

6 / 1925

J. GODDARD & SONS

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G O D D A R D.

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TRANSCRIPT OF JUDGMENTS

of

HIGH COURT.

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J U D G M E N T.

J. GODDARD & SONS V. GODDARD.

Knox C.J. This is an appeal against the decision of the Registrar refusing an application to register the name "Goddard" as a trade mark in respect of plate powder. Under Section 16 of the Trade Marks Act 1905-1912 a mere name, that is, the name of an individual, cannot be registered as a trade mark unless it is found to be a distinctive mark in itself, and here the question which was before the Registrar, and is now before us, is whether the name "Goddard" has acquired in respect of plate powder the meaning that the powder to which it is applied is powder manufactured by the applicants in this case and by no one else. The Registrar came to the conclusion on the evidence that "the state of the Australian market was at the date of the application such that there was such a wide knowledge amongst the trade and the public generally of the applicants' plate powder as 'Goddard's plate powder' and the opponent's plate powder denoted by the same name as to render it an open question which of these two manufactures would be handed to a customer if he asked for a tin of 'Goddard's plate powder,' without distinguishing it by some reference to either the 'Stag brand' or the 'double triangle brand' of the opponent." Finding that, he held that the name "Goddard" had not become distinctive and therefore should not be registered. I find no fault with the conclusion at which the Registrar arrived on the facts, and I think his conclusion in point of law is correct. I therefore think that the appeal should be dismissed.

Rich J. I agree. In refusing to register the trade mark in question I think the Registrar properly exercised the discretion conferred upon him (In re Garrett's Application, (1916) 1 Ch. 436 at p. 446).

Sturke J. The question in this case is one of fact: whether the name "Goddard" has become so associated with the applicants that the use of that name in Australia, in connection with plate powder is tantamount to a statement that goods of that kind are made by the applicants and is not merely a description of the manufacturer? The Registrar has answered that question against the applicants and, in my opinion, the evidence does not compel us to differ from his decision. I think it was right: The name "Goddard" is not uncommon and the territory of Australia is very large. The evidence does not convince me that the applicants' name has acquired any secondary or distinctive meaning. Indeed since the year 1909 another person has also used that name in Australia in respect of the same kind of goods and in an expanding trade. The onus of proof is upon the applicants. That burden in this type of case is very difficult to discharge and it becomes increasingly difficult with the honest use of the same name, by another person, in the same trade and upon a considerable scale, as is proved in this case. The appeal should be dismissed.

BENNETT LANGTON.

28th April, 1925.

Counsel for Appellants:	H.A. HOLMAN K.C. and V.E. TREATER
Solicitors for Appellants:	Wesvor & Allworth
Trade Mark Agent for Appellants:	Fred Welsh
Counsel for Respondent:	G.R. FLANNERY K.C., J.A. BROOME and F.C. SPENDER.
Solicitors for Respondent:	LAURENCE & LAURENCE
Trade Mark Agents for the Respondent:	WRIFFITH & HASSALL