

O-104-08

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2389746
IN THE NAME OF FACE-PIC.COM LIMITED
FOR REGISTRATION OF FACE-PIC.COM
AS A SERIES OF TWO TRADE MARKS IN CLASSES 41 AND 45**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 93852
IN THE NAME OF CIS INTERNET LIMITED
T/A FACEPARTY.COM**

Trade Marks Act 1994

**IN THE MATTER OF trade mark application No. 2389746
in the name of face.pic.com Limited
for registration of the trade marks FACE-PIC.COM and face-pic.com
as a series of two trade marks in Classes 41 and 45**

And

**IN THE MATTER OF opposition thereto
under No. 93852 in the name of CIS Internet Limited t/a Faceparty.com**

BACKGROUND

1. On 19 April 2005, face-pic.com limited made an application to register the trade marks FACE-PIC.COM and face-pic.com as a series of two trade marks in Classes 41 and 45, in respect of the following services:

- | | |
|----------|--|
| Class 41 | Provision of entertainment services, provision of online entertainment services, organisation of parties and social events, organisation of online parties and social events; provision of online chat rooms, games services, music, pictures and video. |
| Class 45 | Dating services, online dating services; provision of services for online social interaction. |

2. On 28 October 2005, CIS Internet Limited t/a Faceparty.com filed notice of opposition to the application, the grounds of opposition being in summary:

- 1. Under Section 5(2)(b)** because the mark applied for is similar to the opponent's earlier trade marks, and is sought to be registered in respect of services that are identical and/or similar to the services covered by these earlier marks such that there exists a likelihood of confusion on the part of the public.
- 2. Under Section 5(3)** because the mark applied for is similar, and its use in respect of all of services specified, would, without due cause, take unfair advantage of, or be detrimental to the opponent's earlier marks.
- 3. Under Section 5(4)(a)** by virtue of the law of passing off.

3. The applicants filed a counterstatement in which they accept that the services of the opponent's earlier marks are identical or similar to those of the application, but dispute that the respective marks are similar. They otherwise deny the grounds on which the

opposition is based.

4. Both sides ask that an award of costs be made in their favour.

5. Both sides filed evidence in these proceedings, which insofar as it is relevant I have summarised below. The matter came to be heard on 26 June 2007, when the applicants were represented by Mr David Moore of Jensen & Son, their trade mark attorneys. The opponents were represented by Mr David Potter of Harrison Goddard Foote, their trade mark attorneys.

Opponents' evidence

6. This consists of a Witness Statement from Andrew David Bamforth of CIS Internet Limited, t/a faceparty.com, for seven years a Director of the opponent's company.

7. Mr Bamforth states that the opponents have been operating a website www.faceparty.com since 28 August 2000. Exhibit ADB1 consists of prints from the site which show the name "FACEPARTY" as a headline page, the word being represented in a lower case italicized script with a "star" placed above the letter "P", a style consistently used. One page contains the text "... last updated 22 June 2006", the remainder are undated. He refers and lists details of the earlier trade marks relied upon in these proceedings.

8. Mr Bamforth refers to the opponents having used the FACEPARTY name in connection with the website providing Internet chat rooms, discussion forums and instant messaging. Exhibit ADB2 consists of what appears to be copies of a poster or advertisement for a music festival held on 3 July 2004 and 23 July 2005 in Finsbury Park, London, FACEPARTY being noted as presenting the event. The Exhibit also includes a print from an online magazine Bizarre, dating from 28 April 2006 referring to a faceparty.com event held the previous night, a copy of the official programme for a FACEPARTY event held on 20 July 2002, and an advertisement for a party held in Brick Lane, London on 10 September 2004 "Celebrating 4 Awesome Years and 3 million Members." Mr Bamforth says that the Exhibit shows use in relation to "... a range of merchandise, including clothes, hats and bags.." but this is not apparent from the prints.

9. Mr Bamforth says that the FACEPARTY website is now the largest online chat room in the UK and also the EU, with over 6 million registered members in 241 countries, and is currently growing at a rate of 35,000 new members each week. He says that the majority of registered members are in the UK. Mr Bamforth says that the UK report produced by Hitwise, a leading online competitive intelligence service ranked faceparty.com as the first out of over 3,000 community and chat websites in the UK in terms of the number of hits in a month, and having a market share of 21%. He goes on to say that in September 2005, Hitwise produced another report, a copy of which is shown as Exhibit ADB3. Mr Bamforth says that Hitwise ranked faceparty.com as the first in the UK in relation to the computers and Internet – net communities and chat industry, with a market share of 17.74% of all UK Internet traffic in relation to such websites. The report refers to faceparty.com as being ranked "within the top 5 Computers and Internet – net communities and chat industry" and the "33rd most visited site for UK Internet users during September 2005". Exhibit ADB4 consists of an extract from 2006 "esuperbrands" site, which contains a profile of faceparty.com, confirming the details previously mentioned.

10. Mr Bamforth estimates the turnover under the FACEPARTY.COM marks since its first use in 2000 to be £6.25 million. He gives the following revenue information for the years ending March:

	2001	2002	2003	2004	2005
Subscriptions	1,304	389,298	739,007	1,005,272	2,477,227
Advertising				432,619	464,453
Merchandising				1,376	
19,924					
Other	59,026	141	16,930	74,411	574,602
	<u>60,330</u>	<u>389,439</u>	<u>755,937</u>	<u>1,513,678</u>	<u>3,536,206</u>

11. Mr Bamforth says that since its launch, FACEPARTY.COM has spent approximately £3.15 million in advertising and promotion with "...the majority of this ...[having] occurred in the last year (2005) when almost £2 million was spent advertising and promoting the Opponent's Marks in the United Kingdom." Mr Bamforth lists the magazines in which the opponent's marks were marketed and advertised in 2000 and 2005, Exhibit ADB/5 consisting of copies of the advertisements and features. These relate to FACEPARTY clubbing or party events held between 2002 and 2005.

12. The remainder of Mr Bamforth's Statement consists of submissions on the relative merits of these proceedings. As such it is neither necessary or appropriate that these be summarised. I will, of course take them fully into account in my determination of this case. In these submissions Mr Bamforth refers to Exhibits ADB6 to ADB8, which consist of:

Print from the face-pic.com website that uses a banner headline with an image of a head alongside the face-pic.com name, with text beneath.

A diagram showing the opponent's and the applicant's use of faceparty and face-pic.com on the respective websites, indicating the similarities in this and the construction of the site pages and information.

e-mails that appear to show confusion having occurred between faceparty and face-pic.com, and two letters written by the representatives in these proceedings.

Applicants' evidence

13. This consists of a Witness Statement dated 21 September 2006 from David Keith Ames, Managing Director of Face-pic. com Ltd, a company that he founded in February 2000.

14. Mr Ames says that the domain name, Face-pic.com was registered on 8th February 2000, Exhibit DA1 being a copy of the registry data from Network Solutions. He says that when the website started it provided online profiles and chat rooms, the revenue had been derived from third party advertisements. Additional services such as the ability to send messages to other members, and a paid for unlimited message sending and an unlimited searching service for members were added to the website in November 2001. Exhibit DA2 is an extract from the web archive site, web.archive.org, showing that the Face-pic.com website was in

existence on 7th April, 2000, Mr Ames highlighting that this predates the Opponent's site. Mr Ames confirms that when it started the website provided profile and chat room facilities, and developed to now offer users both chat room and messaging services.

15. Mr Ames recounts the registration of Face-pic.com Ltd on 19th July 2002, Exhibit DA3 being a copy of the details available from the Companies House website. The current business activities include the provision of entertainment services, particularly online entertainment, parties and social events and chat rooms done via the company's website. A copy of the accounts and annual return for the year up to 19 July 2004 is presented as Exhibit DA4.

16. Mr Ames says that whilst Face-pic is mainly promoted via word of mouth, they do promote the brand through various marketing and PR activities such as banner exchanges with other websites. An example from the Big Brother TV show website shown as Exhibit DA5 has the www.face-pic.com and face logo in the banner. Mr Ames says that Face-pic has been listed on the Yahoo search engine in their Personals and Dating websites. Exhibit DA6 is a screen shot of the Yahoo directory, containing an entry for Face-pic.com stating that the site "allows users to create a web page containing pictures and information about themselves." There are two other "FACE" websites listed, "FaceLink" which is stated to allow users to create their own FacePages which display their personal photo and a short biography and "Facemeet" that is noted as a "friend-finding web site includes photos, ratings, chatrooms, journals and messaging." The page cannot be dated.

17. Mr Ames says that as of 11 August 2005, face-pic had over 2.29 million unique registered users of which around 455,000 are UK based registered users, with an average of 1000 new subscribers every day. Exhibit DA7 shows a screenshot of the database of registered users, each having been assigned a unique user identification number on joining the site, the highest being 2,296,566. The list gives details of the date of last access by the members, showing this to be 11 August 2005.

18. Mr Ames goes on to comment on the statistics provided by the opponents, in particular, the Hitwise report that is said to indicate a market share of 21% in community and chat websites. Mr Ames says that these statistics refer to hits on the website and not actual registered users of the site and the share statistic is misleading. He also refers to the opponent's claim to be ranked first with regard to market share in the "computers and Internet — net communities and chat" industry. He goes on to challenge the opponent's claims to be ranked fourth of all sites worldwide visited by users based in the UK, stating that the statistics are based on hits rather than registered users. In support of this contention he highlights that according to the statistics in Exhibit ADB/3, Faceparty is some 13 places above Friends Reunited UK, which as can be seen from Exhibit DA8 is a site that has 14.4 million registered UK users.

19. Mr Ames go on to say that the word "FACE", which comprises, or forms a prefix of both the Applicant's and Opponent's marks, is a short and simple word, common in everyday language and to the trade. As Exhibits DA9, DA10 and DA11 he provides definitions of FACE taken from Webster's Third New International Dictionary, Chambers English Dictionary and Collins English Dictionary. From these Mr Ames argues that the word FACE

“...alludes to face-to-face interaction.” In support of his contention that "FACE" has become customary in the language of the trade, he refers and exhibits details from the websites "facebook.com", "facemeet.com", "face2meet.com", "facelink.com", "facepal.com", and "facecraze.com" which he says have either been, or are competitors of both the Opponent and his company.

Exhibit DA12 consists of details for facebook.com. The site enables users to create profiles and send messages to other members and has some 9 million members.

Exhibit DA13 consists of the front page of the website facebook.com.

Exhibit DA14 consists of details for facemeet.com. The site enables users to create profiles and send messages to other members.

Exhibit DA15 consists of the front page of the website facemeet.com.

Exhibit DA16 consists of details of face2meet.com. The site includes a number of links to social interaction sites.

Exhibit DA17 consists of the front page of the website face2meet.com.

Exhibit DA18 consists of details for facelink.com. The domain name was registered on 11th February 1998, a number of years before the Opponent's registrations. The site has changed over the last year and now provides links to other social interaction sites.

Exhibit DA19 consists of the front page of the current facelink.com website.

Exhibit DA20 consists of the front page of the website facelink.com as seen in July 2005.

Exhibit DA21 consists of details for facecraze.com. The site is now linked automatically to the site facepal.com.

Exhibit DA22 consists of the front page of the website facecraze.com in July 2005.

Exhibit DA23 consists of the front page of the website facepal.com.

Exhibit DA24 consists of details for facepal.com.

20. As Exhibit DA25 Mr Ames provides details for facewhore.com. and facecraze.com that he says traded for a number of years, but now appear to have ceased trading or offering social interaction.

21. Mr Ames asserts that the evidence shows "FACE" to be generic and is used by a number of undertakings in combination with other words in relation to websites providing social

interaction services. He goes on to consider the meaning of the “PIC” element of his mark, saying that conceptually this suggests a picture or photograph. He exhibits an extract from Collins English Dictionary as Exhibit DA26, which states that PIC is an informal or shortened form, of amongst other things, a “photograph” or “picture”. He contrasts this with the meaning of "PARTY", the suffix to the Opponent's mark, which as can be seen from the extract from Collins shown as Exhibit DA27, means a social gathering for pleasure. Mr Ames refers to Exhibit DA28, which consists of an article that appeared in Guardian Unlimited on 1 June and 29 June 2006, which mention both Faceparty and Face-pic. Mr Ames states that having co-existed for 6 years, this is evidence that the market has no problem in distinguishing the two.

Opponent's evidence in reply

22. This consists of a Witness Statement dated 8 January 2007 from David Potter, a trade mark attorney with Harrison Goddard Foote. Not unusually for reply evidence this Statement consists of submissions on the evidence filed by the applicants, and answers to the comments made by the applicants in their evidence. Being submissions rather than evidence of fact, it is not necessary or appropriate that I summarise it here. I will, of course take the contents of the Statement fully into account in my determination of this case. Mr Potter provides Exhibit DPO1, which consists of the results of a search for <http://facepic.com>, a print from the web-archive website “waybackmachine”, which returned entries dating from 7 April 2000 up to and beyond the relevant date. The Exhibit also includes a print that appears to come from the face-pic website, and endorsed as dating from 7 April 2000 (it contains a copyright notice of 2000). This is headed “Welcome to face-pic.com”, stating that the site enables users to sign up, after which they will be able to create a web page containing a picture and personal information. Under “What can I do with my page?” it states that users can put a link to their face-pic url in e-mails...or give it out in chatrooms.

23. Exhibit DBO2 consists of a further print from “waybackmachine”, and a further print of the “Welcome to face-pic.com” page, showing this to offer the same facilities. Exhibit DPO3 consists of a copy of the Hitwise report of July 2004 referred to in Mr Bamforth's Statement. This sets out the Faceparty industry rankings as 23 for “All sites”, 18 for “Computers and Internet” and 1st for “Computers and Internet – Net Communities and Chat.”. A later page shows the site to be first by visits and “page impressions” amongst immediate competitors in “Computers and Internet – Net Communities and Chat”, face-pic.com is listed in 10th place by “page impressions”. Page 10 of the report also lists face-pic.com in tables of the top “upstream” and “downstream” sites visited before and after visiting FACEPARTY.

24. That concludes my summary of the evidence insofar as it is relevant to these proceedings.

DECISION

25. Turning first to the ground under Section 5(2)(b). That Section reads as follows:

“5.-(2) A trade mark shall not be registered if because –

(a)

it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

26. An earlier trade mark is defined in Section 6 of the Act as follows:

“6.- (1) In this Act an “earlier trade mark” means –

- (a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.”

27. In my consideration of a likelihood of confusion or deception I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] 45 F.S.R. 77 and *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723. It is clear from these cases that:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,
- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,
- (g) in determining whether similarity between the goods or services covered by

two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

- (h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,
- (i) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG*,
- (j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

28. The opponents rely on four earlier UK trade marks, numbered 2362337, 2383978, 2364009 and 2330204, and four earlier Community Trade Marks numbered 3852779, 4279428, 3066611 and 3852647. Since the hearing, earlier mark No 2362337 has been withdrawn. These are for the words FACE and FACEPARTY in plain text, and faceparty in an italicised font with a “star” placed above the letter “P” as follows:



29. As can be seen, although stylised, the logo form is easily recognisable as the word FACEPARTY.

30. The decisions in *Claudia Oberhauser v OHIM (Fifties)* [2003] E.T.M.R. 58, and *Criminal Clothing Ltd v Aytan’s Manufacturing (UK) Ltd*, [2005] EWHC 1303 indicated that the circumstances in which the relevant goods (and I believe it must follow, also services), and the trade marks are encountered by the consumer, particularly at the point at which the purchase is made is an important consideration, but the matter must be assessed by applying an assessment of all relevant factors. In relation to the services such as the messaging and chat rooms covered by the respective marks, there is no purchase as such. There is a registration process and fees may be levied for the provision of add-on services, but by that time the consumer is already well aware of the mark. It would seem reasonable to equate the time of registration as the point-of-sale, and in this respect the contact is visual. It is also the case that once registered the user will tell their friends about the facility, which makes how the mark sounds of equal importance. Unless this occurs whilst the recipient of the information is sitting at the computer and makes contemporaneous access, they will be reliant upon their recollection which brings into play any conceptual similarity.

31. The opponent’s earlier marks are for the words FACE and FACEPARTY, and the marks applied for are FACE-PIC.COM/face-pic.com. In a visual comparison it is self-evident these

marks are not identical. What is also clear is that they have the word “FACE” in common, so if only to that limited extent there must be some degree of similarity in appearance. The word FACE is the first element of the mark applied for, and being separated from the other elements has a strong impact on the eye. However, the addition of a larger element PIC.COM has an immediate and obvious impact on the eye that counteracts the significance of FACE derived from its relative positioning. I do not consider that the opponent’s earlier mark for the word FACE is visually similar to the mark applied for.

32. In respect of the opponent’s other mark FACEPARTY, apart from beginning with a letter “P”, the remaining parts of the marks, “PARTY” and PIC.COM have no visual features in common. On a comparison of whether FACEPARTY and FACE-PIC.COM/face-pic.com as a whole are similar in look, and absent any other factors, they are clearly not so. I do not consider the stylisation of the opponent’s italicised logo version to have a significant impact on the word: it is still clearly FACEPARTY. I take the view that the extent of what should be considered normal and fair use would encompass the possibility of the applicant’s using FACE-PIC.COM in an italicised script. Whilst this would inevitably move the marks closer together visually, I do not consider that this would be to the extent where they would be visually similar.

33. Turning to the oral or aural similarity of the marks, it is most unlikely that a consumer will refer to a composite mark by describing the graphical features; it will be the words that are the point of reference. I do not, therefore consider there to be any reason to regard the opponent’s composite mark differently from the word alone.

34. That the respective marks all consist of, or contain the word FACE will impart a degree of similarity as to how they sound when spoken, but that does not necessarily mean that they are aurally similar. For this to be the case, emphasis would have to be placed on the word FACE to the extent that it subordinates the significance of the other elements. For the opponent’s mark consisting of FACE alone the sound when spoken will be that word alone, but the addition of “PIC.COM” creates a significant change in sound. This is particularly so given the tendency to not only enunciate the text, but also the period point preceding “COM” in web addresses. The applicant’s mark would be spoken as “FACE” “PIC” “DOT” “COM”.

35. The opponent’s mark FACEPARTY is composed of two ordinary English words, and although conjoined this construction will still be apparent to the consumer. That the consumers will perceive the mark in this way makes it likely that each component will be more clearly enunciated than would be the case of words without roots in the English language. The opposed mark consists of component parts separated by a hyphen and period point, in total forming a web address, an entity that will be familiar to consumers.

36. In web addresses it is commonplace for the period point preceding “COM” to be spoken as DOT. That FACE is the first word in FACEPARTY and FACE-PIC.COM means that the initial emphasis will be on the word FACE and the sound will be the same. Apart from the initial letter “P” there is no similarity in the way in which the words PARTY and PIC.COM sound, no matter how they are pronounced, or in what accent they are spoken. Taken as a

whole I would say that the respective marks have some aural similarity, but are not aurally similar.

37. It has been argued, and not unreasonably so in my view, that FACE refers to “contact” through chatroom and messaging services, an allusion to being face-to-face with someone. That the respective marks all consist of, or contain the word FACE must go some way to creating a similar idea in the mind of the consumer. However, the opponent’s earlier marks are either the word FACE alone, or that word conjoined to the word PARTY. The word FACE will bring to mind how someone looks, but also the act of meeting, FACEPARTY brings to mind the concept of meeting people on a social basis in a group environment. Setting aside the actual meaning of the component parts, the first, and most obvious impression of the applicant’s FACE-PIC.COM mark is that it is a website address. This is not an idea created by the opponent’s earlier marks. It must be the case that taken on its own the word FACE would create an identical message to FACE in the opponent’s earlier marks. Adding the element “PIC”, which the evidence shows to be a shortened or informal term for “picture” or “photograph” changes the idea from an encounter by meeting to one of doing so through the use of a visual image. Adding the “.com” indicates this is via the Internet. To the consumer the applicant’s marks will say something different to that of the opponent’s earlier marks.

Taking my consideration of the visual, oral and conceptual make up of the respective marks as a whole, I am of the view that whilst there is identity in one component, this is not sufficient to make them similar.

38. The earlier marks relied upon consist of the word FACE and FACEPARTY. In the latter case some of the marks have the word shown in a stylised font with some graphical matter, both of which I consider to have limited, if any effect on the distinctive character of the word. The word FACE is suggested to be a reference to the “meeting” aspect of the service provided, but this is “virtual”; there is no face-to-face contact, and to me this is more an allusion than a descriptive reference. Likewise, the word “PARTY” creates a sort of fun, gathering, social image, but again is more allusory than descriptive. As a whole FACEPARTY is a meaningless combination that to me has a strong distinctive character. If there is a dominant, distinctive element it is marginally the word FACE by virtue of its relative positioning in the mark.

39. The mark applied for consists of three distinct elements. The word FACE, which as I have already indicated is used as an indirect reference to the interaction element of services such as instant messaging and chat rooms. In the applicant’s marks this word is followed by PIC which the evidence shows to be an abbreviation or shortening form of PICTURE or PHOTOGRAPH. In my view, the word PIC and its meaning will be known to consumers of the services in question. The evidence also shows photographs or pictures to be a feature of the applicant’s website, and accordingly, this element in isolation is wholly descriptive of an aspect of the services for which it is used. Although grammatically unusual, the words FACE and PIC hang together to create an idea linked to the relevant services, namely FACE PICTURES, so placing PIC after FACE alters the distinctiveness of FACE by making it more a description. The final part of the applicant’s mark is “.COM”, which is an abbreviation meaning “commercial” and is used as a generic top-level domain used on the Internet’s Domain Name System. Even if the

consumer does not know what .COM actually means, I have little doubt they will recognise it as being widely used by companies on the internet, and is therefore an element that is individually devoid of distinctive character. Tacking it on to FACE-PIC adds to the descriptiveness of these words which says "FACE PICTURES on the Internet". On this assessment the conclusion must be that if viewed in isolation the only distinctive element of the applicant's mark is the word FACE, which by virtue of its relative positioning in the mark is also the dominant element, but when the other elements are taken into account, distinctiveness also rests in the mark as a whole.

40. In their Counterstatement the applicants accept that the services of the opponent's earlier marks are identical or similar to those of their application, so I do not need to give this aspect any further consideration. Given that there is nothing in the respective specifications that would serve to separate them in some way, it must follow that they are notionally placed in the same market, and available from the same provider, by the same means to the same end consumer. In the case of these services I take the view that the consumer will be well aware of the market and the trade marks used by providers of internet messaging and chatroom services. The evidence also suggests that the market is well aware of who is doing what under what name.

41. The opponent's say that they have been operating the website www.faceparty.com since 28 August 2000, providing chat rooms, discussion forums and instant messaging. There is nothing in the evidence that originates from that date. There is a poster in Exhibit ADB2 for a party held in Brick Lane, London on 10 September 2004 "Celebrating 4 Awesome Years..." which would be consistent with the date claimed. Prints from the site show the name "FACEPARTY" as a headline page, the word being represented in a lower case italicized script with a "star" placed above the letter "P", a style consistently used. Despite the stylisation it is still clearly the word FACEPARTY which in any event is the way to which it is referred. It is now stated to be the largest online chat room in the UK with over 6 million registered members, the majority of whom are stated to be in the UK. Since the launch, FACEPARTY.COM is said to have spent approximately £3.15 million in advertising and promotion, the majority in 2005 when almost £2 million is said to have been spent in the United Kingdom. The problem is that the relevant date in these proceedings is April of that year, and without more details it is not known whether all, some or none of this promotion occurred prior to the relevant date. Notwithstanding this, and the dispute over the statistics provided, to me there can be little doubt that FACEPARTY has had a significant impact on its market and built a strong and widespread reputation in respect of the messaging and chat room services provided under the trade mark.

42. There is also evidence that FACEPARTY has organised sporadic party/entertainment events that received fairly widespread publicity in certain sectors of the media. It seems likely to me that this will also have had some impact on the reputation of FACEPARTY which I would take to extend to these services also, but to a lesser extent.

43. The applicants have provided evidence that shows FACE to have been used as part of the names of websites offering messaging and/or chat room services, or other services that are to varying degrees related to such services. Mr Potter submits that "...The existence of a small handful of other websites which feature the FACE name, none of which the Opponent has allowed to register as a trade mark in the UK, does not substantiate the Applicant's claim that

the word FACE is a generic term used in relation to a social interaction site, nor does it prove that FACE-PIC.[COM] mark is not confusingly similar to the Opponent's marks FACEPARTY and FACE." The evidence shows that some of the domain name registrations such as facebook.com and facelink.com were created prior to the start-up of the opponent's FACEPARTY website. In the case of facebook.com the site did not actually launch until after the opponents. There is nothing that tells me when facelink.com hit the Internet. The evidence suggests that some of the websites mentioned were, or are running in parallel with the opponents, the evidence lacks the detail to be able to determine, whether, and if so, to what extent they may have impacted on the UK consumer.

44. Whether the domain names have been registered as trade marks is of no consequence; it is the use in the market and impact on the perception of the consumer that is the material consideration. If the consumer is used to seeing the word "FACE" being used in the web addresses of a number of sites they will be less likely to draw the conclusion that a website using that element is necessarily linked to the opponents. Likewise, use of FACE by a number of websites does not show that the word has become a generic description.

45. The opponent's have not argued that FACE-PIC.COM will be seen as another part or spin-off from the FACEPARTY site, but for completeness it is something that I will address. In the decision in *Jose Alejandro SL v OHIM (Budman)* [2004] E.T.M.R. 15, relating to the consumer perceptions about sub-brands, the CFI at paragraph 57 stated:

"It must be observed that it is common in the clothing sector for the same mark to be configured in various different ways according to the type of product which it designates. It is also common for a single clothing manufacturer to use sub-brands (signs that derive from a principle mark and which share with it a common dominant element) in order to distinguish his various lines from one another (women's, men's, youth). In such circumstances it is conceivable that the relevant public may regard the clothing designated by the conflicting marks as belonging, admittedly, to two distinct ranges or products but as coming, none the less, from the same undertaking."

46. The only evidence that I can see that shows FACE being used by a single site in several forms that could be regarded as sub-branding can be found on Exhibit DA20, the FACELINK site, that uses it in the web address, the site having a section where a personal page called FACEPAGE can be created. There is nothing that shows the opponents to have used FACE other than in the domain name, and I do not see that they have done anything that would create an expectation that another FACE mark trading in the same area must either be the opponents or connected to them.

47. Another matter that needs to be considered is the contacts in Exhibit ADB8 which are put forward by the opponents as being evidence of actual confusion. A number are anecdotal, reporting things that are supposed to have been said, but, without knowing context and circumstances I do not see that they can be inferred as evidence of confusion. Others have been sent to FACEPARTY and relate to FACE-PIC, but this is not necessarily confusion; it may simply have been the predictive text suggestions found in certain search engines or carelessness by the sender. Two refer to someone with a FACE-PIC account making false representations, but as there is no detail of who this is from or to, it is not clear whether this

is an instance of confusion. A further e-mail mentions a FACEPARTY registrant trying to access face-pic.com, and whilst it could be inferred that the sender believed there to be some connection, this is not clear; they obviously knew that there were two different websites. Where there is some similarity between two marks used in the same or similar fields there is always a potential for the uninformed, inattentive or in-a-hurry consumer to mistake one for the other, but that is not the test. The matter must be judged as though through the eyes of a reasonably well informed and circumspect consumer.

48. This leaves the matter of the claimed concurrent use, or to put it another way, actual use in which the question of confusion has been tested in the reality of the market. In the *CODAS* case [2001] RPC 14, I stated and gave my reasons why use as provided for by Section 7(2) of the Act would not, of itself, be sufficient to ward off an attack that would otherwise be successful, but is one of the factors to be taken into account in the “global appreciation” of a likelihood of confusion.

49. In their evidence the opponents appear to accept that the applicant’s website face-pic.com was registered on 8 February 2000, but not active as a website until 7 April 2000. They provide evidence to substantiate the appearance of the website, highlighting that at that time face-pic.com did not provide profile and chat room facilities, and did not appear to be doing so one year later. The evidence relating to face-pic.com taken from the waybackmachine website supports the opponent’s arguments. This describes the site as enabling members to sign up, after which they will be able to create a web page containing a picture and personal information. Under “What can I do with my page?” it states that users can put a link to their face-pic url in e-mails...or “give it out in chatrooms.” Whilst these services are not the same as those provided by FACEPARTY, they appear, or could be said to be related, or even complementary. The whole point about concurrent use is that the two marks have been used in circumstances where the consumer will have had the opportunity for exposure to the two marks, but there is no real evidence of confusion having been caused. It is also relevant that the consumer will have become educated to expect marks with similarities to be used by different traders in respect of the same or similar goods or services which is the case here. Beyond the alleged instances proffered by the opponents, which I have already dealt with, there does not seem to have been any confusion. I do, of course accept the opponent’s argument that there may well have been confusion that has not been realised.

50. Balancing all of the factors and adopting the global approach advocated, I reach the view that use of the marks applied for in respect of the services for which they seek registration may bring to mind the opponent’s marks, and particularly so given the reputation that it enjoys, but that is not sufficient for there to be a finding of a likelihood of confusion (*Sabel BV v Puma AG and Marca Mode CV v Adidas AG*). The question is whether the association between the marks will lead the consumer to believe that the respective services come from the same or some linked undertakings; there has to be a likelihood of confusion. (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*) I do not consider there to be such a likelihood and the opposition under Section 5(2)(b) is accordingly dismissed.

51. Turning next to the ground under Section 5(3). That section reads as follows:

“5.- (3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, and
(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,
shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC) in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

52. The standard test for the sort of reputation that is needed to underpin a Section 5(3) action is set out in *General Motors Corp v Yplon SA* [2000] R.P.C. 572. In this case the Court concluded that the requirement implies a certain degree of knowledge amongst the public, and that the required level would be considered to have been reached when the earlier mark is known by a significant part of the relevant sectors of the public. In deciding whether this requirement is fulfilled all relevant factors should be considered, including, the market share held by the trade mark, the intensity, geographical extent and duration of its use and the size of the investment made by the undertaking promoting it; the stronger the reputation and distinctive character, the easier it will be to accept that detriment has been caused to it.

53. The raft of recent case law relating to objections under Article 8(5) of Regulation 40/94, equivalent to Section 5(3) of the Trade Marks Act was considered by the CFI in some detail in Case T-215/03 *Sigla SA v. Office for Harmonisation in the Internal Market*, namely: Case C-292/00 *Davidoff & Cie SA & Zino Davidoff SA v Gofkid Ltd* [2003] E.C.R. I-389 at [24]-[26], Case C-408/01 *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd* [2003] E.C.R. I-12537 at [19]-[22], Case T-67/04 *SpA Monopole v OHIM--Spa-Finders Travel Arrangements* [2005] E.C.R. II-1825 at [30], the Opinion of Advocate General Jacobs in *Adidas-Salomon and Adidas Benelux* at [36]-[39], Case T-104/01, *Claudia Oberhauser v OHIM-- Petit Liberto* [2002] E.C.R. II-4359 at [25], Case C-39/97 *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1998] E.C.R. I-5507 at [29], Case C-342/97 *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* [1999] E.C.R. I-3819 at [17], Case C-251/95 *Sabel BV v Puma AG* [1997] E.C.R. I-6191 at [20] and Case C-375/97 *General Motors Corp v Yplon SA* [1999] E.C.R. I-5421 at [30].

54. The CFI concluded that the marks at issue must be either identical or similar to an earlier mark relied upon. In its judgment in *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd*, the ECJ were not so conclusive about the need for the respective marks to be “similar”, only that they have a “certain degree of similarity”:

“29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them: (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23)”

55. In *Esure Insurance Limited v. Direct Line Insurance plc* a decision of the High Court of Justice Chancery Division, [2007] EWHC 1557 (ChD), Mr Justice Lindsay stated that

whether marks were found to be similar involved the passing of a “threshold”. He said:

“94 At his para 114 the Hearing Officer concluded:

"In my view, a distinctive feature of both marks is the unusual juxtaposition of wheels attached to (albeit recognisably different) electronic communication devices. I find that this gives rise to a recognisable similarity between the marks".

But if the threshold question is as I have indicated -- see para 46. above -- the threshold question is more a matter of law and first impression rather than one requiring detailed analysis or evidence and, if the threshold is as I have taken it to be, it is in my judgment here satisfied; I would not be able to say that duly-arrived-at overall impressions made by the rival marks are such that one could reasonably say that a likelihood of confusion could not thereby have been created. Despite the differences -- and there are several -- between the phone on wheels and the mouse on wheels, the relevant services are identical and both the sign and the mark are indicators of a means of making contact and doing business with the provider of those identical services and in both cases (against all experience) black road wheels have been added to that means of communication and give it the appearance of a vehicle.

As a matter of first impression I would take the low threshold to have been cleared.

95 Mr Silverleaf draws attention to the passage in the Hearing Officer's paragraph 110 where he said:

"The requirement for similarity is therefore passed when there is any visual, aural or conceptual similarity between marks which is likely to be recognised as such by an average consumer."

He had said much the same in his paragraph 108; once there was that degree of similarity then the Tribunal was obliged to go on to consider the other factors identified in section 5(2)(b) or section 5(3) of the 1994 Act. As will have been seen from my observations on thresholds, I take a different view but it is not, as it seems to me, a difference that can here be magnified into a material and clear error of principle. The difference in approach would only have been a material error of principle if, upon adopting my view as to the threshold, I had taken the view that the threshold had not been equaled or exceeded. But, as I have indicated, in my view the threshold is low, as I have described it, and was exceeded. The Hearing Officer, in my view, was thus obliged to go on to consider whether there was a likelihood of confusion in the manner that he did and, equally, to consider questions as to unfair advantage and detriment, as I shall come on to, as he did.

96 I would add this (as I apprehend Mr Silverleaf asserted error in principle as to the Hearing Officer's response to conceptual similarity): it is difficult to elevate matters essentially of weight and degree into ones of principle but, even if one were to take

out of the Hearing Officer's evaluation his concept of desk top electric communication devices as a feature common to both, I would, having regard to other similarities between the mark and the sign (especially if the mouse could be used in red with black wheels) nonetheless take the low threshold to have been exceeded.

97 If that is right then I next need to look into whether such similarity as there was, as globally appreciated in the way described in the authorities which I have touched upon in paragraphs 24 et seq. above, caused a likelihood of relevant confusion.”

56. The Paragraph 46 referred to (and Paragraph 45 which puts it into context) read as follows:

45 Lewison J's judgment does not itself specify what kind of minimum threshold Mr Wyand QC had contended for but I have been given a copy of the very full Skeleton argument which Mr Wyand and his junior, Mr Moody-Stuart, deployed before Lewison J.. At para 29 the Skeleton Argument makes the point that "absent at least similarity there can be no infringement". The argument continues:--

"This is a threshold test and is to be considered in each case by a visual, aural and conceptual comparison of the mark and sign".

fault Although that is not a complete specification of the test for the relevant 4(1)(b) similarity -- it leaves out, inter alia, the concept of interdependence -- it is hard to it as far as it goes. If all that Mr Wyand was arguing for was that there had to be at least some similarity, I would not think that Lewison J. was intending to reject that argument. Nor does the fact that the question is one of degree of itself exclude there being a threshold. I notice, too, that, so far as one can tell from the report, Vedral supra was not referred to the Judge. But Lewison J's observation that whether "something is relevantly similar to another thing must depend on why you are asking the question" is, as it seems to me, irresistible. "Are they similar", asked of marks, would be almost bound to meet the response "For what purpose?"

46 That is not to say that in every case where some one or more items or aspects, howsoever insignificant, of the rival marks can be said to be similar, the fact-finding body necessarily has to go on to examine into the existence or not of a likelihood of confusion because that would obviate the necessity for an overall impression being formed of the rival marks in the relevant surrounding circumstances and for those overall impressions then to be compared. There can be cases -- see e.g. Vedral and Soffass supra -- where the fact-finding body, deploying the proper approach to the overall assessment which the authorities require and having due regard for interdependence and the other relevant surrounding circumstances, is able to conclude that notwithstanding some aspects of similarity, no likelihood of confusion could have been created. But, although I am far from sure I am here differing in any material way from Lewison J, I would hold there to be some form of threshold, albeit a low one. In a case such as the one before me, the threshold, in my judgment, is arrived at as follows. First, overall impressions of the rival marks are formed, paying full regard to

all the requirements of the autonomous concept of 4(1)(b) similarity. Next one has to have in mind the types of confusion which are then relevant, namely (as I shall come on to below) those identified in *Sabel supra* at its para 16. Then the threshold question arises: are those overall impressions such that one can reasonably say that a likelihood of confusion could not thereby be created?"

57. In *Inlima S.L*'s application [2000] RPC 661 Mr Simon Thorley QC, sitting as the Appointed Person posed the question of what "similar" meant in the context of Section 5(3):

the "13..The word 'similar' is a relative term. One has to ask the question 'similar for what purpose'. The question of similarity accordingly can only be answered within the context of a particular set of facts, once one has identified both the facts and the purpose for which similarity is required. In the case of section 5(3), the purpose of requiring similarity is so that the possibility of detriment or unfair advantage might arise. In any particular case, a conclusion as to whether it does arise must depend not only upon the degree of similarity but on all the other factors of the case, not least, the extent of the reputation.

14. I therefore conclude that the same global appreciation as is required for confusion under section 5(2) is likewise to be applied to the changed circumstances of section 5(3)."

58. The Statement of Case did not set out the grounds for the objection in any detail, and beyond the usual references to having a reputation in a similar mark, and the potential for confusion, advantage or detriment, the arguments at the hearing did not add much. The CFI considered the risk of dilution to be lower if the earlier mark consists of a term which, because of a meaning inherent in it, is very common and frequently used. That is not the case in respect of the opponent's marks in relation to the messaging and chat room services for which they have been used, although from the references in the evidence it would seem that the opponent's use of FACE in this field does not appear to be unique.

59. Clearly the earlier mark must have a reputation. There must be a risk that the use of the mark applied for, without due cause, would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark. In *Sigla* the CFI went on to say that along with the "similarity" requirement for the marks, these conditions are cumulative and a failure to satisfy one of them is sufficient for a case to fail.

60. In my consideration of the ground under Section 5(2)(b) I found the opponents' earlier marks and the mark applied for to be dissimilar. To my mind that is the case whether determined by reference to the law and first impression, or by detailed analysis; there is no evidence relating to the question of the similarity of the respective marks. On the "cumulative" approach advocated in *Sigla* that is effectively the end of the matter. Notwithstanding any reputation that they may have, the ground under Section 5(3) must fall at the first hurdle and accordingly be dismissed.

61. In relation to the specifics of this case I have the following comments. The point is that the newcomer must have a similarity to the established trade mark sufficient for the consumer

to make an association. If that is not the case how can the earlier mark be affected in any material way? But even if the respective marks had been similar, that does not necessarily mean that the opponents would have succeeded with this ground. Both the ECJ and the CFI have reiterated the comment made in *Premier Brands UK Ltd v Typhoon Europe Ltd* [2000] FSR 767 (in relation to Section 10(3)), that the purpose of the Regulation is not to prevent registration of any mark which is identical or similar to a mark with a reputation.

62. In *Intel Corporation Inc v CPM United Kingdom Ltd* [2006] EWCH 1878 Patten J said at para 28:

“But the first step to the exploitation of the distinctive character of the earlier mark is necessarily the making of the association or link between the two marks and all that Neuberger J is, I think, saying in this passage [*Premier Brands* at p. 789] is that the existence of a later mark which calls to mind the earlier established mark is not sufficient to ground an objection under s.5(3) or s.10(3) unless it has one or other of the consequences specified by those provisions. It must be right that the making of the association is not necessarily to be treated as a detriment or the taking of an unfair advantage in itself and in cases of unfair advantage it is likely to be necessary to show that the making of the link between the marks had economic consequences beneficial to the user of the later mark. But in relation to detriment the position is more complicated. The association between two marks and therefore potentially between the products or services to which they relate may be detrimental to the strength and reputation of the earlier mark if it tarnishes it by association or makes it less distinctive. This is likely to take place as a consequence of the same mental process which links the two marks in the minds of consumers and is essentially a negative reaction and effect.”

63. In *Electrocoin Automatics Limited v Coinworld Limited and Others* [2005] FSR 7, Mr Geoffrey Hobbs Q.C. (sitting as a Deputy Judge) stated:

“ 102. I think it is clear that in order to be productive of advantage or detriment of the kind prescribed, ‘the link’ established in the minds of people in the market place needs to have an effect on their economic behaviour. The presence in the market place of marks and signs which call each other to mind is not, of itself, sufficient for that purpose.”

64. In *Daimler Chrysler v Alavi* (the *Merc* case) [2001] RPC 42 at para 88, Pumfrey J stated:

“In my view, the best approach is just to follow the section remembering Jacobs A.G.’s warning that it is concerned with actual effects, not risks or likelihoods...”

65. If you are the only provider using a particular indicia as part of your trade, then any other use in relation to the same or similar services must inevitably lessen its exclusivity. The applicants are seeking to register a mark that is similar to the opponent’s mark to the extent that they both contain the word FACE. The opponents have undoubtedly built a strong reputation in their market under the name FACEPARTY, but there is no evidence that they have done so in relation to FACE. Other websites engaged in providing the same and similar

services to those of the opponents have been, and are, in existence, using FACE as part of their domain name; that is not disputed. What preserves the distinctiveness is the fact that FACEPARTY is not similar to these other marks, including FACE-PIC.COM. I do not see that registration of this mark will make the opponent's marks any less distinctive or capable of distinguishing the services for which it is used. For similar reasons I do not see that there is a potential for any advantage to be gained from using a trade mark with FACE as the first element.

66. In relation to detriment to the repute of the earlier mark, the CFI considered that this would occur where the goods or services of the mark applied for "have a characteristic or a quality which may have a negative influence on the image of an earlier mark". The services of the application are generally the same or similar to those for which the opponent's use FACEPARTY. Setting aside the question of whether the consumer would make any connection in the first place, I do not consider it reasonable to simply infer that the applicant's services will be of an inferior quality or standard such that if a link with the opponents were to be made, their mark or its reputation would be adversely affected.

67. As I have said earlier, the ground under Section 5(3) is dismissed.

68. This leaves the ground under Section 5(4)(a). That section reads as follows:

"5.-(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark".

69. The requirements for this ground of opposition have been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD* Trade Mark [1998] R.P.C. 455. Adapted to opposition proceedings, the three elements that must be present can be summarised as follows:

(1) that the opponents' goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the applicant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the applicant are goods or services of the opponents; and

(3) that the opponents have suffered or are likely to suffer damage as a result of the erroneous belief engendered by the applicant's misrepresentation.

70. To the above I add the comments of Pumfrey J in the *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* case, [2002] RPC 19 in which he said:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See Smith Hayden (OVAX) (1946) 63 RPC 97 as qualified by BALI [1969] RPC 472).

Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed at the relevant date. Once raised the applicant must rebut the prima facie case. Obviously he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of possibilities that passing off will occur.”

71. The first question is whether the opponents have any goodwill in FACEPARTY. I have already accepted that the opponents have established a significant reputation in the trade mark FACEPARTY in respect of messaging and chat room services, and probably, albeit to a lesser extent, for the organisation of party or entertainment events. Notwithstanding this, the fact that they may be better known than the applicants, and trading in the same or similar areas as the services specified in the application does not necessarily lead to a finding of misrepresentation. The simple fact is that the respective trade marks are not similar and I can see no reason why the public would be deceived into obtaining the applicants’ services believing them to have directly or indirectly originated from the opponents. There will be no misrepresentation from which damage may, or will occur and the opposition under Section 5(4)(a) also fails.

72. The opposition having failed on all counts, the applicants are entitled to a contribution towards their costs. I therefore order that the opponents pay the applicants the sum of £3,250 their costs. This sum to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of April 2008

**Mike Foley
for the Registrar
the Comptroller-General**