours, plus black. Coloured Centre Flush: \$16.50 (underwater valve) and \$19.50 (syphonic valve); White \$12.10 (underwater valve) and \$14.50 (syphonic valve); Toilet Seats: \$4.30 (single top) and \$6.60 (double top).

\*Inclusive of average plumbing installation costs—See your local plumber for full details.

**Dux**  
THE LAST WORD IN TOILET FITTINGS

N.Z. Distributors:  
Plumbers Agency Division  
(Pv. Plumbers Ltd.),  
P.O. Box 26-876, Lower Hut.

78

GARDENING

## PLANT LILIES IN AUTUMN

THE fleshy roots of lilies don't take kindly to being moved in cold weather — the shock delays their new growth. So it is a good idea to move them in the autumn while there's still some warmth in the soil.

Another thing the roots dislike is being left out of the ground; if they get really dry the bulb may take a whole year to get established because it will have to grow a new lot of roots from the base.

### Handle carefully

Note that I said, "From the base." Most lilies have a second lot of roots on the flowering stem just above the bulb. They are annual and by now have done their job of holding and feeding the flower stem, and they'll be dead or dying. So don't hesitate to cut them off with the old flower stem.

Handle the bulbs carefully and try not to break off any of the fleshy scales. If you do happen to break some off, plant them shallowly in good soil and they'll probably develop new bulbs, which, in two or three years will reach flowering size.

### Good soil needed

When planting lilies, give them good soil. If possible

### MASS OF GOLDEN FLOWERS

ONE of the best of the autumn-flowering shrubs is *Cassia corymbosa* "John Ball." It covers itself with a mass of golden flowers for several weeks. Growth is vigorous and the mature plant is 6 to 8ft high and as much across. Plant it in an open sunny position. Prune in the spring after new growth starts.



Jacobinia carnea

choose a position where lilies haven't grown before. Add compost and bonedust. Drainage should be good and for this reason lilies thrive on sloping ground.

What of the old story about having the roots in shade and the tops in sun? The tops themselves will provide some shade so plant your lilies out in full sun just as the nurserymen do. Filtered sunlight may bring out the more delicate colours but it tends to make weak stems and soft flowers.

### Depth not essential

Another story said lilies should be planted deep. I once planted some big *Lilium auratum* about a foot deep. They survived and flowered well, probably because the soil was light.

But such a depth is not essential and now the general rule is to plant with no more than 4in of soil over the tops of the bulbs.

The only exception is *L. candidum*, which should be planted just below the surface.

Space your lilies about a foot apart for best results. If you give them less room than this you'll need to transplant more often.

Water them well if the soil is dry.

## FLOWERS TWICE A YEAR

AN old-fashioned shrub always like to see c into flower — and it does twice a year, in spring and autumn — is *Jacobinia carnea*, a native of Brazil. The flowers are carried in torch-like clusters at the tips of the straight stems and the colour is rosy pink.

The plant has attractively ridged leaves, which are a foot long; they are tinged with purple on the underside. The stems which are bamboo-like, are purple.

### How to prune

The height of a mature plant is 4 to 8ft high. To keep it tidy and vigorous, prune about 2ft from the ground late winter. It grows easily from cuttings.

Tender to frost, this should be planted in a sheltered place. I have seen it doing equally well in full and partial shade.

NEW ZEALAND HERALD MARCH 22, 1972

In the Supreme Court of New Zealand

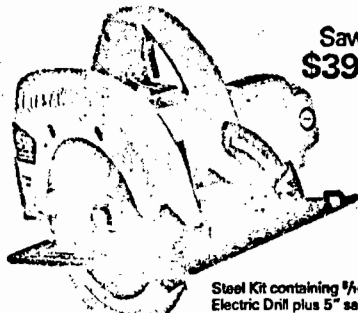
"ELW.8"

Exhibit "ELW.8" to Affidavit of Ernest Leslie Watson sworn 30th March 1972

- continued

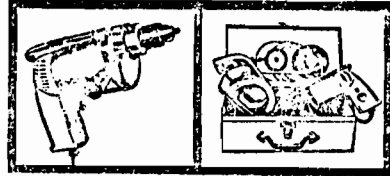
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# put power in Dad's hands this FATHER'S DAY with



Saws \$39.95

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POWER TOOLS



Steel Kit containing 5/8" Dia. Electric Drill plus 5" saw attachment, rubber pad and sanding discs, with paint mixer and 3" grinding wheel, price \$36.95.

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Evening Post September 1 1971





In the Supreme Court of New Zealand



This is what he said...

“When I first sat in the Peugeot 504 I immediately felt at home. As if I'd been driving one for weeks. The seats, the steering, the controls felt just right. I had no hesitation in racing the car up the road and round a few fast corners and bends.

The 504's general roadability and handling is first class. It's extremely stable. And predictable.

If you go into a corner a bit too fast, or have to brake or swerve, you always come out of it in one piece.

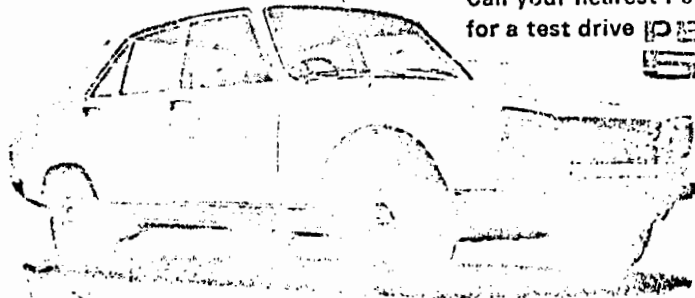
The 504 has an almost indestructible feel about it. You can drive it from Auckland to Wellington at a moments notice and it won't run out of breath. And you feel so relaxed when you get there that it seems as if

you could just as easily turn round and come back up.

I can't look at the Peugeot 504 and say that I like any particular feature. It's the completeness, the balance, the total 'feel' of the car that appeals to me.

*P.S. Barry St. Kay not only tested the 504, he bought one. His wife, who is also a keen driver, is equally enthusiastic about the 504, and drives it whenever she can.*

Call your nearest Peugeot Dealer for a test drive **PEUGEOT 504**



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MANNERS ST. A  
Larnaka and Seagram Rave  
Anticipation (8) — \$57.50  
Dunmy (2)  
Dunmy (2)  
TARANAKI  
Double: Horatia Cup and  
President's Sixes: Prince  
and Barbara Hill  
Dunmy (2)  
Dunmy (2)

Exhibit "ELW.8"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued

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the  
Ernest Leslie  
Watson sworn  
30th March 1972

In the Supreme Court of New Zealand

Exhibit "ELW.8"  
to Affidavit of Ernest Leslie Watson sworn 30th March 1972

- continued

"ELW.8"

Seagram's 100 PIPERS  
is De Luxe Whisky...  
blended in Scotland  
from 30 top whiskies and imported  
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strength retaining

**Taste that  
matches legend.**

Distributed by Jackson & Co. Ltd  
Whisky 40% pure Malt has been over 25 years.

MINIMUM QUANTITY: As Wholesale Wine and Spirit Merchants

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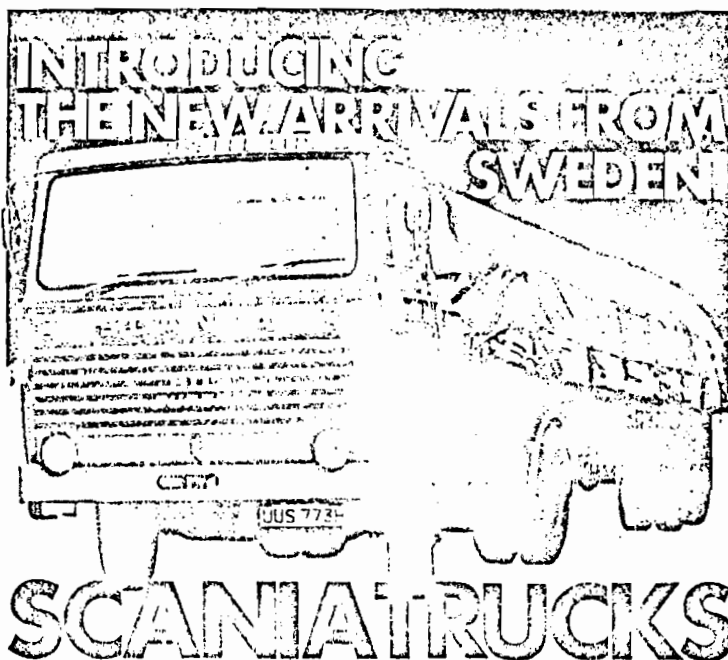
L

Every Port September 1 1971

In the Supreme  
Court of New  
Zealand

Exhibit "ELW.8"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

- continued



"ELW.8"

**COME ON STRONG  
WITH THE BEST  
HEAVY HAULAGE  
DIESEL TRANSPORT  
ON THE ROAD.**

Here is supercharged power, and sustained performance in a beautifully designed, easily handled, heavy haulage truck. Its direct-injection, 8 litre or 11 litre turbo charged engines give you up to 40% more power. Scania trucks give you durability, strength and sophistication. Synchronesh gears that are indestructible. Up to 10 forward speeds and tandem drive available. The cab can be tilted hydraulically - exposing the entire engine and front assembly for easy, fast maintenance. Scania trucks add a new dimension to the Heavy Haulage industry. We know you want to know all about them - when and where you can buy one - and how. Post the attached voucher for further information.

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Position \_\_\_\_\_

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Dominion 2nd September 1971  
"ELW.8"

In the Supreme  
Court of New  
Zealand

ELW/9

(Pat. 135) Exhibit "ELW.9"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972



IN THE PATENT OFFICE,  
NEW ZEALAND. No. 42988

This is the Certificate of the  
Commissioner of Trade Marks for New  
Zealand marked ELW/9 now produced and  
shown to ERNEST LESLIE WATSON and  
referred to in his affidavit SWORN  
at Auckland this 30th day  
of March 1972.

In the matter of the Trade Marks Act 1953  
and the Regulations thereunder;

AND

Before me:-

.....*M. Fisher*.....

A Solicitor of the Supreme Court  
of New Zealand.

In the matter of Trade Mark  
Registration in the name of  
THE UNITED STATES TIME CORPORATION.

### Certificate.

I CONWAY WALTER WADHAM Commissioner of  
Trade Marks for New Zealand, hereby Certify that THE UNITED STATES TIME  
CORPORATION, a corporation organised under the laws of the  
State of Connecticut, of 31 Cherry Avenue, Waterbury,  
Connecticut, U.S.A., manufacturers, were registered under the  
date of 8 May 1946, as proprietor of the Trade Mark TIMEX, a  
representation of which appears below in Class 14 (Schedule IV)  
under No. 42988 in respect of "horological instruments of all  
kinds, timepieces of all kinds, and devices for keeping,  
controlling, and recording time, including watches, clocks,  
chronometers, time-recorders, time-recording machines, time-  
daters, time-dating machines, elapsed-time recorders, watchmen's  
clocks, watchmen's time-detectors, time-cycle recorders, and  
parts of any and all of the foregoing goods included in Class 14".

I Further Certify that the registration of such Trade Mark is  
current until 8 May 1981, when it may be renewed.

The representation of the Trade Mark referred to  
above is:

TIMEX

GIVEN under my hand and the  
seal of the Patent Office this  
23rd day of February 1972.

*Conway Walter Wadham*

In the Supreme  
Court of New  
Zealand

ELW/10

[Pat. 135]

Exhibit "ELW.10"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972



IN THE PATENT OFFICE,  
NEW ZEALAND. } No. 74369

This is the Certificate of the  
Commissioner of Trade Marks for New  
Zealand marked ELW/10 now produced and  
shown to ERNEST LESLIE WATSON and  
referred to in his affidavit SWORN  
at Auckland this 30th day  
of March 1972.

In the matter of the Trade Marks Act 1953  
and the Regulations thereunder;

AND

In the matter of Trade Mark  
Registration in the name of  
JOSEPH E. SEAGRAM & SONS LIMITED.

Before me:-

..... *W. J. D. J. J.* .....  
A Solicitor of the Supreme Court  
of New Zealand.

### Certificate.

I CONWAY WALTER WADHAM Commissioner of  
Trade Marks for New Zealand, hereby Certify that JOSEPH E. SEAGRAM & SONS  
LIMITED, of 1430 Peel Street, Montreal, Canada, distillers,  
were registered under the date of 11 October 1963, as proprietor  
of the Trade Mark SEAGRAM'S, a representation of which appears  
below in Class 33 (Schedule IV) under No. 74369 in respect of  
"whisky".

#### I Further Certify:

- (a) that the Trade Mark was advertised before  
acceptance under the provisions of Section 27(1)  
proviso) of the Trade Marks Act 1953.
- (b) that under the date of 29 July 1966, JOSEPH E.  
SEAGRAM & SONS, INC., a corporation organised  
under the laws of the State of Indiana, of 375  
Park Avenue, New York, U.S.A., manufacturers,  
were registered as registered user.
- (c) that under the date of 12 March 1971,  
JOSEPH E. SEAGRAM & SONS (SCOTLAND) LIMITED,  
of Keith, Banffshire, Scotland, distillers,



226.

In the Supreme  
Court of New  
Zealand

PHONE: 92 9758

PHONE: 92 8883

*Glareavoid*

THE FASHION SUNGLASS

OPTICAL MANUF. CO PTY. LTD.  
48A MOUNT STREET, NORTH SYDNEY, N.S.W. 2060

KEITH HORTON

Exhibit "ELW.11"  
to Affidavit of  
Ernest Leslie  
Watson sworn  
30th March 1972

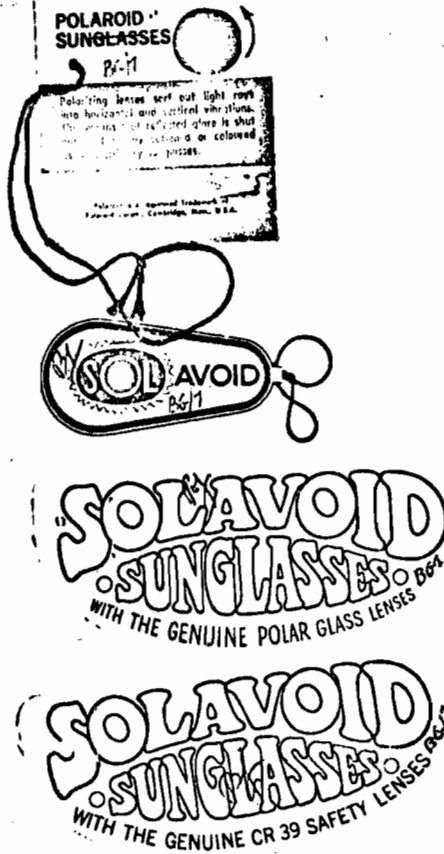
This is the envelope marked  
"ELW/11" now produced and shown  
to ERNEST LESLIE WATSON and  
referred to in his affidavit  
SWORN at Auckland this 30<sup>th</sup>  
day of *March* 1972,  
Before me

*Ernest Leslie Watson*  
.....  
A Solicitor of the Supreme  
Court of New Zealand.

BG/1

In the Supreme  
Court of New  
Zealand

Exhibit "BG.1"  
to Affidavit of  
Bryant Goldsbury  
sworn 17th April  
1972



These are the labels marked "BG/1" now produced and shown to BRYANT GOLDSBURY and referred to in his affidavit SWORN at Wanganui this 17th day of April, 1972  
Before me:

*[Handwritten signature]*

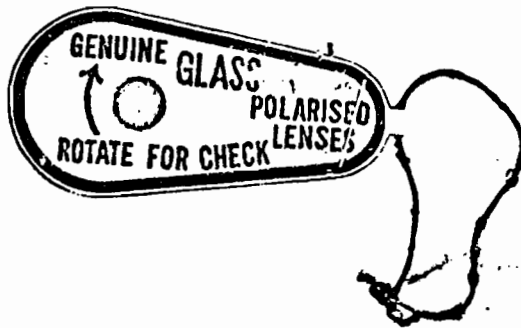
A Solicitor of the Supreme  
Court of New Zealand.



In the Supreme  
Court of New  
Zealand

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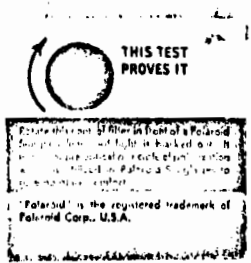
Exhibit "DIG/1"  
to Affidavit of  
Douglas Leslie  
Grant sworn  
20th April 1972



In the Supreme  
Court of New  
Zealand

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Exhibit "P.J.M.1"  
to Affidavit of  
Peter James  
Mardon sworn  
4th February 1972



EFM1

In the Supreme  
Court of New  
Zealand

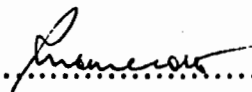
---

Exhibit "EFM.1"  
to Affidavit of  
Elder Frederick  
Masson sworn  
27th April 1972



This is the label marked EFM/1 now produced and shown to  
ELDER FREDERICK MASSON and referred to in his affidavit  
SWORN at New Plymouth this 27<sup>th</sup> day of April 1972

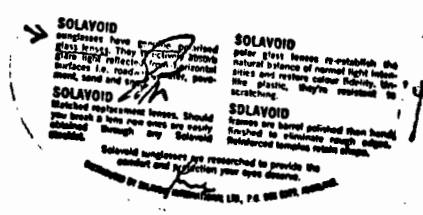
Before me:-

  
.....  
A Solicitor of the Supreme  
Court of New Zealand.

In the Supreme  
Court of New  
Zealand

EFM2

Exhibit "EFM.2"  
to Affidavit of  
Elder Frederick  
Masson sworn  
27th April 1972



This is the label marked EFM/2 now produced and shown to  
ELDER FREDERICK MASSON and referred to in his affidavit  
SWORN at New Plymouth this 27<sup>th</sup> day of April 1972

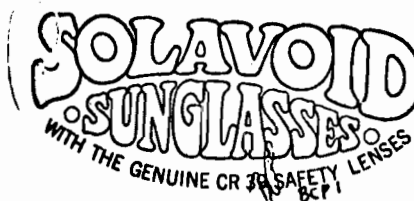
Before me:-

*Frederick Masson*  
.....  
A Solicitor of the Supreme  
Court of New Zealand.

In the Supreme  
Court of New  
Zealand


BCP/1

Exhibit "BCP/1"  
to Affidavit of  
Bryan Carroll  
Pearson sworn  
5th May 1972



These are the swing tickets marked BCP/1 now produced  
and shown to BRYAN CARROLL PEARSON and referred to in  
his affidavit SWORN at Napier this 5<sup>th</sup> day of May  
1972.

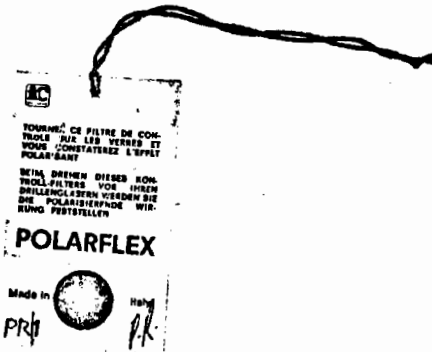
Before me:-

  
.....  
A Solicitor of the Supreme  
Court of New Zealand.

In the Supreme  
Court of New  
Zealand

PR/1

Exhibit "PR/1"  
to Affidavit of  
Peter Robinson  
sworn 10th  
March 1972



This is the swing ticket now produced and shown  
to PETER ROBINSON and referred to in his affidavit  
SWORN at Wellington this 10<sup>th</sup> day of March 1972.

Before me:

*A. S. Rajadhar*  
.....  
A Solicitor of the Supreme Court  
of New Zealand.

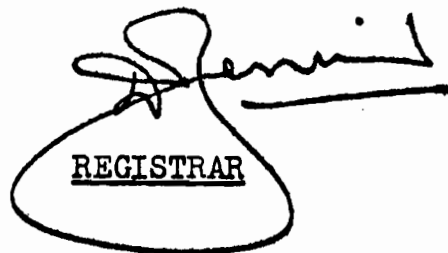
IN THE COURT OF APPEAL OF NEW ZEALANDNo. C.A. 98/73BETWEEN POLAROID CORPORATIONAppellantA N D HANNAFORD & BURTON  
LIMITEDRespondent

10 I, DOUGLAS VICTOR JENKIN, Registrar of the Court of Appeal of New Zealand DO HEREBY CERTIFY that the foregoing 233 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have relation to the matters of appeal, and also correct copies of the reasons given by the Judges of the Court of Appeal of New Zealand in delivering judgment therein, such reasons having been given in writing:

20 AND I DO FURTHER CERTIFY that the Respondent has taken all the necessary steps for the purpose of procuring the preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said Respondent to prosecute this Appeal.

AS WITNESS my hand and Seal of the Court of Appeal of New Zealand this 10<sup>th</sup> day of July 1975.

L.S.



REGISTRAR

31 OF 1975

No. \_\_\_\_\_ of 1975

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN:

HANNAFORD & BURTON LIMITED

Appellant

- and -

POLAROID CORPORATION

Respondent

---

RECORD OF PROCEEDINGS

---

SLAUGHTER AND MAY  
35 Basinghall Street,  
London, EC2V 5DB.

Agents for :

Swan, Davies, McKay & Co.,  
Wellington,  
New Zealand.

Solicitors for Appellant.

TITMUSS, SAINER & WEBB,  
2 Serjeants Inn,  
London, EC4Y 1LT.

Agents for :

Ennis, Callander & Gault,  
Wellington,  
New Zealand.

Solicitors for Respondent.