

O-118-06

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No 2307413  
BY THE FOOTBALL ASSOCIATION LIMITED  
TO REGISTER A TRADE MARK  
IN CLASSES 3, 5, 6, 8, 9, 11, 14, 16, 18, 20, 21, 24,  
25, 26, 27, 28, 29, 30, 32, 33, 36, 38 & 41**

**AND IN THE MATTER OF OPPOSITION  
THERE TO UNDER NO 91618  
BY HENKEL KGAA**

## BACKGROUND

1) On 6 August 2002, The Football Association Limited of 25 Soho Square, London, W1D 4FA applied under the Trade Marks Act 1994 for registration of the following trade mark:



2) The mark was sought to be registered in respect of the following goods and services:

In Class 3: Non-medicated toilet preparations; soaps; shampoos; deodorants; preparations for the care, treatment and cleansing of the skin, hair and the body; preparations for the bath and shower; aftershave preparations; shaving preparations; cosmetic preparations; dentifrices; laundry detergent and fabric conditioners; vegetable dye skin transfers.

In Class 5: Air fresheners; air purifying preparations; deodorants and deodorisers (other than for personal use).

In Class 6: Badges of metal for vehicles; metal badges; key rings; metal toy boxes; metallic bins.

In Class 8: Hand-operated tools and implements; electric and non-electric razors, including razor blades and accessories therefor; cutlery; canteens of cutlery, cutlery for children, disposable cutlery; manicure and pedicure implements; scissors; depilatory apparatus; eyebrow tweezers.

In Class 9: Sound and/or video recordings; tapes; cassettes; compact discs; films; slides; lenticulars; video recorders; video cassettes; games adapted for use with television receivers; computer software; computer games; screen savers; publications in electronic format; data processing apparatus; electric and electronic scoreboards; photographic and cinematographic apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; calculators; video discs; time recording apparatus and instruments; encoded credit cards, debit cards and charge cards; telephone apparatus and instruments; sunglasses; protective helmets; parts and fittings for all the aforesaid goods.

In Class 11: Lampshades; torches; lighting apparatus and installations.

In Class 14: Horological and chronometric instruments; clocks and watches; trophies; ornaments, figurines, models; badges and brooches; tea plates, tea services, tea caddies, tea pots, goblets, egg cups; trays, vases and urns; salt and pepper pots; napkin holders and napkin rings; all made wholly or principally of precious metals and their alloys or coated therewith; jewellery and precious stones; tie clips, tie pins, cuff links; medals and medallions; coins; timekeeping systems for sport; shoe ornaments of precious metal; belt buckles of precious metal; key rings; identity tags and bracelets of precious metal; silver lockets; rings, earrings; silver perfume atomisers; silver perfume flasks and funnels; silver pill boxes; silver compacts containing mirrors.

In Class 16: Paper; cardboard; notepaper; writing paper; transfers; decalcomanias; labels; printed matter; trading cards; stickers; posters; albums; periodical publications; books; photographs; packs of photographs; stationery; rulers; adhesive materials (stationery); instructional and teaching materials (other than apparatus); coaching aids in the nature of magnetic and dry-wipeable surfaces with magnetic pieces; flags of paper, pennants of paper; replica football kits made of paper or cardboard; calendars; desk top calendars; milk cartons of cardboard; beer mats; paper figurines; pencil cases; writing and drawing instruments; writing instruments of precious metals; files; folders and folios; personal organisers; diaries; picture frames of cardboard; greeting cards; wrapping and packaging materials; appliques of paper; laminated cards; tissues and towels made of paper; lithoserigraphs; rosettes of paper; paper napkins and tablecloths; non-encoded credit, debit and charge cards.

In Class 18: Bags and containers; leather and imitations of leather and goods made from these materials; umbrellas; walking sticks.

In Class 20: Tags; tags for use on soccer bags, made wholly or principally of plastic; identity tags; identity tags for use on soccer bags, made wholly or principally of plastic; identification bracelets (not of metal) for hospital purposes; plastic clips; plastic closures for containers; picture frames; mirrors; replica football kits made of plastic; cake decorations made of plastic; non-metallic bins; bean bags; plastic figurines.

In Class 21: Lunch boxes; flasks; table mats; tankards; pewterware; mugs; glassware; nonics; lager glasses; plastic cups, soap holders and dispensers; toothbrushes; toothbrush holders; sponges for toilet use; ceramic ornaments and holloware; cleaning cloths; water bottles; perfume atomisers; perfume flasks and funnels; pill boxes; mirrors; compacts (not of precious metals or coated therewith) containing mirrors.

In Class 24: Textile piece goods; bath linen; bed covers; curtains of textile or plastic; sleeping bag sheet liners; bean bag covers; fabric for use in the manufacture of bags; fibre fabrics for use in the manufacture of linings of bags; quilt bags; handkerchiefs; tea towels; textile wall hangings; bar towels; flags (not of paper); pennants; napkins and tablecloths.

In Class 25: Articles of outerclothing; articles of underclothing; footwear; headgear.

In Class 26: Badges; pins; emblems; buttons; buckles; tie pins, (none of precious metals or coated therewith); brooches (none of precious metals or coated therewith); embroidery being textile smallwares; shoe ornaments; appliques of textile; rosettes of textile.

In Class 27: Wallpapers; wall paper borders; rugs; mats; wall hangings.

In Class 28: Games and playthings; kites; gymnastic and sporting articles; bags adapted for carrying sporting apparatus; novelties; miniature replica football kits; action figure toys; footballs; balls; goal posts; hand-held electronic games; sponge hands in the nature of novelties; outdoor rebound walls in the nature of playthings and sporting articles; playing cards; coin and/or counter-operated games.

In Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; milk and milk products; marmalade; meals prepared from fish and poultry; snack foods; pickles; processed peanuts; potato crisps; peanut butter; soups.

In Class 30: Coffee, tea, cocoa, artificial coffee; preparations made from cereals; bread, pastry and confectionery; ices; sauces (condiments); chocolate spread; cakes; cake decorations made of candy; biscuits; frozen confectionery; pizza; snack foods; snack foods and crisps made from potato flour.

In Class 32: Non-alcoholic beverages; beers; mineral and aerated waters; fruit drinks and fruit juices; isotonic drinks; syrups and other preparations for making beverages.

In Class 33: Alcoholic beverages; wine, cider, champagne, perry.

In Class 36: Insurance services; general insurances; credit card, charge card and debit card services; investment and pension services; life insurance (protection investment and pension products); banking and money transmission services; secured lending; unsecured lending; interest bearing and equity linked savings accounts and bonds; unit trusts/PEPs/ISAs.

In Class 38: Broadcasting services; broadcasting and transmission of television programmes; data transmission and data broadcasting; broadcasting and transmission of text, messages, information, sound and images; transmission of television programmes, text, messages, information, sound and images via communication and computer networks; computer aided transmission of information, messages, text, sound, images, data and television programmes; broadcasting and transmission of digital information by means of cable, wire or fibre; receiving and exchanging of information text, messages, sound, images and data; electronic mail services; interactive video text services; news information and news agency services; message sending; communications by and/or between computers and computer terminals; communications for access to information, text, sound, images and data via communication and computer networks; telecommunications access services for access to a communications

or computer network; retrieval, provision and display of information from a computer stored databank; electronic display of information, messages, text images and data; on-line services; on-line information services; information and advisory services relating to any of the aforesaid services.

In Class 41: Training services; football academy services; assessment and qualifications services; coaching; organisation of competitions and sporting events; provision of courses of instruction in coaching, sports medicine, player development and child protection and welfare; physical fitness instruction; practical training demonstrations relating to football; providing courses of instruction in self-awareness; arranging and conducting seminars, conferences, exhibitions and symposia relating to football; provision of club recreation facilities; officiating at sports contests; sports camp services; sports club services; provision of sports facilities; sports refereeing; timing of sports events; staging of sports tournaments; provision of information relating to all of the aforesaid services; publication of printed matter; award ceremonies; entertainment services; production, presentation, distribution, syndication, networking and rental of television programmes, films and video recordings; production and presentation of sporting events; rental of television broadcasting facilities; interactive entertainment, films and sound and video recordings, interactive compact disks and CD ROMS; provision of entertainment for accessing via-communication and computer networks; provision of information relating to television programmes for accessing via communication and computer networks; provision of information relating to any of the aforesaid services.

3) On 15 April 2003 Henkel KgaA of Henkelstrasse 67, Dusseldorf 40589, Germany filed notice of opposition to the application. The grounds of opposition are in summary:

a) The opponent is the proprietor of the following mark:

| Mark      | Number       | Effective Date | Class | Specification   |
|-----------|--------------|----------------|-------|---|
| <b>Fa</b> | CTM<br>69047 | 01.04.96       | 3     | Soaps, perfumery, essential oils, preparations for body and beautycare, deodorants for personal use, chemical preparations for care and treatment of hair, non-medicated toothpastes and mouthwashes, cosmetical foam baths and shower baths. |
|           |              |                | 5     | Medicated toothpastes and mouthwashes, chemical preparations for sanitary purposes, disinfectants   |
|           |              |                | 21    | Electric toothbrushes, dental water jets, shaving brushes, powder puffs, eyebrow brushes, eyelash formers   |

b) The mark in suit “is made up of three elements; the word “The” (a non-dominant element), the letters “FA” ( a dominant element) and the shield device (a dominant element). The shield device is not sufficiently dominant to detract attention from the significance of the “FA” element in the mark. “FA” appears prominently, at the head of the mark in white on a black background, making it appear very bold. It is submitted that it is likely that in many instances the trade mark will be reduced in size (for

example to fit on to the packaging of goods etc.) to the extent that the shield device will lose its impact, making the “FA” element of the mark even more dominant. It is also submitted that it is commonly understood that a word element in a trade mark is a dominant element where the trade mark includes a device element. Therefore, “FA” remains a dominant element despite the use of the shield device.”

- c) Whilst it is accepted that The Football Association is a well-known body governing the game of football in England, there are many goods applied for under the mark in suit that are not associated with the game of football or in particular its governance. The mark in suit is similar to the opponent’s trade mark, and the goods applied for in Classes 3, 5 & 21 are identical or similar. The mark applied for therefore offends against Section 5(2)(b) of the Trade Marks Act 1994.

4) The applicant subsequently filed a counterstatement denying the opponent’s claims.

5) Both sides filed evidence in these proceedings. Both sides ask for an award of costs. Neither side wished to be heard on the matter although both sides filed written submissions which I shall refer to as and when they are relevant during my decision.

**OPPONENT’S EVIDENCE**

6) The opponent filed a witness statement, dated 3 March 2005, by Gerhard Vasen the opponent’s Trade Mark Attorney. He states that the opponent’s mark “Fa” was first used in 1954. At exhibit GV2 he provides copies from the opponent’s website which refers to the use over this period and provides images of the products and advertising for each decade. The mark appears to have been used with a leaf device since 1975, the colour and exact nature of which has varied slightly over the years. The opponent’s mark is shown being used on soap, foam baths, deodorants, shower gels and shampoos.

7) Mr Vasen states that the mark has been used in France, Germany, Spain, Austria, Belgium, Finland and various other EU countries but no mention is made of the UK. He provides sales figures for goods using the mark Fa in a variety of countries such as Germany, Spain, France etc from 1999 -2002. However, he does not state if these are values in the currencies used in each country at that time, or whether he has converted them to euros or another currency. Mr Vasen also provides pan European figures for promotions which are as follows:

| Year | Euros (million) |
|------|-----------------|
| 1998 | 46.1            |
| 1999 | 55.2            |
| 2000 | 56.1            |
| 2001 | 52.3            |
| 2002 | 59.7            |

8) At exhibit GV3 he provides examples of advertising from Germany, Benelux and Spain, whilst at exhibit GV4 he provides examples of printed promotional material,

packaging, price lists and website pages from a variety of continental countries such as Germany, Benelux etc. Mr Vasen claims that as a result of the use of the opponent's mark in Europe that the mark has acquired a substantial reputation in many of the European Member States for a range of cosmetic, body care and toiletry preparations and associated goods.

9) Mr Vasen repeats his view that the marks of the two parties are similar and at exhibit GV5 he provides copies of an Internet search using the term "Fa" which produced hits which included the applicant. I note that in fact all of the hits produced relate to soccer and none relate to the opponent. Mr Vasen also claims that the mark in suit when applied to products will be so reduced in size that the text elements will dominate the device element. At exhibit GV6 he provides a copy of actual packaging used by the applicant upon which the mark in suit is shown in a very reduced fashion. However, I do not accept that the device element is any more diminished by this reduction in size.

10) Mr Vasen states that the applicant has a reputation connected to the game of soccer and that whilst that reputation might have extended to items of merchandising connected to the game it cannot be extended to goods such as those in Classes 3, 5 and 21.

#### **APPLICANT'S EVIDENCE**

11) The applicant filed a witness statement, dated 12 September 2005, by Nicholas Adrian Langhorne an in-house solicitor for The Football Association Limited (The FA). He states that the applicant is permitted by FIFA to be referred to as "The Football Association" simpliciter, whereas other associations have to refer to their country as part of their name such as The Scottish Football Association. He states that the name of his association has been abbreviated to "The FA" for some considerable time. At exhibits NAL1 and 2 he provides copies from a publication which refers to the FA Cup competition.

12) Mr Langhorne also refers to the licensing of the FA crest, which comprises the shield with three lions on it as in the mark in suit. At exhibit NAL4 he provides a list of licences that have been granted for use of the crest device. He provides evidence that the device element has been registered and also the letters "F.A.", and also conjoined as in mark 1571947. He states that the crest device has also been used with the word "England" above it (instead of the words "The FA" as in the mark in suit). He files exhibits relating to this use but these are not relevant to the instant case.

13) Mr Langhorne points out that it is common for brand owners to expand their range of products such as Harley-Davidson who produce a range of toiletries. He also notes that the opponent has not used its mark in the UK.

#### **OPPONENT'S EVIDENCE IN REPLY**

14) The opponent filed a second witness statement by Mr Vasen, dated 13 December 2005. He states that as football associations in other territories refer to themselves by reference to that territory there is a danger that consumers outside the UK purchasing on-line could be confused with the opponent's mark. He points out that much of the

applicant's evidence goes to showing that they have a reputation with regard to soccer, something which he has already accepted, but not the goods under attack.

15) That concludes my review of the evidence. I now turn to the decision.

## DECISION

16) 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.”

17) An “earlier trade mark” is defined in section 6, the relevant parts of which state:

“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,”

18) The opponent is relying upon CTM 69047 which has an effective date of 1 April 1996 and is clearly an earlier trade mark.

19) In determining the question under section 5(2)(b), 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] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG* [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) 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*;

(h) 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*;

(i) 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.*

20) In essence the test under section 5(2)(b) is whether there are similarities in marks and goods 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 judgements of the European Court of Justice 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, the category of goods 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 a full range of the goods and services covered within the respective specifications.

21) 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 Kitchen Q.C. sitting as the Appointed Person in *Steelco Trade Mark* (BL O/268/04). Mr Kitchen 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.”

22) I also have to consider whether the mark that the opponent is relying upon has a particularly distinctive character either arising from the inherent characteristics of the mark or because of the use made of it. The opponent claims that its mark is well known in Europe. I do not accept that a reputation in Europe would be relevant in a case before this tribunal. However, even if it were relevant the figures provided for various European countries did not stipulate the currency, nor were the figures put into any context by reference to the size of the market or the market share of the opponent. Further, no evidence was filed from independent witnesses regarding the reputation of the opponent’s mark in any of the countries mentioned. Figures relating to promotion and advertising were provided, these were pan-European figures in Euros. These averaged approximately 52 million Euros per annum which approximates to £34.6 million per annum. As these figures are said to relate to “promoting the goods/services using the Fa trade mark throughout Europe” this figure does not seem very large. In the circumstances I do not accept that the opponent has shown that it had a reputation in any country let alone the whole of Europe, therefore the opponent cannot benefit from an enhanced reputation. In my opinion, the opponent’s mark is inherently distinctive for the goods for which it is registered.

23) The applicant has also sought to rely upon its reputation, built up over the years with regard to soccer matches. The opponent accepts that the applicant has reputation with regard to such activities. However, in my opinion this reputation does not stretch to the goods under attack in Classes 3, 5 and 21. The applicant cannot benefit in any way from its reputation in relation to soccer.

24) I shall now consider the specifications of the two parties. The opposition relates only to the goods in Classes 3, 5 and 21. The specifications are as follows:

| Applicant’s specification   | Opponent’s specification   |
|---|--|
| Class 3: Non-medicated toilet preparations; soaps; shampoos; deodorants; preparations for the care, treatment and cleansing of the skin, hair and the body; preparations for the bath and shower; aftershave preparations; shaving preparations; cosmetic preparations; dentifrices; laundry detergent and fabric | Class 3: Soaps, perfumery, essential oils, preparations for body and beautycare, deodorants for personal use, chemical preparations for care and treatment of hair, non-medicated toothpastes and mouthwashes, cosmetical foam |

|  |   |
|--|---|
| conditioners; vegetable dye skin transfers.  | baths and shower baths.   |
| Class 5: Air fresheners; air purifying preparations; deodorants and deodorisers (other than for personal use).   | Class 5: Medicated toothpastes and mouthwashes, chemical preparations for sanitary purposes, disinfectants          |
| Class 21: Lunch boxes; flasks; table mats; tankards; pewterware; mugs; glassware; nonics; lager glasses; plastic cups, soap holders and dispensers; toothbrushes; toothbrush holders; sponges for toilet use; ceramic ornaments and holloware; cleaning cloths; water bottles; perfume atomisers; perfume flasks and funnels; pill boxes; mirrors; compacts (not of precious metals or coated therewith) containing mirrors. | Class 21: Electric toothbrushes, dental water jets, shaving brushes, powder puffs, eyebrow brushes, eyelash formers |

25) In its counterstatement the applicant accepted that there was overlap in some of the Class 3 goods, although they stated that the identity or similarity of goods is “considerably less marked in respect of Classes 5 and 21”. I would go slightly further than the applicant and state that with the exception of “laundry detergent and fabric conditioner; vegetable dye skin transfers” the Class 3 goods of both parties are identical. Those goods in Class 3 that I have listed above are similar to the opponent’s goods. The Class 5 goods of the applicant are similar to those of the opponent. Whilst in Class 21 “toothbrushes” are identical to the goods of the opponent whilst the rest of the Class 21 specification can, at best be said to be similar. The opponent’s strongest case is served by the Class 3 goods which are identical. If in the global test it cannot win with identical goods then it must fail with goods which are only similar. Therefore, in carrying out the global assessment I shall regard the goods as being identical.

26) I must also consider the average consumer for the types of goods which are under attack which can be broadly categorised as toiletries and household goods. In my opinion, the average consumer has to be the general public who are reasonably well informed and reasonably circumspect and observant. In my view, the types of items covered by Classes 3, 5 and 21 are not purchased without some consideration. Although I must take into account the concept of imperfect recollection.

27) I now turn to the marks of the two parties. For ease of reference I reproduce them below, with the applicant’s mark significantly reduced in size to take into account the views expressed by the opponent regarding the dominant aspects of the applicant’s mark when used on goods in the marketplace:

| Applicant’s mark  | Opponent’s mark |
|---|-----------------|
|  | <b>Fa</b>       |

28) The opponent contends that the applicant’s mark is made up of three elements; the word “THE” the letters “FA” and the shield device. It claims that the word “The” is a non-distinctive element whilst the other two elements are distinctive. Of these two

elements the opponent contends that the letters “FA” are very bold and so, in a reduced form the shield element loses its visual impact, making the “FA” element even more dominant. They also comment that it is accepted that words speak louder than devices. Thus, the opponent contends that the two marks are visually and phonetically similar.

29) I do not agree with the opponent that the average consumer would carry out such a detailed dissection of the mark. Consumers tend to view marks as wholes. However, even following the contentions of the opponent and dismissing the word “The” as non-distinctive, I do not agree that the shield device loses its visual impact when the mark is reduced in size. In paragraph 27 above I have reduced the mark considerably, and it is shown in a size that could readily be applied to all goods covered by the opposition. To my mind the shield device does not lose its visual impact. It is still very clear and is still a very prominent part of the overall mark. The letters at the top of the mark are approaching the size where those with less than perfect vision begin to struggle to read them. To my mind the marks are visually and phonetically quite different.

30) No conceptual meaning has been provided for the opponent’s mark and I can only conclude that the average consumer would not attach any meaning to the mark. The applicant’s mark would be seen by a large number of consumers as referring to the first or original football association, the device element being an obvious reference to England.

31) Taking account of the above it is my opinion that the differences between the marks outweigh the similarities.

32) Taking account of all of the above when considering the marks globally, I believe that there is not a likelihood of consumers being confused into believing that the goods 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 fails.

33) As the applicant is successful it is entitled to a contribution towards its costs. I order the opponent to pay the applicant the sum of £1,200. 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 28<sup>th</sup> day of April 2006**

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