

IN THE MATTER of the Trade
Marks Ordinance (Cap 43)

and

IN THE MATTER of application
no. 15562/92 by Tiffany Lunettes Srl
to register the trade mark
Tiffany Lunettes and device in class 9

and

IN THE MATTER of an opposition by
Tiffany and Company to the registration

DECISION

OF

Teresa Grant acting for the Registrar of Trade Marks after a hearing on 21 June 1999

Appearing : Mr Ling Chun Wai instructed by Wenping & Co for the applicant for registration

Mr John M Y Yan instructed by Baker & McKenzie for the opponent

1. Tiffany Lunettes Srl ('the applicant') a company formed in Italy, has applied for registration of a trade mark under the Trade Marks Ordinance. Tiffany and Company ('the opponent') of New York, under the Trade Marks Ordinance section 15 has opposed the application.

2. The parties' arguments in the opposition were put to me at a hearing on 21 June 1999.

The opposed mark

3. The applicant has applied to register the mark:



(the opposed mark) application number 15562/92, for optical apparatus, eyeglasses, lenses, sunglasses, spectacle frames, spectacle cases, in Class 9. The application for registration was filed on 8 September 1992.

The opponent's marks

4. In these opposition proceedings, the opponent relies on its substantial reputation in the marks TIFFANY and TIFFANY & Co throughout the world and in Hong Kong, and on its registrations in Hong Kong for the mark:

TIFFANY

The opponent's registrations in Hong Kong are:

2895/92 in class 3

B1691/89 in class 8

B1692/89 in class 14

2185/91 in class 16

3603/92 in class 18

B1693/89 in class 21

2100/89 in class 34

2992/93 in class 35

The date of application of the earliest of the opponent's registrations in Hong Kong is 3 November 1987.

Grounds of opposition

5. The grounds for opposing under the Trade Marks Ordinance section 15 are essentially the use and reputation of the opponent's marks, so that the use of the opposed mark would be likely to deceive or cause confusion (section 12(1)); and the near resemblance of the opposed mark to the opponent's registered marks for goods of the same description (section 20). In its notice of opposition, the opponent also relied on other grounds, which it does not now pursue.

Pleadings

6. The opponent's amended notice of opposition, states, in respect of the grounds pursued:

- (a) The opponent is the owner of the trade marks TIFFANY and TIFFANY & CO throughout the world. The opponent has registrations for the mark TIFFANY in Hong Kong in classes 3, 8, 14, 16, 18, 21, 34 and 35.
- (b) The opponent has applied for registration of the mark TIFFANY in Hong Kong under applications 2777/89 in class 24, 2778/89 in class 25 and 6188/92 in class 42.
- (c) The opponent first used the trade marks TIFFANY and TIFFANY AND CO in 1837 in the United States and in 1988 in Hong Kong in its business as a manufacturer and retailer of a wide range of goods. The goods include diamond jewellery, watches and jewellery made of precious metals, eyeglasses, eyeglass cases, holders and chains.
- (d) Since 1988, the opponent's affiliates have operated retail stores under the name TIFFANY & CO for the sale of jewellery and other luxury goods in Hong Kong at the Peninsular Hotel and the Landmark. The trade marks TIFFANY and TIFFANY & CO are used extensively in connection with the operation of those stores. As a result of the use, the trade marks are known as belonging to, or as being associated with, the opponent.
- (e) Prior to 8 September 1992 the opponent had substantial goodwill and reputation in the name TIFFANY through its extensive use of its marks in Hong Kong and throughout the world.

- (f) The applicant is seeking to register a trade mark, which is substantially similar to the opponent's marks for goods identical to, or of a description similar to, goods for which the opponent's marks are registered or used in Hong Kong.
- (g) The opponent has a worldwide reputation as a specialist trader in diamond jewellery. As a result, the applicant's use of a diamond device with the word TIFFANY in the opposed mark is likely to mislead purchasers into believing that the applicant's goods are the opponent's goods, or are goods associated with, endorsed by, or approved by the opponent.
- (h) Registration of the opposed mark will cause deception or confusion by reason of its similarity to the opponent's marks registered in Hong Kong so that the application should be refused under section 20.
- (i) The use of the opposed mark in Hong Kong is likely to deceive and should be refused under section 12(1).

7. The applicant in its counter-statement admits only that it seeks to register the opposed mark and that the opponent is the applicant of application 6188/92. The applicant denies all other grounds in the notice of opposition. The applicant's counter-statement is summarised as follows, with my comments in square brackets:

- (a) The opposed mark is not similar to the opponent's marks and the applicant's goods are neither similar to, nor of a description similar to, the opponent's goods.
- (b) The applicant has used the opposed mark for optical apparatus, eyeglasses, lenses, sunglasses, spectacle frames, and spectacle cases, since November 1989 overseas and since October 1990 in Hong Kong. The applicant gives figures for sales of its goods worldwide and in Hong Kong. [The figures the applicant gives for its sales in Hong Kong in its counter-statement differ from the figures it gives in its evidence.]
- (c) The applicant has made trade mark applications, similar to the present application, worldwide.
- (d) The applicant relies on the registrar's pre-opposition acceptance of the application despite the existence of the opponent's prior registrations for TIFFANY and TIFFANY & CO. [In fact the opponent's mark TIFFANY & CO is not registered in

Hong Kong.] The applicant relies on the fact that the registrar cited the opponent's application 6188/92 against the applicant's application but withdrew the citation on the basis that the applications were for different goods.

The opponent's evidence

8. The opponent has filed evidence under Trade Marks Rules 25 and 27. Under Trade Marks Rule 25 the opponent has filed declarations from:

Michael J Kowalski, President of Tiffany and Company of New York, the opponent

Claire Chao, Managing Director of Tiffany & Co of New York Limited, the opponent's Hong Kong subsidiary

Hiromi Ogura, sales associate, employed by Tiffany & Co of New York Limited, the opponent's Hong Kong subsidiary

Lee Yee Hing, Glenis, sales associate, employed by Tiffany & Co of New York Limited, the opponent's Hong Kong subsidiary

Yeung Kit Lee, sales associate, employed by Tiffany & Co of New York Limited, the opponent's Hong Kong subsidiary

Tracy Wut Oi Ching of Baker & McKenzie, solicitors for the opponent.

9. Michael Kowalski's declaration, made in 1996 and filed under rule 25, is summarised as follows, with my comments in square brackets:

- (a) The opponent's mark TIFFANY is registered in Hong Kong in classes 3, 8, 14, 16, 18, 21 and 35. Copies of the certificates of registration are exhibited at MJK-3.
- (b) The opponent has numerous registrations for the marks TIFFANY and TIFFANY & CO throughout the world. Copies of International Registration 536554 dated 13 October 1988 in many classes; and US registration 1,774,071 dated 1993 and claiming use from 1957 for eyeglass cases; are exhibited at MJK-4.
- (c) Eyewear is a personal accessory like jewellery and is considered as jewellery by many because of its design element or because it can be made of precious metals. A copy of an article from Europa Star, a trade paper for the Swiss jewellery industry, entitled 'Tiffany choose platinum for its new eyeglasses made of platinum' is exhibited at MJK-5. [It is apparent from references to dates referred to in other articles on the same page that the article relates to the situation in 1992/1993.]

- (d) Eyeglasses are commonly sold with jewellery items and designer houses have their trade marks registered for both jewellery and eyeglasses. Chanel, Calvin Klein, Ralph Lauren, Giorgio Armani and Cartier have their marks registered and licensed for both jewellery and eyeglasses.
- (e) The opponent sells the works of famous designers. Its products extend to items, such as ties, scarves and perfume, commonly used with designer marks. Customers seeing the mark TIFFANY on the type of product commonly used with designer marks, will conclude that the opponent is the source of that product.
- (f) The opponent's competitor, Cartier, sells eyeglasses as an extension of its jewellery business in Hong Kong. Cartier's 1995 catalogue, exhibited at MJK-6, shows frames decorated with gemstones described as the 'High Jewellery Eyewear Collection', frames made from precious metal, and eyeglasses named after jewellery designers.
- (g) The opponent produces a wide range of functional luxury products such as pens, bookmarks and tableware. Eyewear can also fall into the category of functional luxury products.
- (h) The opponent has evidence of at least four instances of actual confusion in Japan, France, Switzerland and Israel (paragraph 21 and exhibits MJK-9, MJK-10, MJK-5 and MJK-11).
- (i) Although the opponent does not presently produce eyewear, it has in the past produced and sold a variety of eyewear. Items such as eyeglass cases, eyeglass chains and lorgnettes are listed in the opponent's Blue Book catalogues (photo copies exhibited at MJK-12) from 1845 to 1966. Exhibited at MJK-13 is an eyeglass case manufactured by the opponent, with the TIFFANY & CO mark affixed, which is sold in the United States and Canada.
- (j) The opponent's reputation in Hong Kong and worldwide is so substantial that it is likely the Hong Kong public would be misled into believing that the goods sold under the opposed mark were the opponent's.
- (k) The opponent's business began in New York in 1837. The opponent now has numerous retail locations throughout the world.

- (l) The opponent's business is the design, manufacture and sale of a broad range of luxury items for personal and household use and adornment and the provision of related services. The opponent's directory of the broad range of items sold in its New York store is exhibited at MJK-14. The opponent has an international clientele and its directory is translated into Japanese, French, German and Spanish. The 1994-1995 issue of the opponent's primary catalogue, the Blue Book, exhibited at MJK-15, shows that many of the opponent's items are made with precious stones, including diamonds.
- (m) The opponent has 96 retail locations worldwide. [Page 4 of the opponent's 1992 annual report, exhibited at MJK-17 shows that in 1992 the opponent had 74 retail locations worldwide.] The opponent's retail store in the Peninsula, Hong Kong opened in 1988 and its store in the Landmark, Hong Kong, in 1989. Additionally the opponent's products are offered in 62 TIFFANY & CO boutiques operated by the opponent's affiliates or licensees.
- (n) Asia is an important market for the opponent. [The inside front cover and page 13 of the opponent's 1991 annual report, exhibited at MJK-17, uses the caption 'Tiffany's growing reputation: from Fifth Avenue to the Far East'. Page 4 of the opponent's 1992 annual report, exhibited at MJK-17 states that the opponent 'is one of the leading international jewellers and speciality retailers in major markets from Fifth Avenue to the Far East'.] Page 5 of the opponent's 1993 annual report, exhibited at MJK-17 states that the opponent's 'target audience' are 'consumers from Fifth Avenue to the Far East'. Fifty-nine of the opponent's retail locations are in Asia.
- (o) The opponent has been doing business in Asia for more than 20 years. An article in the January 1992 edition of Jewellery News Asia exhibited at MK-18 describes the development of the opponent's Asian business.
- (p) The opponent's international sales in 1992 were US\$184 million, as evidenced in the opponent's annual report exhibited at MJK-19.
- (q) The opponent's products were advertised prior to the relevant date in various in-flight magazines, including Cathay Pacific Airlines Discovery magazine. Examples of the advertisements are exhibited at MJK-21.
- (r) Articles about the opponent's products and business have appeared regularly in publications worldwide. The opponent's international fame was extended by the film

'Breakfast at Tiffany's' made in 1961. The opponent has made medals and trophies for international sporting events.

- (s) The applicant's bad faith in adopting the opposed mark is made apparent by the presence of a diamond in the opposed mark. The opponent's association with diamonds is such that the use of the word TIFFANY with the device of a diamond must misappropriate the opponent's reputation.
- (t) The founder of the opponent's business, Charles Tiffany, was called the 'King of Diamonds' in 1848, as recounted in an article on the opponent's history in Smithsonian, exhibited at MJK-24. The opponent's 'Tiffany Diamond', one of the largest yellow diamonds ever mined, is on permanent display in the opponent's Fifth Avenue store. A book, 'Famous Diamonds: the stories of 100 of the world's most celebrated jewels', published in 1987, describes the Tiffany Diamond, in extracts exhibited at MJK-31. The opponent's booklet 'How to Buy a Diamond' is exhibited at MJK-32. An advertisement for the booklet in the United States in 1992 is exhibited at MJK-32. Tiffany is referred to in the song 'Diamonds are a Girl's Best Friend'. The opponent has emphasised its diamond jewellery in its advertisements exhibited at MJK- 20 and 21. The cover of the opponent's 1992 annual report, exhibited at MJK-35, depicts a diamond ring.
- (u) The opponent's reputation as a famous mark has been supported by decisions of tribunals in various jurisdictions.

10. Claire Chao's declaration under rule 25, is summarised as follows:

- (a) The opponent's business in Hong Kong is operated through its subsidiary Tiffany & Co of New York Limited.
- (b) The opponent has two retail stores in Hong Kong, one that opened in the Peninsula Hotel in 1988 and another that opened in the Landmark in 1989. Photographs of the stores are exhibited at CC-1.
- (c) The opponent also has boutiques in the Mitsukoshi and Sogo department stores in Causeway Bay in Hong Kong.

- (d) The opponent's sales income in Hong Kong since 1988 is estimated as being in excess of HK\$539,000,000. The opponent's average annual turnover in Hong Kong since 1989 is HK\$75,225,000.
- (e) The opponent's business in Hong Kong has approximately 500 corporate customers, including many of Hong Kong's most famous companies. The opponent's catalogue 'Tiffany's HK's selections for business', which is distributed to its corporate customers, is exhibited at CC-2.
- (f) The opponent's advertising and promotional expenditure in Hong Kong since 1988 is estimated as being in excess of HK\$13,448,000. The opponent's average annual advertising and promotional expenses since 1989 in Hong Kong is HK\$1,867,000.
- (g) The opponent regularly issues press releases in relation to its products and business in Hong Kong. Copies of articles in the South China Morning Post magazine on 30 September 1990 and in Eve magazine in September 1992 are exhibited at CC-5.
- (h) Customers' enquiries to the opponent in Hong Kong about the availability of TIFFANY eyeglasses indicates that there is confusion as to the origin of the applicant's goods.
- (i) The opponent's famous jewellery competitor, Cartier, sells eyeglasses through authorised optical shops in Hong Kong. Cartier does not offer its eyeglasses at all of its Hong Kong boutiques.

11. The declarations by Hiromi Ogura, Lee Yee Hing Glenis, and Yeung Kit Lee, filed under rule 25, recount instances between June and November 1995 where customers in the opponent's Peninsular store asked whether the opponent sold eyeglasses.

12. Tracy Wut Oi Ching's declaration, filed under rule 25, recounts her purchase in February 1996 of two sets of the applicant's eyeglasses from Queensway Optical Shop, where the sales assistant represented that the eyeglasses were made by Tiffany and Company of New York, the opponent.

13. The opponent's evidence under Trade Marks Rule 27 is filed in two declarations; a declaration made by Mr Kowalski in 1997 and a declaration by Linda Anne De Silva of Baker & McKenzie, solicitors for the opponent.

14. In reply to the applicant's evidence, Mr Kowalski, in his 1997 declaration, deposes as follows :

- (a) The applicant has not filed evidence of use of the opposed mark prior to the 8 September 1992 filing date of the application and the opponent challenges the claim of first use of the opposed mark since November 1989.
- (b) Expressed in Hong Kong dollars, at the average annual exchange rate for the relevant year, the applicant's sales in Hong Kong in 1991 and 1992 were \$387,122 and \$2,384,817, respectively.
- (c) Assuming HK\$1,800 as the average retail price of the applicant's eyeglasses, the number sold in Hong Kong in 1991 and 1992 is estimated at 215 and 1,324 pairs, respectively.
- (d) The applicant claims use of the opposed mark in Hong Kong since October 1990. The opponent first became aware of the use of the opposed mark in Hong Kong in 1993.
- (e) Mr Deppi's declaration, exhibit DG-2, shows promotion of the opposed mark in immediate proximity to well-known brand names such as Christian Dior, Armani, Valantino, Trussardi, Maserati, Gianni Versace, Mickey & Friends (Disney), Polaroid and Kodak. It is common knowledge that the primary businesses of the owners of these brand names concern goods other than eyewear. It appears from these materials that production of eyewear can be considered to be related to, or an extension of, the major fields of business of these trade mark owners.
- (f) Mr Deppi's declaration, exhibit DG-1, shows that the applicant's goods are made of, or plated with, gold platinum and other metals. Goods of precious metal or coated with precious metal are classified in class 14 of the Nice Classification. Jewellery is also classified in class 14. Eyewear is classified, by its function and purpose, in class 9. But that does not negate the close association between eyewear and jewellery.

- (g) At present the opponent does not manufacture or sell eye wear (although it does sell eye wear cases bearing the mark TIFFANY & CO). Accordingly the opponent does not tender evidence of income from sales of eyewear.
- (h) The opponent's goodwill in relation to eye wear is evidenced by an article 'No Rough Diamond' from the 19 October 1990 edition of the South China Morning Post, exhibited at 2MJK-3, which describes the opponent as a 'designer firm'.
- (i) The word 'lunettes' means 'eyeglasses' in French and is a descriptive term. Exhibit DG-2 in Mr Deppi's declaration shows another brand of eyewear, "Paris Lunettes" which also uses the term.
- (j) A diamond device is closely identified with the opponent. The diamond device and the word TIFFANY are not referential to each other except as a result of the opponent's fame as a jeweller.
- (k) The article 'No Rough Diamond', exhibit 2MJK-3, refers to the opponent as 'famous jewellers' and reports on the exhibition of the Tiffany Jewels at the APA in Hong Kong in September 1990. The article also refers to the Tiffany Diamond and the fact that a six prong setting for a diamond solitaire ring is referred to as a Tiffany setting.
- (l) An article 'A Spot of Tea at Tiffany's' from the July 1988 issue of Executive (HK), exhibit 2MJK-7, reports on the opening of the opponent's store in the Peninsula Hotel. The article refers to the Tiffany Diamond and illustrates the article with a drawing of diamonds. Articles in the Hong Kong press depicting or referring to the Tiffany Diamond, prior to the applicant's alleged date of first use, are exhibited at 2MJK-8. Articles in the Hong Kong press depicting gemstones sold by the opponent in Hong Kong, prior to the applicant's application, are exhibited at 2MJK-8.
- (m) None of the countries listed at paragraph 9 of Mr Deppi's declaration have trade mark systems similar to Hong Kong's system and the registrations or proceedings in those countries are not relevant to the present proceedings.
- (n) The words 'made in Italy' do not distinguish the applicant's goods from the opponent's. A significant portion of the opponent's goods is manufactured in Italy. Labels marked 'Tiffany & Co made in Italy', exhibit 2MJK-10, are affixed to the opponent's Italian made ceramic ware.

15. Linda Anne De Silva's declaration under rule 27, relates the result of a search of websites of owners of famous marks who were using or licensing their marks for use on sunglasses and eyewear prior to the applicant's application.

The applicant's evidence

16. The applicant's evidence is given in a declaration made by Gianni Deppi, the applicant's president. The declaration is filed under Trade Marks Rule 26 and is summarised as follows, with my comments in square brackets :

- (a) The applicant was incorporated in 1989 and has used the opposed mark overseas, for the goods now applied for, since November 1989. The applicant's annual worldwide sales for the years 1989 to 1994 are given in paragraph 4 of the declaration. [In 1991 the applicant's worldwide sales were 947,929,000 Italian lira (approximately equivalent to HK\$5,937,939).]
- (b) The applicant has sold goods in Class 9 under the opposed mark in Hong Kong since October 1990 through its agent Intergold Limited. The applicant's annual sales in Hong Kong for the years 1989 to 1995 are given in paragraph 5 of the declaration. Copies of sale invoices are exhibited at DG-1. [In 1991 the applicant's sales in Hong Kong were 61,800,000 Italian lira (approximately equivalent to HK\$387,122). This figure differs from the figure of 65,016,000 lira in the applicant's counter-statement paragraph 10. The applicant does not particularise which goods in Class 9 it has sold but the invoices exhibited at DG-1 refer to 'optical frames'.]
- (c) The applicant has promoted the opposed mark in various ways including advertising and distributing catalogues. The applicant has spent approximately HK\$50,000 a year on promotion in Hong Kong. Copies of promotional materials are exhibited at DG-2.
- (d) The applicant's goods are sold in Hong Kong at shops listed in paragraph 7 of the declaration.
- (e) Prior to the opposition proceedings the applicant had no knowledge that the opponent was engaged in the manufacture or sale of the applied for goods. The opponent's evidence (Mr Kowalski's 1996 declaration) gives no figure for sales of

eyeglasses. The opponent's eyeglass cases are sold only in the USA and in Canada. It is therefore unlikely that the opponent owns any goodwill in relation to eyeglasses outside the USA and Canada.

- (f) The presence of the word 'lunettes' and the device in the opposed mark clearly distinguish it from the opponent's registered mark TIFFANY. The opposed mark has been registered in Finland, USSR, Spain and Saudi Arabia despite the opponent's opposition to the applicant's registration in those countries. A copy of a notice of acceptance by the Finnish Patent Office issued after the opponent's opposition is exhibited at DG-3. [The actual form of the mark accepted is not shown in the notice.]
- (g) The applicant's mark is registered in the jurisdictions listed in paragraph 9 of the declaration.
- (h) The applicant disputes the opponent's interpretation of the letter from Kosei Industrial Co Ltd (Mr Kowalski's 1996 declaration paragraph 21). The applicant interprets Kosei's letter as indicating that if the opponent does not grant Kosei a licence, Kosei will approach the applicant as an alternative and separate entity.
- (i) All frames sold under the opposed mark carry the words 'made in Italy'. This makes confusion as to the origin of the applicant's goods unlikely.

Admissible evidence

17. The applicant raised a preliminary point as to the admissibility of the opponent's evidence filed under Trade Marks rule 27. The applicant argues the opponent's evidence is not confined to matters strictly in reply to the applicant's evidence as required by rule 27(2). The applicant argues that the opponent's evidence filed under rule 27 was available at the time the opponent was required to file its evidence in support of the opposition under rule 25. Consequently, the opponent should have filed its evidence under rule 25 and is precluded from filing it under rule 27. The applicant also argues that the opponent's evidence must be in reply to new issues raised in the applicant's evidence and must not supplement evidence filed under rule 25.

18. At the hearing I ruled the opponent's evidence was admissible. The test is whether the evidence is strictly in reply to the applicant's evidence under rule 26. Under rule 27 the opponent is not restricted to new evidence that was not available at the time of filing evidence under rule 25.

Nor is the opponent restricted to replying only to new issues in the applicant's evidence under rule 26. Provided the opponent's evidence is in reply to a point raised in the applicant's evidence, it is admissible under rule 27.

19. The applicant referred to particular parts of the opponent's evidence filed under rule 27. I found those parts were confined to matters strictly in reply. In its evidence under rule 26 the applicant states 'it is unlikely the opponent owns any goodwill in relation to eyewear outside the United States and Canada' (Gianni Deppi's declaration, paragraph 8). It is in reply to that point that the opponent has put in evidence of its reputation (Michael J Kowalski's 1997 declaration, paragraphs 10.2 and 10.3) and evidence that companies similar to the opponent had branched out into eyewear (Linda Anne De Silva's declaration). The applicant states the use of the word 'lunettes' and the diamond device distinguish the opposed mark from the opponent's mark (Gianni Deppi's declaration, paragraph 9). In reply, the opponent has put in evidence of the opponent's reputation in relation to diamonds (Michael J Kowalski's 1997 declaration, paragraph 11). The applicant states the opposed mark has been registered in several jurisdictions despite opposition by the opponent (Gianni Deppi's declaration, paragraph 9). In reply, the opponent has put in evidence that the opponent's reputation, although not specifically for eyewear, prevented the registration of the applicant's mark in other jurisdictions ((Michael J Kowalski's 1997 declaration, paragraphs 10.4, 10.5, and 12.2). The opponent has put in evidence under rule 25 to support the grounds of opposition. Its evidence under rule 27 is not an attempt to supplement that evidence. It is evidence strictly in reply.

Statutory provisions and decided cases

20. The relevant statutory provisions are section 12(1), section 20, and section 2(4) of the Trade Marks Ordinance. Section 12(1) makes it unlawful to register a mark the use of which would be likely to deceive or would be disentitled to protection in a court of justice. Section 20 prohibits the registration of a trade mark which is identical with or so nearly resembles another registered trade mark. Section 2(4) states that a near resemblance of marks is a resemblance so near as to be likely to deceive or cause confusion.

21. Sections 12(1), 20, and 2(4) of the Trade Marks Ordinance are substantially similar to sections 11 and 12 of the United Kingdom Trade Marks Act 1938 and decisions under sections 11 and 12 of the 1938 Act are generally relevant in considering our sections 12(1), 20, and 2(4). Specifically, however, there is a difference between our section 12(1) and section 11 of the 1938 Act. In our section 12(1), the two limbs, 'likely to deceive' and 'disentitled to protection etc', are not linked

as they are in the 1938 Act. They are disjunctive, so that under our section 12(1) the likelihood of deception is an independent ground of objection (*Hong Kong Caterers Limited v Maxim's Ltd* [1983] HKLR 287). In this respect the United Kingdom decisions are not precisely applicable (*Maxim's* at 296).

22. In section 12(1) of the Trade Marks Ordinance, the words 'likely to deceive' mean the same as the words 'likely to deceive or cause confusion' in section 11 of the United Kingdom Trade Marks Act 1938. In this respect the United Kingdom decisions are applicable. The words 'likely to deceive or cause confusion' in section 11 of the United Kingdom Trade Marks Act 1938 have been interpreted as having the same meaning as the words 'calculated to deceive' in section 11 of the United Kingdom Trade Marks Act 1905 (*GE* [1973] RPC 297 at 334, HL). It follows that the words 'likely to deceive' in section 12(1) of the Trade Marks Ordinance must also have the same meaning (see *Maxim's* at 296, 297, on the construction of section 12(1), where it was tacit that 'likelihood of deception' means 'likelihood of deception or confusion').

Relevant date

23. The date of application for registration of the applicant's mark is 8 September 1992. It is not disputed that the date of application is the relevant date at which the parties' position under section 12(1) and section 20 is to be determined (*Rotolok* [1968] RPC 227 at 230; *Blue Paraffin* [1977] RPC 473; *C (device)* [1998] RPC 439 at 449).

Onus of proof

24. The onus is on the applicant to defeat the opposition by satisfying me that there is no reasonable likelihood of deception or confusion, without necessarily leading to passing off, if the opposed mark TIFFANY LUNETTES and device is used normally and fairly on the goods of the specification (*Bali* [1969] RPC 472; applied by the registrar in *Tunlees Watch Manufactory (HK) Ltd* [1993] HKDCLR 15 at 21). As Kerly's (*Law of Trade Marks and Trade Names* 12^{edn} paragraph 10-06) says 'it does not follow, because an opponent could not obtain an injunction (in infringement proceedings where the onus is on the plaintiff) against the use by the applicant of the mark which he tenders for registration, that the tribunal will be satisfied it is not likely to deceive within section 12(1) (our section 20)' (*Australian Wine Importers* (1889) 41 Ch D 278 at 289; 6 RPC 311, CA; *Guards* [1964] RPC 9; *Carreras v Frankau* [1964] RPC 210). Also, as Kerly's puts it in paragraph 10-06, 'the question whether or not a particular mark is calculated to deceive or cause confusion is not the same

as the question whether the use of the mark will lead to passing off. There may be confusion in the sense of section 12 (our section 20) although the purchaser is not, in the end, deceived'. *Hack's Application* (1940) 58 RPC 91 at 103 is the authority often cited. It was said there that 'the mark must be held to offend against the provisions of section 11 (our section 12) if it is likely to cause confusion or deception in the minds of persons to whom the mark is addressed, even if actual purchasers will not ultimately be deceived'.

Section 12(1) and section 20

25. It is well established that the tests to be used in applying section 12(1) and section 20 are those stated in *Smith Hayden & Co's Application* (1946) 63 RPC 97 at 101. The test under section 12(1), adapted to this application, is as follows, 'having regard to the reputation of the marks TIFFANY and TIFFANY & Co, is the registrar 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?' Under section 20 and 2(4) the test is, 'assuming user by the opponent of its mark TIFFANY in a normal and fair manner for any of the goods covered by the registration of the mark, is the registrar satisfied that there will be no reasonable likelihood of deception or confusion among a substantial number of persons if the applicant also uses the opposed mark TIFFANY LUNETTES and device normally and fairly in respect of any goods covered by its proposed registrations?' The requirement that the deception and confusion must be among a substantial number of persons is a judicial gloss to be properly and sensibly applied (*Bali* [1969] RPC 472 at 496).

26. To find that a mark offends against section 12(1), and also under section 20, '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 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 (*Bali* [1969] RPC 472 at 496).

27. Under section 12 and section 20, the question of whether there is deception among a substantial number of persons must be judged in relation to the market concerned, that is, all likely purchasers of the goods. If there is a probability of deception, there is no discretion to the registrar in the application of section 12 and section 20.

28. To rely on section 12(1) the opponent must show a sufficiently substantial reputation for his mark in Hong Kong (*Nova* [1968] RPC 357 at 360, a decision under the equivalent provision in the United Kingdom 1938 Act). The applicant must then show there is no reasonable likelihood of deception or confusion. The extent of the reputation of the opponent's mark and the goods for which it has been achieved are factors in determining whether there is a sufficient likelihood of deception or confusion to refuse the applicant registration under section 12(1).

Reputation

29. The applicant says the opponent is not able to base an opposition on section 12(1) because it had not used its mark for eyeglasses in Hong Kong at the date of application for registration of the opposed mark. The applicant cites *Macy's* [1989] RPC 546 and *Lal's (Pte) Ltd v Jaguar Cars Ltd* [1993] AIPR 529 in support. Alternatively the applicant argues that even if reputation, as opposed to use, is a sufficient basis for opposing under section 12(1), the fact that the opponent has no reputation in eyeglasses means that the likelihood of confusion would be remote.

30. I think it is clear that reputation, not use, is the criteria under section 12(1). *Hong Kong Caterers Ltd v Maxim's Ltd* [1983] HKLR 287 is authority for the principle that reputation associated in trade or business with a name is recognised in law for trade mark purposes whether the reputation is based on what would be regarded as registrable trade mark user or not (*Maxim's* at 291). The position under section 11 of the United Kingdom 1938 Act is different. In section 11 of the 1938 Act 'likely to deceive' is coupled with 'disentitled to protection' so that it must be established not merely that there is a likelihood of deception or confusion but something more, that is user at the relevant time by the owner of the existing mark which under the old common law the court would protect (*Bali* [1969] RPC 472, at 495, 496, distinguishing *Smith Hayden & Co's Application*). By contrast, the construction of our section 12(1) makes the likelihood of deception an independent ground of objection, so that reputation can be acquired here and protected here even when no business is carried on here (*Maxim's* at 296; *Wienerwald Holdings AG v Kwan & Others* [1979] FSR 381, approved in *Maxim's* at 295; *Omega* [1995] 2 HKC 473, at 477).

31. The applicant cites *Macy's* [1989] RPC 546 and *Lal's (Pte) Ltd v Jaguar Cars Ltd* [1993] AIPR 529. *Macy's*, a decision under section 11 of the United Kingdom 1938 Act, cannot be relied upon in support of a requirement for use as opposed to reputation in Hong Kong because the position under our section 12(1) is different. In *Jaguar*, a decision of the registrar in Hong Kong, it

was not disputed that reputation was sufficient to mount an opposition under section 12(1). Neither case supports the applicant's contention that to rely on section 12(1) the opponent must have used the mark in respect of the particular goods. In *Macy's* the opposition as regards watches failed not merely because there was no evidence of use for watches but also because there was no evidence of use for related goods (*Macy's* at 554). In *Jaguar* a reputation in respect of cars and engines was at least sufficient to mount an opposition in respect of jeans, jackets, shirts, sportswear, slacks and children's wear.

32. In *Jaguar*, the registrar expressed the view that the reputation of a famous mark for particular goods may, if the mark is an invented word, spill over in a diluted form into other goods not obviously closely related to the particular goods but that this principle should not have any application where the mark is an ordinary English word conveying a particular meaning (*Jaguar* at 551). The opposition to registration of the mark *Jaguar* failed. Although the opponent had a substantial reputation in Hong Kong for *Jaguar* in relation to cars, it had no reputation in goods in the nature of, or closely related or allied to, the applicant's goods (*Jaguar* at 552). The view that unless the opponent's substantial reputation was in an invented mark the goods must be closely related or allied, was rejected in *Omega* [1995] 2 HKC 473, a decision of the High Court. In *Omega* the court held that section 12(1) does not require the goods to be closely allied (*Omega* at 479). *Omega* was followed in *Gay Giano* [1996] 2 HKC 646, also a decision of the High Court, in which the applicant for removal, who had a substantial reputation in the mark in relation to clothing, succeeded in rectifying the register by removing the respondent's registration of the mark for watches. The court found that use of the mark by the respondent on watches would confuse and would be likely to deceive under section 12(1) (*Gay Giano* at 652, 653).

33. The fact that reputation is not in respect of the particular goods is a factor to be taken into account in assessing confusion, not a precondition for opposing the registration of a mark under section 12.

34. Evidence of the opponent's substantial international reputation in the marks TIFFANY and TIFFANY & CO is given in Mr Michael J Kowalski's 1996 statutory declaration. The opponent's business began in 1837 in New York (1996 declaration, paragraph 26) and expanded so that at the relevant date for these proceedings TIFFANY & CO retail stores operated in many countries in the world (outside back cover of the opponent's 1991 annual report, exhibit MJK-19). In 1989 and 1990, the opponent's international retail sales increased by 152% and 61%, respectively (1990 annual report, page 15, exhibit MJK-19). In 1991 international sales of the opponent's

products amounted to US\$184.3 million (1991 annual report, page 2, exhibit MJK-19). In 1992 international sales of the opponent's products amounted to US\$155.7 million (1992 annual report, pages 2 and 11, exhibit MJK-19).

35. The opponent has a long history in making and selling jewellery and luxury goods (Mr Kowalski's 1996 statutory declaration, paragraphs 25-30). The opponent has designed and made trophies commissioned to mark important events and luxury items and jewellery commissioned by public figures and famous individuals (Mr Kowalski's 1996 statutory declaration, paragraphs 37-40; 1991 annual report, page 2, exhibit MJK-19). The opponent has a particular reputation in diamonds and in diamond jewellery (Mr Kowalski's 1996 statutory declaration, paragraphs 42-44; 1991 annual report, inside front cover, exhibit MJK-19: 'Tiffany developed the six-prong setting, which has become the universal standard for solitaire diamond engagement rings'). The opponent's reputation is for jewellery and designer products and functional luxury goods (Mr Kowalski's 1996 statutory declaration, paragraphs 10,14,18,27; 1991 annual report, page 29, exhibit MJK-19: 'The company operates in a single industry segment: the retail sale and wholesale distribution of fine jewellery, gift and fashion accessory items. Net export sales were US\$150,000,000, US\$121,000,000 and US\$73,000,000 for the years ended January 31, 1992, 1991 and 1990, respectively, and were made principally for export to the Far East'). At the relevant date the opponent's business had diversified into designer products and functional luxury goods (1991 annual report, page 1, exhibit MJK-19: 'Tiffany offers jewellery, sterling silverware, china, crystal, time pieces, stationary, writing instruments, fragrances and accessories'; 19 October 1990 issue of South China Morning Post Asia Magazine article 'No Rough Diamond', exhibit 2MJK-3, where the opponent's goods were described as being 'fine jewellery, sterling silver, china, crystal, watches, clocks, stationary, leather goods, scarves and fragrance'; August 1988 issue of Eve, exhibit 2MJK-3, where the opponent's goods, available at the opponent's Peninsula store, were noted as being 'souvenirs, sterling silver picture frames, scarves, perfume, handbags, engagement and wedding rings'). The opponent has in the past sold and produced items of eyewear (Mr Kowalski's 1996 statutory declaration, paragraphs 22,23). The opponent manufactures and markets eyeglass cases in the US and Canada (Mr Kowalski's 1996 statutory declaration, paragraph 24).

36. The opponent's reputation in Hong Kong at the relevant date derives from its international reputation and from its use of the marks TIFFANY and TIFFANY & CO in its business in Hong Kong. The opponent's retail stores, in the name TIFFANY & CO, opened in Hong Kong in the Peninsula in 1988 and in the Landmark in 1989 (the opponent's 1988 Annual Report page 34 page 16, page 1 Financial Highlights and page 8, exhibit MJK-19). The opponent's average annual turnover in Hong Kong since 1989 is estimated at HK\$75,225,000 (Claire Chao's declaration,

paragraph 5). The opponent's average annual advertising and promotional expenses in Hong Kong since 1989 are estimated at HK\$1,867,000 (Claire Chao's declaration, paragraph 8). Counters in Mitsukoshi Department Store and Sogo Department Store in Hong Kong were operating by 1990 and January 1992, respectively (the opponent's 1989 Annual Report page 2, exhibit MJK-19; Jewellery News Asia, exhibit MJK-18). In 1989 and 1990 strong demand for the opponent's products by Japanese travellers to Hong Kong contributed to the opponent's sales growth in the Far East (the opponent's 1990 annual report, page 15). In September 1991 the film 'Breakfast at Tiffany's' was once again screened in Hong Kong (Jewellery News Asia, exhibit MJK-18). At the relevant date, consumers in Hong Kong would have been aware of the opponent's international reputation from advertising and articles in newspapers and magazines circulating in Hong Kong (exhibit MJK-21; exhibit MJK-26; exhibit CC-5; exhibit 2MJK-3; exhibit 2MJK-8; exhibit 2MJK-9). Consumers in Hong Kong would have been aware of the range of goods for which the opponent's reputation had been achieved.

37. The applicant doubts the degree to which the opponent's international reputation had spilt over into Hong Kong at the relevant date. The applicant cites *Bugatti* [1993] 1HKC 557, at 577, 578, in support of an argument that foreign reputation, unless there is evidence indicating 'spilling over' into Hong Kong, is not relevant. It argues that the opponent advertised in magazines with a low circulation in Hong Kong or in in-flight magazines read only by people travelling to and from Hong Kong. The applicant refers me to *Hong Kong Caterers Ltd v Maxim's Ltd* [1983] HKLR 287, at 295, where it was said that visitors to Hong Kong cannot, as it were, bring a foreign reputation with them. I think these arguments ignore the fact that Hong Kong residents also fly in and out of Hong Kong and would have been aware of the advertisements in in-flight magazines. The opponent rightly says its advertising examples are in respect of airlines that fly in and out of Hong Kong. The applicant's arguments ignore the fact that the opponent's goods are of the sort that are more usually, although not exclusively, advertised in international fashion magazines that cannot have the level of circulation of local newspapers. The applicant's arguments also ignore the fact that at the relevant date the opponent was using its marks here in Hong Kong in relation to its stores and that its use in Hong Kong was substantial. I do not find *Bugatti* relevant to the applicant's argument. It was a case in which the opponent could not establish that it had a reputation in Hong Kong or abroad.

38. I find that at the relevant date, the opponent had a substantial international reputation in the marks TIFFANY and TIFFANY & CO. The opponent's reputation at the relevant date was for jewellery, including diamond jewellery and diamonds, and designer products and functional luxury goods. At the relevant date the opponent had a substantial reputation in Hong Kong which derived

from its international reputation and from its use of the marks TIFFANY and TIFFANY & CO in its business in Hong Kong. I find the opponent has shown reputation to enable it to rely on section 12.

Deception

39. Having considered the opponent's reputation, I must consider whether use of the applicant's mark is likely to deceive the public. The test is whether the opposed mark, if used in a normal and fair manner in connection with any goods covered by the registration proposed, will be reasonably likely to cause deception amongst a substantial number of persons (*Smith Hayden & Co's Application* (1946) 63 RPC 97 at 101). To put it another way, the question is what would people think if they see the applicant's eyewear with the opposed mark? (*Omega* [1995] 2 HKC 473, at 479). The onus of proof, that there is no reasonable probability of deception, is on the applicant (*Omega*, at 477).

40. I find the word TIFFANY in the opposed mark is presented in essentially the same way as it appears in the opponent's marks (the advertisement in Cathay Pacific's Discovery magazine, June 1991 issue, exhibit MJK-21, shows how the opponent's mark TIFFANY & CO appears in actual use on the packaging shown in the advertisement). Although the letter 'T' in the opponent's marks, as they are used, is slightly enlarged, the typeface in which TIFFANY is presented in the opponent's marks and the opposed mark appears the same. I find the marks are similar, although there are some differences. The differences are, that the words '& CO' are present in the opponent's mark TIFFANY & CO, and that the word 'LUNETTES' and a diamond device are present in the opposed mark. I do not find that the words & CO in the opponent's mark TIFFANY & CO makes it sufficiently different from the opposed mark so that there would be no likelihood of confusion between the two marks. Similarly, I do not find that the word LUNETTES in the opposed mark differentiates it from the opponent's marks in any way. LUNETTES is the French word for spectacles, or eyeglasses. Its function in the opposed mark can only be descriptive because the applicant is applying for registration in respect of optical goods. I find there are strong similarities between the opposed mark and the opponent's marks that I must take into account in assessing the likelihood of deception.

41. An additional factor to be taken into account is the presence of a diamond device in the opposed mark. The evidence shows that the opponent's reputation is in diamonds and at the relevant date the opponent's reputation was such that the use of the word TIFFANY and a diamond device must call to mind the opponent. The opponent referred me to *Harrods Ltd v Harroddian*

School Ltd [1996] RPC 697, at 706, to support its argument that, even in an action for passing off, in which deception is the gist of the tort, a plaintiff does not have to establish that the defendant consciously intended to deceive the public if that is the probable result of his conduct. Nevertheless, the opponent argues that the question why the applicant chose to adopt a particular name is always highly relevant (*Harrods* at 706; *Macy's* [1989] RPC 546 at 554, where it was said the applicant had not been taxed with wrongfully adopting the mark; *Omega*, at 478). In this application the applicant puts forward no explanation for adopting the opposed mark, despite being challenged by the opponent. The applicant claims use of the mark overseas since November 1989 and in Hong Kong since October 1990 (Mr Gianni Deppi's declaration, paragraph 4). But by that time the opponent's reputation had been long established and the opponent's retail stores, in the name TIFFANY & CO, opened in Hong Kong in 1988 and in 1989. I think the fact that the word TIFFANY in the opposed mark is presented in essentially the same way as it appears in the opponent's marks and that the opposed mark includes a diamond device will result in deception. It may also infer that the applicant's intention is to trade on the opponent's reputation. That is an additional fact that may indicate the probability of deception is likely.

42. The opponent gives evidence of instances of actual confusion. The applicant objects to the evidence of some instances on the grounds that it is hearsay (Claire Chao's declaration) or that it is unreliable because it was obtained in answer to leading questions (Tracy Wut Oi Ching's declaration). I think the applicant's objections are right and consequently I do not rely on those particular instances. The applicant says all the instances of confusion occurred after the relevant date and are therefore unreliable as a guide to the tendency to confuse. Against that argument the opponent cites *Helena Rubinstein Ltd's Application* [1960] RPC 229, at 231, where evidence of use of the competing marks, since application, was considered a reliable guide as to whether confusion was likely (see also *Bali* [1969] RPC 472, at 498). I give some weight to the fact that there are instances of confusion in this application (other than those which are hearsay or obtained in answer to leading questions) but evidence of actual confusion, or the lack of it, does not decide the question of whether deception is likely (see *GE* [1973] RPC 297, at 320, 321).

43. The opponent states that owners of famous brands have extended their product lines to eyewear (Mr Kowalski's 1996 declaration, paragraph 13; Claire Chao's declaration, paragraph 12; Mr Kowalski's 1997 declaration, paragraph 8, where he refers to Mr Deppi's declaration exhibit DG-2 which shows promotion of the opposed mark in immediate proximity to eyewear produced by owners of well-known brands whose primary business is in goods other than eyewear). The opponent refers to *Alfred Dunhill Limited v Sunoptic SA* [1979] FSR 337, at 354, where it was noted from the evidence that in about 1977 or sooner, certain well-known firms, for example Christian Dior

and Yves St. Laurent, had diversified into the spectacle frames and sun-glasses market. The opponent refers to *Omega* [1995] 2 HKC 473, at 479, where evidence was given to show that owners of famous trade marks tend to use them for a range of products, including, in particular watches and writing instruments. The opponent refers to *Gay Giano* [1996] 2HKC 646 at 651, where the court took judicial notice of the fact that owners of famous trade marks in the fashion industry apply their marks to various fashion items such as clothing, handbags, footwear and watches. There is also *Borsalini* [1993] 1 HKC 587, at 593, where it was said the public has become used to the association of a trade mark with the goods of a fashion house, which, having been founded by, say a dressmaker in Paris, a shoemaker in Rome, or a saddler in London, has grown into a substantial international business, selling a wide range of luxury items which appeal to people for the cachet provided by the name.

44. Although much of the evidence and many of the judicial statements about the diversifying businesses of owners of famous trade marks relate to a period after the relevant date for these proceedings, evidence of events after the relevant date may be good evidence of the likelihood of confusion at the relevant date unless there is some evidence in a particular case that times, manners, modes and circumstances generally have so changed that the evidence after the relevant date is of no weight in considering the question of confusion at the relevant date (*Bali* [1969] RPC 472, at 498). There is no evidence in this opposition that times have so changed that I should not take into account the evidence and statements relating to a period after the relevant date.

45. In response to the opponent's arguments on diversifying businesses, the applicant argues that the opponent is a jeweller and not a designer house whose business might naturally extend to eyeglasses. The applicant says the fact that one other comparable jeweller, Cartier, sells eyeglasses does mean that there will be a risk of confusion if the opposed mark is used for the goods of the proposed registration. I do not agree. The evidence shows the opponent's business is in jewellery and in a wide range of luxury goods: goods that are bought primarily for their design or for their cachet. I find there is evidence that owners of famous trade marks, including Cartier, tend to use their marks for a range of products, including eyewear. I take note of the case law that refers to the diversifying businesses of owners of famous trade marks. I give some weight to the fact that the opponent has in the past produced some items of eyewear or similar goods such as opera glasses. I find that people in Hong Kong may well think that a jeweller producing a wide range of luxury goods would also sell eyewear, particularly as eyewear can be a functional but luxury item, either because of the material eyewear is made of, or because of its design (Mr Kowalski's 1996 declaration, paragraph 12).

Probability of deception

46. Having regard to the opponent's substantial reputation in the marks TIFFANY and TIFFANY & CO and to the opponent's substantial reputation in diamonds, at the relevant date, I find the use of the opposed mark would be likely to deceive under section 12(1). Assuming the use of the opposed mark in a normal and fair manner for any goods covered by the registration proposed, I find that a substantial number of persons would infer that the applicant's goods come from the opponent, or at least would wonder whether the goods might come from the opponent. I find there is a real tangible danger of deception under section 12(1).

Confusion with registered marks

47. Is there also a likelihood of deception or confusion on the opponent's grounds under section 20? The test as to whether the opponent's marks and the opposed mark are sufficiently similar to cause confusion under section 20 is essentially the same as under section 12. But section 20 applies only where the competing marks are for the same goods, or goods of the same description.

48. Whether goods are of the same description depends on the nature of the respective goods, the use of the goods and the trade channels through which the goods are bought and sold (*Jellinek's Application* (1946) 63 RPC 70). In this application the applicant's goods can be described loosely as 'optical goods'. The opponent has registrations in a number of classes for a range of goods but none are for optical goods or goods of the same description as optical goods. The opponent argues that its registrations for jewellery and for glassware are for goods of the same description as the applicant's goods because the applicant's goods, particularly eyewear, can be made of the same materials as jewellery and glassware. But jewellery and glassware, or other goods covered by the opponent's registrations, do not have the same uses as optical goods. Additionally, optical goods are usually sold in shops that specialise in the particular goods, so that optical apparatus, which is included in the applicant's specification of goods, would not usually be sold in shops that sell eyewear. It is even less likely that optical apparatus or eyewear would be sold in shops that sell jewellery or glassware, or any other goods covered by the opponent's registrations. I find that the goods specified in the applicant's application for registration are not the same, or of the same description, as the goods for which the opponent's marks are registered in Hong Kong. I find the opponent has not made out its grounds under section 20.

Exercise of discretion

49. The registrar has a general discretion, to refuse an application for registration or to accept it (section 13(2)). He must exercise the discretion judicially, considering all the circumstances of the case (*Maxim's* at 301). But in the present application I find, under section 12(1), there is a probability of deception and as section 12 has as an object the protection of the public (see *Gay Giano* [1996] 2HKC 646, at 653) I must refuse the application for registration. An additional point is that the applicant does not explain why it seeks to register a mark which is so similar to the opponent's marks and which includes a diamond device. The inference is that the applicant's intention is to trade on the opponent's reputation. That is an additional reason for refusing the applicant's application (*Omega*, at 478).

50. As the opposition has succeeded, I award the opponent costs. Subject to any representations, as to the amount of costs or calling for special treatment, which either party makes within one month from the date of this decision, costs will be calculated with reference to the usual scale in Part I of the First Schedule to Order 62 of the Rules of the High Court (Cap 4) as applied to trade mark matters, unless otherwise agreed between the parties.



(Teresa Grant)

for Registrar of Trade Marks

17.12.1999