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BHAAVIN WALLIA

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Birss J, in the High Court of England and Wales, held that Victoria's Secret's use of "PINK" for its clothing sub-brand infringed Thomas Pink's registered trade marks. An array of legal issues arose (as manifested by the 20,000-word judgment) but, of particular interest, were: (1) the applicability of the "exclusively" requirement under s.3(1)(c) of the TMA 1994 when the mark includes other visual content; (2) whether, to gain protection from the acquired distinctiveness proviso, the mark has to be used in a form identical to the form as registered; and (3) how the context of use requirement (when assessing likelihood of confusion) was to be interpreted.

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