

O-104-10

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION  
No. 2451318 BY D-LINK CORPORATION  
TO REGISTER THE TRADE MARK**

**D-Life**

**IN CLASSES 9, 38 AND 42**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 95892 BY  
MEDION AG**

## BACKGROUND

1) On 30 March 2007, D-Link Corporation (hereinafter the applicant), applied to register the following trademark:

**D-Life**

2) In respect of the following goods and services:

Class 9: Computer software used in network communication; Internet phones; telematics apparatus, namely, wireless Internet devices which provide telematics services and have a cellular phone function; computer programs recorded on optical or magnetic disks for use in network management; firewall software used in computers and network apparatuses; computer network hubs, switches and routers; image capture devices for use with computers.

Class 38: Telephone communication services; value added network communication services, providing multiple-user access to global computer information network; online transmission of data via Internet and other communication networks; telecommunication connection via the Internet.

Class 42: Online website that enables the management of network systems of others by providing technical maintenance and performance reports based on data provided by users; design of computer software for others; application and development of computer networks and design of databases.

3) The application was examined and accepted, and subsequently published for opposition purposes on 2 November 2007 in Trade Marks Journal No.6708.

4) Medion AG (hereafter the opponent), filed a notice of opposition, dated 24 January 2008. The grounds of opposition are in summary:

- a) The opponent is the proprietor of International Trade Mark M718093, which was registered by consent of No 576740, 758636 and others. The date of designation in the UK is 22 February 1999, with a priority date claimed of 29 August 1998 from its German registration. The mark was advertised in the UK on 18 September 2002. The mark, **LIFE**, is protected for, inter alia, the following:

Class 9: Communication apparatus and entertainment apparatus and parts thereof, included in this class, especially radios, car radios, record players, cassette recorders, headphones, video cameras and recorders, record players for digital compact disks, magnetic tape recorders, apparatus for the recording, transmitting, amplifying and reproduction of sound and images, loudspeakers, television sets, video games (for connection to a television), video cassettes (pre-recorded and blank), phonograph records, audio cassettes (pre-recorded and blank), antennas, radio recorders, projectors, faders, microphones, apparatus

for editing images, dictating machines, walkie-talkies, monitoring apparatus and monitoring devices and operational systems made thereof; electric and electronic calculators, inclusive of pocket calculators; electronic data processing machines, computers, computer peripheral equipment and parts thereof, included in this class, inclusive of computers for games, computers for home use, notebooks, monitors, active speakers, data input-output apparatus (inclusive of keyboard, joystick, gamepad and mouse), scanners, printers, printer interface converters, terminals, interface cards, diskettes, CD-ROM, fixed disks, drives of all kinds (external and internal), storage modules, storage systems (external and internal), essentially consisting of storage media, inclusive of optical, digital or magnetic storage media and PC-plug-in cards as well as appropriate writing and reading units, CD burners, main boards, plug-in components, modems, ISDN cards, sound cards, graphic cards, digital cameras, programs stored on data media; game software; photocopying apparatus, tripods, flashlight apparatus and flash lamps, photographic exposure meters, film cameras, film projection apparatus, diapositives, slide frames; electric and electronic apparatus and instruments as well as parts thereof for the use in telecommunication and communication engineering, included in this class, including ISDN installations, telephone sets, digital telephone sets, wireless telephone sets, mobile telephones, display-radio-receivers, telephone earpieces, telephone answering machines, telecopiers (telex), intercommunication apparatus, hands-free sets, all the aforementioned goods inclusive of appropriate peripheral equipment, included in this class; transmitting and receiving stations for communication engineering and data communication, inclusive of antennas, parabolic antennas, receivers, decoders, modems, converters, microwave converters, amplifiers, wave guides, antenna connecting sockets, wide-band communication systems; alarm devices and systems, included in this class; glasses (optic), spectacle cases; electrical household utensils, included in this class, especially sheet welding and soldering equipment, scales and kitchen scales, curling tongs, electric irons; thermometers, weather stations; bicycle computers; cables, cable clamps, multiple connectors, male plugs, batteries, accumulators and power supplies, battery chargers, electric power supplies for all the aforementioned goods included in this class.

Class 38: Processing and forwarding of electronically transmitted data, operation of networks for the transfer of data, images and voice, offline and online multimedia services, transport-specific fixed and mobile radio services as well as telematic services; value-added services in using networks, essentially data bank services, namely collecting, processing, activating, storing and requesting of data information as well as information services, order services and voice services against payment, namely telephony, voice storing services, forwarding for short messages, inquiries, conference calls; operation of a call-centre, rental of the goods named in class 9 and their accessories.

Class 42: Design, development and maintenance of programs for operating of networks of class 38 and goods of class 9; technical consulting in projecting of apparatus, installations and units for network services; technical consulting in projecting, inclusive of planning and developing of networks of class 38; rental of the goods named in class 9 and their accessories.

b) The opponent states that the mark applied for is similar to the opponent's earlier registration and that the goods and services applied for are similar to those for which its' mark is registered. The opponent states that the application offends against Section 5(2)(b) of the Trade Marks Act 1994.

5) On 27 January 2009 the applicant filed a counterstatement which denied the opponent's claim.

6) Both sides filed evidence, and both parties seek an award of costs in their favour. The matter came to be heard on 9 March 2010. At the hearing, the opponent was represented by Mr Gymer of Messrs Page Hargrave, the applicant was not represented.

### **OPPONENT'S EVIDENCE**

7) This consists of a witness statement, dated 8 May 2008, by Keith F Gymer, the opponent's Trade Mark Attorney. He simply provides as exhibits copies of three earlier decisions by the German Patent Court, OHIM and the European Court of Justice (ECJ) where on each occasion the opponent's mark LIFE was found to be similar to other marks also containing the word "LIFE".

### **APPLICANT'S EVIDENCE**

8) The applicant filed a witness statement dated 17 July 2009, by Rebecca Cooper-Holmes, the applicant's Trade Mark Attorney. She provides submissions rather than evidence, but I will summarise these here in order to refer to them in my decision. She states that there are numerous marks with the word "life" *solus* and others with a single letter prefix on the register, and provides printouts listing many of these. However, I note that State of the Register evidence was commented upon in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 where Mr Justice Jacob said:

"Both sides invite me to have regard to the state of the register. Some traders have registered marks consisting of or incorporating the word "treat". I do not think this assists the factual inquiry one way or the other, save perhaps to confirm that this is the sort of word in which traders would like a monopoly. In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the register. It has long been held under the old Act that comparison with other marks on the register is on principle irrelevant when considering a particular mark tendered for registration, see e.g. *Madam Trade Mark* and the same must be true under the 1994 Act. I disregard the state of the register evidence."

9) Ms Cooper-Holmes also provides dictionary definitions of the word LIFE, which in summary state:

a) As a noun it can mean the distinction between organisms from inorganic objects and dead organisms; the period of animate existence of an individual; the universal condition of human existence such as “too bad, but life is like that” an expression of a particular aspect of existence such as “he enjoys an active physical life”.

b) In terms of adjectives life can mean life-long as in imprisonment or membership of a club; it pertains to animate existence, it may be life functions or life force.

c) Further idioms show “life” can be used in numerous ways such as large as life; as big as life; come to life.

10) Ms Cooper-Holmes states that the applicant has a reputation in “D-” as it has used the term “D-LINK” since 20 June 1987. At exhibit RCH3 she provides copies of pages from the applicant’s internet site which shows use of its D-Link as a trade mark in many countries around the globe, but no mention is made of use in the UK. I note that on one of these pages of advertising it refers to “Your Digital Life, Connected” and then the mark in suit. She also claims that the applicant’s mark is registered in countries alongside the opponent’s mark.

#### **OPPONENT’S EVIDENCE IN REPLY**

11) The opponent filed a witness statement dated 15 October 2009, by Johannes Schweiger a German Trade Mark Attorney. He states that he has been dealing with the opponent company for a number of years and has instructed the opponent’s UK agents. He states that he has access to all the relevant documents of the opponent. He makes a number of comments on the applicant’s evidence, which I do not find of assistance in my decision.

12) That concludes my summary of the evidence filed, insofar as I consider it necessary.

#### **DECISION**

13) The only ground of opposition is under section 5(2)(b) which reads:

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

(a)....

(b) 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.”

14) An “earlier trade mark” is defined in section 6, the relevant part of which states:

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

- (a) a registered trade mark, international trade mark (UK) or Community trade mark 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.”

15) The opponent is relying upon its trade mark listed in paragraph 4 which is clearly an earlier trade mark. The applicant did not put the opponent to proof of use. The opponent’s earlier mark is therefore protected for all of the goods and services for which it is registered, and the full specification will be used in the comparison test. In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law 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] F.S.R. 77 and *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P (LIMONCELLO). 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 and Adidas Benelux BV*,

(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.*,

(k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*

16) In essence the test under section 5(2)(b) is whether there are similarities in marks and goods and services which would combine to create a likelihood of confusion. In my consideration of whether there are similarities sufficient to show a likelihood of confusion I am guided by the judgments mentioned above. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking into account the degree of similarity in the goods and services, the category of goods and services in question and how they are marketed. Furthermore, I must compare the applicant's mark and the mark relied upon by the opponent on the basis of their inherent characteristics assuming normal and fair use of the marks on the goods and services in their specifications.

17) The effect of reputation on the global consideration of a likelihood of confusion under Section 5(2)(b) of the Act was considered by David Kitchin Q.C. (as he was then) sitting as the Appointed Person in *Steelco Trade Mark* (BL O/268/04). Mr Kitchin concluded at paragraph 17 of his decision:

“The global assessment of the likelihood of confusion must therefore be based on all the circumstances. These include an assessment of the distinctive character of the earlier mark. When the mark has been used on a significant scale that distinctiveness will depend upon a combination of its inherent nature and its factual distinctiveness. I do not detect in the principles established by the European Court of Justice any intention to limit the assessment of distinctiveness acquired through use to those marks which have become household names. Accordingly, I believe the observations of Mr. Thorley Q.C in

*DUONEBS* should not be seen as of general application irrespective of the circumstances of the case. The recognition of the earlier trade mark in the market is one of the factors which must be taken into account in making the overall global assessment of the likelihood of confusion. As observed recently by Jacob L.J. in *Reed Executive & Ors v. Reed Business Information Ltd & Ors*, EWCA Civ 159, this may be particularly important in the case of marks which contain an element descriptive of the goods or services for which they have been registered. In the case of marks which are descriptive, the average consumer will expect others to use similar descriptive marks and thus be alert for details which would differentiate one mark from another. Where a mark has become more distinctive through use then this may cease to be such an important consideration. But all must depend upon the circumstances of each individual case.”

18) The opponent has singularly failed to show that it has a reputation in the goods and services for which its mark is registered. The opponent has not provided turnover figures, market share or any independent trade evidence. It is certainly not sufficient for them to enjoy enhanced protection because of reputation. However, I do accept that the opponent’s mark is inherently distinctive for the goods and services for which it is registered.

19) I must now determine the average consumer for the goods and services of the parties. It seems clear that the goods and services offered by the two parties are aimed at both the general public and also the business community. Both groups must therefore be regarded as the average consumer.

20) I shall first consider the goods and services of the two parties. For ease of reference, I set out the goods and services of both parties below.

Applicant’s specification	Opponent’s specification
Class 9: Computer software used in network communication; Internet phones; telematics apparatus, namely, wireless Internet devices which provide telematics services and have a cellular phone function; computer programs recorded on optical or magnetic disks for use in network management; firewall software used in computers and network apparatuses; computer network hubs, switches and routers; image capture devices for use with computers.	Class 9: Communication apparatus and entertainment apparatus and parts thereof, included in this class, especially radios, car radios, record players, cassette recorders, headphones, video cameras and recorders, record players for digital compact disks, magnetic tape recorders, apparatus for the recording, transmitting, amplifying and reproduction of sound and images, loudspeakers, television sets, video games (for connection to a television), video cassettes (prerecorded and blank), phonograph records, audio cassettes (prerecorded and blank), antennas, radio recorders, projectors, faders, microphones, apparatus for editing images, dictating machines, walkie-talkies, monitoring apparatus and monitoring devices and operational systems made thereof; electric and electronic calculators, inclusive of pocket calculators; electronic data processing machines, computers, computer peripheral equipment and parts thereof, included in this class, inclusive of computers for games, computers for home use, notebooks, monitors,

	<p>active speakers, data input-output apparatus (inclusive of keyboard, joystick, gamepad and mouse), scanners, printers, printer interface converters, terminals, interface cards, diskettes, CD-ROM, fixed disks, drives of all kinds (external and internal), storage modules, storage systems (external and internal), essentially consisting of storage media, inclusive of optical, digital or magnetic storage media and PC-plug-in cards as well as appropriate writing and reading units, CD burners, main boards, plug-in components, modems, ISDN cards, sound cards, graphic cards, digital cameras, programs stored on data media; game software; photocopying apparatus, tripods, flashlight apparatus and flashlamps, photographic exposure meters, film cameras, film projection apparatus, diapositives, slide frames; electric and electronic apparatus and instruments as well as parts thereof for the use in telecommunication and communication engineering, included in this class, including ISDN installations, telephone sets, digital telephone sets, wireless telephone sets, mobile telephones, display-radio-receivers, telephone earpieces, telephone answering machines, telecopiers (telefax), intercommunication apparatus, hands-free sets, all the aforementioned goods inclusive of appropriate peripheral equipment, included in this class; transmitting and receiving stations for communication engineering and data communication, inclusive of antennas, parabolic antennas, receivers, decoders, modems, converters, microwave converters, amplifiers, wave guides, antenna connecting sockets, wide-band communication systems; alarm devices and systems, included in this class; glasses (optic), spectacle cases; electrical household utensils, included in this class, especially sheet welding and soldering equipment, scales and kitchen scales, curling tongs, electric irons; thermometers, weather stations; bicycle computers; cables, cable clamps, multiple connectors, male plugs, batteries, accumulators and power supplies, battery chargers, electric power supplies for all the aforementioned goods included in this class.</p>
<p>Class 38: Telephone communication services; value added network communication services, providing multiple-user access to global computer information network; online transmission of data via Internet</p>	<p>Class 38: Processing and forwarding of electronically transmitted data, operation of networks for the transfer of data, images and voice, offline and online multimedia services, transport-specific fixed and mobile radio services as well as telematic services; value-added services in using networks, essentially data bank services, namely collecting, processing, activating, storing and requesting of data</p>

and other communication networks; telecommunication connection via the Internet.	information as well as information services, order services and voice services against payment, namely telephony, voice storing services, forwarding for short messages, inquiries, conference calls; operation of a callcenter, rental of the goods named in class 9 and their accessories.
Class 42: Online website that enables the management of network systems of others by providing technical maintenance and performance reports based on data provided by users; design of computer software for others; application and development of computer networks and design of databases.	Class 42: Design, development and maintenance of programs for operating of networks of class 38 and goods of class 9; technical consulting in projecting of apparatus, installations and units for network services; technical consulting in projecting, inclusive of planning and developing of networks of class 38; rental of the goods named in class 9 and their accessories.

21) In carrying out the comparison I will take into account *British Sugar Plc v James Robertson & Sons Ltd* (TREAT) RPC 281. This identified the following as elements to be considered, uses, users, nature, trade channels, where the items are to be found and whether they are in competition.

22) I also take into account the views of Neuberger J in *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267 where he stated:

“I should add that I see no reason to give the word "cosmetics" and "toilet preparations" or any other word found in Schedule 4 to the Trade Mark Regulations 1994 anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context. In particular, I see no reason to give the words an unnaturally narrow meaning simply because registration under the 1994 Act bestows a monopoly on the proprietor.”

23) Further, I also bear in mind the comments of Jacob J. in *Avnet Incorporated v. Isoact Ltd* [1998] FSR 16 where he said:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

24) The issue of complementary goods was dealt with by the CFI in *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM) Case T-325/06 where they stated:

“It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that

customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI) [2005] ECR II-685 , paragraph 60, upheld on appeal in Case C-214/05 P Rossi v OHIM [2006] ECR I-7057 ; Case T-364/05 Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL) [2007] ECR II-757 , paragraph 94; and Case T-443/05 El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños) [2007] ECR I-0000 , paragraph 48).”

25) Turning first to the Class 9 goods. The applicant contends that a number of the opponent’s goods such as, inter alia, radios, record players and cassette recorders have to be plugged into a power source and operate independently of each other whereas its goods in this class relate to an Internet based system. However, I note that the opponent has, amongst its Class 9 specification the following items:

a) “Communication apparatus”;

b) “electronic data processing machines, computers, computer peripheral equipment and parts thereof, included in this class, inclusive of computers for games, computers for home use, notebooks, monitors, active speakers, data input-output apparatus (inclusive of keyboard, joystick, gamepad and mouse), scanners, printers, printer interface converters, terminals, interface cards, diskettes, CD-ROM, fixed disks, drives of all kinds (external and internal), storage modules, storage systems (external and internal), essentially consisting of storage media, inclusive of optical, digital or magnetic storage media and PC-plug-in cards as well as appropriate writing and reading units, CD burners, main boards, plug-in components, modems, ISDN cards, sound cards, graphic cards, digital cameras, programs stored on data media; game software;”

c)“electric and electronic apparatus and instruments as well as parts thereof for the use in telecommunication and communication engineering, included in this class, including ISDN installations, telephone sets, digital telephone sets, wireless telephone sets, mobile telephones, display-radio-receivers, telephone earpieces, telephone answering machines, telecopiers (telefax), intercommunication apparatus, hands-free sets, all the aforementioned goods inclusive of appropriate peripheral equipment, included in this class; transmitting and receiving stations for communication engineering and data communication, inclusive of antennas, parabolic antennas, receivers, decoders, modems, converters, microwave converters, amplifiers, wave guides, antenna connecting sockets, wide-band communication systems; alarm devices and systems, included in this class.”.

26) The applicant contends that these goods are different to its own as they are the physical hardware of a computer whereas they are seeking to protect an Internet network including software which protects from viruses. They claim these would not be sold alongside each other. I do not accept this contention. The average consumer is highly conscious of the security problems with internet use. There are a huge range of products designed and marketed which offer virus protection and institutions, including the Government, promote the message of Internet security. A software package protecting against viruses is a normal part of any computer package. They therefore have exactly the same trade channels and similar purchasers. The applicant also seeks

to draw a distinction between its phone systems which are internet based and the opponent's telephony equipment. Whilst a number of the goods listed above in the opponent's specification are not internet based they still would be in competition with internet based phones, and as VoIP is gaining in popularity due to its lower cost, then the products would be purchased by the same consumers. Further, the opponent's specification is broad enough to cover Internet based telephone systems. To my mind the goods in the opponent's specification encompasses the applicant's goods in Class 9, and are identical.

27) Turning to the services in Class 38 of the opponent, the applicant contends that these relate to the provision of a satellite navigation system; a storage or telephone directory service and call centre services. It contrasts these with the services it is seeking to register, which it states relates to a network system which records data which is remote and accessed via the Internet rather than being based locally to the user. However, I note that the opponent's specification has the words "online multimedia services" within it. These services, in my opinion, would appear to be identical to those of the applicant. In addition the applicant's services in Class 38 would also appear to be similar to the opponent's goods in Class 9.

28) Lastly, I consider the Class 42 services of the two parties. The applicant contends that the opponent's services relate to physical goods such as programmes and networks whereas the applicant's services all relate to services provided via the Internet. To my mind the applicant is again reading the opponent's specification in an unnaturally narrow manner. The fact that the opponent carries out "design, development and maintenance of programs for operating of networks of class 38 and goods of class 9" does not preclude it from offering these services via the Internet, indeed it would be unusual these days not to offer such a service via the Internet in addition to face to face. Similarly, "technical consulting in projecting of apparatus, installations and units for network services; technical consulting in projecting, inclusive of planning and developing of networks of class 38" could be provided via the Internet, and the opponent's specification does not exclude such services. The services of both parties must, in my view, be regarded as identical.

29) I now turn to consider the marks of the two parties. For ease of reference these are reproduced below:

Applicant's Trade Mark	Opponent's Trade Mark
<b>D-Life</b>	<b>LIFE</b>

30) The applicant's mark contains more than one word or element and is, therefore, a composite mark. The *Medion* case acknowledges that the overall impression conveyed to the relevant public by a composite mark may, in certain circumstances, be dominated by one or more of its components. The applicant contends:

- i) "There are so many examples of "LIFE" functioning in a trade mark sense and the term has so many meanings that the interpretation of the mark is completely dependent upon the context, or goods/services, in/upon which it is placed."

ii) "...the public are used to differentiating between marks featuring the term "LIFE" and naturally when they see the mark applied with the "D-" pre-fix they will associate the mark with the Applicant."

iii) "the Applicant's mark will not be confused with the Opponent's mark as "D-LIFE" refers to a home network whereby users have an account to manage their various D-Link products/services. On the packaging shown in exhibit RCH4, D-Link is clearly visible and consumers would be aware of the origin of the product not just at the point of buying the product but also when researching the product, as the purchase of such electronic items often requires (compatibility issues etc). On Internet web pages for "D-LIFE" references are clearly made to D-Link and their copyright notice is plain to see."

iv) "...given that when the element "LIFE" is applied to arguably any goods/services they immediately take on a meaning of being lifestyle choices, a purchase which will aid day to day living and help simplify it in some way. The public attaches no specific meaning to the term "LIFE" enabling differences by only one letter to be meaningful and pronounced."

31) The applicant seems to be implying that the dominant feature of its mark is the letter "D". Whilst I accept that it is the first letter in the mark it is only a letter. It conveys very little to the average consumer, and it does not affect the meaning of the word "Life" as there is no concept of "D-Life". In my opinion, when used on the goods and services in the specification applied for the term "LIFE" does not have a specific meaning. It requires use of another word for it to change from the normal meaning relating to existence. To my mind the average consumer will view the marks of both parties as wholes.

32) The only difference visually or aurally is the prefix "D-" in the applicant's mark. This does not affect the conceptual meaning which would be the same for both marks as each consumer will have their own concept of "LIFE" and will apply that concept to both marks. The whole of the opponent's mark is subsumed within the applicant's mark with very little addition. The similarities far outweigh any differences.

33) As to the points made by the applicant at paragraph 30 above, there is no evidence that the average consumer would view the prefix "D" as relating to the applicant, and the point made at paragraph 30(iii) is misconceived.

34) I take all of the above into account when considering the marks globally. To my mind, the similarities in the marks are such that when used on goods or services which are identical or at least very similar I believe that there is a likelihood of consumers being confused into believing that the goods and services provided by the applicant are those of the opponent or provided by some undertaking linked to them. The opposition under Section 5(2) (b) therefore succeeds in relation to the entire application.

## **COSTS**

35) As the opponent has been successful it is entitled to a contribution towards costs. I order the applicant to pay the opponent the sum of £1,600. 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 06 day of April 2010**

**George W Salthouse  
For the Registrar,  
the Comptroller-General**