

O-124-13

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2584265
BY JO ROBINSON T/A HAM
TO REGISTER THE TRADE MARK**

HAM

IN CLASSES 16, 21, 24 & 25

AND:

**OPPOSITION THERETO UNDER NO. 102466
BY HAMA GMBH & CO.KG**

BACKGROUND

1. On 13 June 2011, HAM applied to register **HAM** as a trade mark. The application now stands in the name of Jo Robinson trading as HAM, but as nothing turns on this amendment I need say no more about it in this decision. The application was accepted and published for opposition purposes on 1 July 2011 for the following goods:

- 16** – Stationery, goods made from paper and card, art prints;
- 21** – Articles made of porcelain, ceramic, glass and earthenware;
- 24** – Textiles and textile goods;
- 25** – Clothing.

2. Hama GmbH & Co KG (“Hama”) filed a notice of opposition directed against all of the goods in Ms Robinson’s application. Following amendment, Hama’s opposition is now based upon a single ground under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) for which it relies upon the following trade mark registrations:

CTM no. 5360342 for the trade mark **HAMA** applied for on 5 October 2006 and registered on 5 March 2008. Although Hama indicates that it is relying upon all of the goods for which its trade mark is registered, it refers specifically to the following goods:

- 16** - Paper and cardboard and goods made from these materials, not included in other classes; Printed matter; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Artists' materials; Paint brushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packing (not included in other classes); Printers' type; Printing blocks.
- 21** – Household or kitchen utensils and containers (not of precious metal nor coated therewith); Combs and sponges; Brushes (except paint brushes); Brush-making materials; Articles for cleaning purposes; Steelwool; Unworked or semi-worked glass (except glass used in building); Glassware, porcelain and earthenware (not included in other classes).
- 24** - Textiles and textile goods, not included in other classes; Bed and table covers.

Of these goods Hama says:

“The party’s respective goods in classes 16, 21 and 24 are identical or closely similar. The class 25 goods of the opposed application are similar goods to the class 24 goods of [the registration].”

IR designating the EU no. 1069575 for the trade mark:

hama

The IR designated the EU on 25 May 2010 claiming a priority date of 4 May 2010 from Germany; the colour red is claimed. On 18 January 2013 the IR was published as registered. Although Hama indicates that it is relying upon all of the goods and services for which its trade mark is registered, I note that it refers specifically to the goods in the following classes:

16 - Paper, cardboard and goods made from these materials, included in this class; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging, included in this class; printers' type; printing blocks; bags, envelopes, pouches of paper or plastics, for packaging; plastic film for wrapping; films and sachets of paper or plastics for wrapping for keeping foodstuffs fresh; cardboard articles; bottle envelopes of cardboard or paper; paper coffee filters; filter paper; tablecloths of paper; garbage bags of paper or of plastics; bags for microwave cooking; rubbish bags of paper or plastics; baking paper; albums, in particular photo albums; almanacs; announcement cards (stationery); stickers (stationery); greeting cards; graphic representations; writing or drawing books; calendars; note books; musical greeting cards; prospectuses, postcards; moisteners (office requisites); elastic bands for offices; adhesive tapes for stationery and household purposes; glue for stationery and household purposes; self-adhesive tapes for stationery or household purposes; apparatus for mounting photographs; adhesive tape dispensers (office requisites); transfers (decalcomanias); folders for papers; document files (stationery); address stamps; cabinets for stationery (office requisites); paperweights; pads (stationery); inking ribbons; photograph stands; photoengravings; drawing pins; correcting fluids (office requisites); office perforators; writing instruments; paper shredders for office use; napkins of paper for removing make-up; face towels of paper; towels of paper; handkerchiefs of paper.

21 – Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware included in this class; vessels of metal for making ices and iced drinks, garlic presses, grills (cooking utensils), beaters (non-electric), whisks (non-electric), corkscrews; coffeepots (non-electric), deep fryers (non-electric); cooking pot sets; tableware, other than knives, forks and spoons; fitted picnic baskets, including dishes; camping dishes; plastic tableware, in particular tableware for microwave ovens; cooking pots; closures for pot lids; hot pots, not electrically heated; dishes, in particular salad bowls; goblets;

drinking glasses; beer mugs; paper plates; disposable table plates; cups of paper or plastic; containers for household and kitchen use; containers and dishes for freezing food and beverages; bottles; egg cups; sugar bowls, tea caddies, soap boxes, powder compacts, cookie jars and butter dishes; boxes for food conservation; jugs; teapots; decanters; boxes of glass; painted glassware; bread baskets, domestic; bread bins; bread boards; cutting boards for the kitchen; trays for domestic purposes; moulds (kitchen utensils), in particular cake moulds; ice cube moulds; oil cruets; cruets; stirring sticks for cocktails; spice sets; pepper pots; pepper mills, hand-operated; buckets; dustbins; strainers for household purposes; baskets for domestic use; heat-insulated containers; insulating flasks; thermally insulated containers for food and heat insulated containers for beverages; refrigerating bottles and isothermic bags, non-electric; frying pans; cooking skewers, of metal; grill supports; watering cans; ironing boards; ironing board covers, shaped; flat-iron stands; clothes racks, for drying; baby baths, portable; heaters for feeding bottles, non-electric; toothbrushes, electric and non-electric; boxes of metal, for dispensing paper towels; abrasive sponges for scrubbing the skin; flower pots; flower-pot covers, not of paper; cloth for washing floors; scrubbing brushes; brooms; chamois leather for cleaning; polishing gloves, gloves for household purposes and gardening gloves; cleaning instruments, hand-operated; rags (cloth) for cleaning, dusting cloths (rags) and furniture dusters; cleaning rags (cloth) for electric apparatus; cleaning sponges; insect traps; baking molds.

24 – Textiles and textile goods included in this class; bed and table covers; household linen; place mats, not of paper; table napkins of textile.

25 - Clothing, footwear, headgear.

3. Ms Robinson filed a counterstatement which consists, in essence, of a denial of the ground upon which the opposition is based.

4. Only Ms Robinson filed evidence; she also filed submissions during the evidential rounds. While neither party asked to be heard, both filed submissions in lieu of attendance at a hearing; I will refer to these submissions as necessary below.

EVIDENCE

5. Ms Robinson's evidence consists of a witness statement from her dated 8 October 2012 accompanied by 7 exhibits, and a witness statement from her professional representative in these proceedings, Mr Bruce Marsh of Wilson Gunn, dated 23 October 2012 accompanied by 3 exhibits. I do not propose to summarise this evidence here, but will comment on it later when I deal with the likelihood of confusion.

DECISION

6. Section 5(2)(b) of the Act reads as follows:

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

(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, or

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

7. An earlier trade mark is defined in section 6 of the Act, 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 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

8. In these proceedings Hama is relying upon the two trade marks shown in paragraph 2 above, both of which constitute earlier trade marks under the above provisions. Given the interplay between the date on which Ms Robinson’s application was published and the dates on which Hama’s registration/designation completed their registration procedure, the registration/designation are not subject to proof of use, as per The Trade Marks (Proof of Use, etc) Regulations 2004.

Section 5(2)(b) – case law

9. In his decision in *La Chemise Lacoste SA v Baker Street Clothing Ltd* -BL O/330/10 (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs QC, expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

The CJEU cases

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; Marca Mode CV v Adidas AG & Adidas Benelux BV [2000] E.T.M.R. 723; Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Case T-6/01; Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH C-120/04; Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) C-334/05 P.

The principles

“(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, 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, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) 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;

(k) if the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.”

The average consumer and the nature of the purchasing process

10. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods and then to determine the manner in which these goods will be selected by the average consumer in the course of trade. As all of the goods at issue in these proceedings will be purchased by members of the general public, they are the average consumer.

11. In its submissions Hama said:

“The level of attention of the general public for the goods is likely to be low as these goods are ordinary household goods available at low prices; none of the goods at issue require particular care at the point of purchase and none are sufficiently costly to justify a high degree of attention.”

12. As all of the goods at issue are most likely to be selected from a shelf in a conventional retail setting or from the pages of a catalogue or website, and while oral/aural considerations cannot be ignored, it is, in my view, likely that visual considerations will dominate the selection process.

13. While the cost of, for example, art prints, porcelain and articles of clothing can vary considerably, considered overall, I accept that the cost of many of the goods at issue is unlikely to be terribly high. While I would expect an average consumer selecting, for example, an expensive print, or piece of porcelain or an article of designer clothing to pay a reasonably high degree of attention to their selection, when the cost and importance of the selection decreases, so will the degree of attention he pays to it. That said, given the nature of many of the goods in classes 16, 21 and 24, which the average consumer is likely to select with the adornment of their home or work place in mind, and, insofar as the goods in class 25 are concerned, where size, colour, material and co-ordination with other items of clothing are all factors the average consumer will take into account, I would expect them to pay at least a normal degree of attention to their selection.

Comparison of goods

14. The leading authorities on how to determine similarity between goods and services are considered to be *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117 and *British Sugar Plc v James Robertson & Sons Ltd (Treat)* [1996] R.P.C. 281. In the first of these cases the CJEU accepted that all relevant factors should be taken into account including the nature of the goods/services, their intended purpose, their method of use and whether they are in competition with each other or are complementary. The criteria identified in the *Treat* case were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market.
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

15. In reaching a conclusion, I will also keep in mind the decision of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05 i.e.

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

16. In relation to what constitutes complementary goods and services, the comments of the Court of First Instance (now the General Court) in *Boston Scientific Ltd v OHIM* case T-325/06 are relevant:

“82 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).”

Class 16

17. Ms Robinson’s goods in this class are:

16 – Stationery, goods made from paper and card, art prints.

18. The terms “stationery” and “goods made from paper and card” find equivalent terms in Hama’s earlier trade marks and are identical. As to “art prints”, I agree with Hama that these are either identical or highly similar to “photographs” in both earlier trade marks and to “graphic representations” in IR no. 1069575.

Class 21

19. Ms Robinson’s goods in this class are:

21 – Articles made of porcelain, ceramic, glass and earthenware;

20. As both of Hama’s earlier trade marks contain a reference to “Glassware, porcelain and earthenware”, to that extent at least the competing goods are identical. That leaves “articles of ceramic” in Ms Robinson’s specification to consider. In its submissions Hama said:

“Ceramics...are also similar goods to [Hama’s goods]. Ceramics are goods made of clay and permanently hardened by heat whereas earthenware is pottery made of clay; these are ordinary dictionary definitions of these two items. Ceramics and earthenware are identical goods as the terms are virtually synonymous; furthermore, many of the class 21 goods in [Hama’s earlier trade marks] could or would be made of ceramics...”

21. Given the similarities in their nature, intended purpose and method of use, I find that “articles of ceramic” in Ms Robinson’s specification are either identical or (at worst) highly similar to (at least) “earthenware” in Hama’s earlier trade marks.

Class 24

22. Ms Robinson’s goods in this class are:

24 – Textiles and textile goods.

23. As identical terms are included in both of Hama’s earlier trade marks, the competing goods are identical.

Class 25

24. Ms Robinson’s goods in this class are:

25 – Clothing.

25. As the identical term appears in IR 1069575, once again the competing goods are identical.

Comparison of trade marks

26. For the sake of convenience the trade marks to be compared are as follows:

Hama’s trade marks	Ms Robinson’s trade mark
HAMA 	HAM

27. It is well established that the average consumer is considered to be reasonably well informed, circumspect and observant but perceives trade marks as a whole and does not pause to analyse their various details. In addition, he/she rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he/she has kept in his or her mind. In reaching a conclusion on similarity, I must identify what I consider to be the distinctive and dominant elements of the respective trade marks and, with that conclusion in mind, I must then go on and compare the respective trade marks from the visual, aural and conceptual perspectives.

Distinctive and dominant components

28. In these proceedings Hama relies upon the two trade marks shown above. The first of these trade marks is presented in upper case. As both of these trade marks consist of single words no element of which is highlighted or emphasised in any way, the distinctiveness lies in the trade marks as a whole. The second trade mark upon which Hama relies is presented a slightly stylised lower case script and claims the colour red. Ms Robinson’s trade mark as shown above is also presented in upper case. As Ms

Robinson's trade mark is presented in black and white this does not, for the reasons given by Mann J in *Specsavers International Healthcare Ltd v Asda Stores Ltd* (No. 2) [2011] FSR 1, assist in distinguishing the competing trade marks. As the degree of stylisation present in Hama's second trade mark is, in my view, limited, it is the word hama which is the distinctive and dominant element of that trade mark. In conducting the comparison, I will, therefore, focus on the word only version of the trade mark whilst keeping in mind the small differences I have identified above.

Visual similarity

29. The competing trade marks consists of 3 and 4 letters respectively the first 3 letters of which are identical. There is, in my view, a reasonable degree of visual similarity between the word only versions of the competing trade marks, and a somewhat lower degree of similarity between Ms Robinson's trade mark and Hama's stylised trade mark.

Aural similarity

30. Regardless of presentation, Hama's trade marks is, in my view, likely to be pronounced by the average consumer in the same way as they would the word "HAMMER". As the average consumer will be very familiar with the word the subject of Ms Robinson's trade mark, its pronunciation is predictable. Bearing those conclusions in mind, there is, in my view, at best a reasonable degree of aural similarity between the competing trade marks.

Conceptual similarity

31. As far as I am aware (and there is no evidence to the contrary), Hama's trade mark will not convey any conceptual meaning to the average consumer; it is, in effect, an invented word. Insofar as Ms Robinson's trade mark is concerned, in its submissions Hama say:

"11...Although "ham" has a meaning such will not be evoked in the mind of the relevant consumer when faced with the mark for the goods applied for [by Ms Robinson]. The meaning of the word is unrelated to the goods and the consumer will not associate the mark with the common meaning of "ham".

32. In her statement, Ms Robinson explains that she chose HAM as a trade mark because it was her maiden name. In her submissions, she adds that her trade mark will convey a range of meanings, for example, a cut of meat, an acting performance and a type of radio operator. While the word has these various meanings, in the context of the goods for which Ms Robinson has applied, the word HAM will, in my view, be construed by the average consumer as a surname rather than attributed any of the meanings mentioned above. As a consequence, Ms Robinson's trade mark will convey a clear surnominal meaning to the average consumer whereas Hama's trade mark will not convey any meaning.

Distinctive character of Hama's earlier trade marks

33. I must now assess the distinctive character of Hama's trade marks. The distinctive character of a trade mark can be appraised only, first, by reference to the goods for which it is registered and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

34. As Hama has not filed any evidence of any use it may have made of its trade marks, I have only their inherent qualities to consider. As I have already concluded that Hama's trade marks are, in effect, invented words, they are neither descriptive of nor non-distinctive for the goods upon which Hama relies in these proceedings. Hama's trade marks are, as a consequence, possessed of a high degree of inherent distinctive character.

Likelihood of confusion

35. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is also necessary for me to factor in the distinctive character of Hama's earlier trade marks as the more distinctive these trade marks are the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

36. Earlier in this decision I concluded that:

- the average consumer of the goods at issue is a member of the general public who will select the goods predominately by visual means and will pay at least a normal level of attention when doing so;
- the goods at issue are either identical or similar to a high degree;
- the distinctiveness of both parties' word only trade marks lies in the trade marks as a whole;
- the word hama is the distinctive and dominant element in Hama's stylised trade mark;

- there is at best a reasonable degree of visual and aural similarity between the competing trade marks;
- Ms Robinson’s trade mark will create a clear conceptual picture in the average consumer’s mind whereas Hama’s trade marks will not;
- Hama’s earlier trade marks are possessed of a high degree of inherent distinctive character.

37. I note that in *The Picasso Estate v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) – Case C-361/04, the CJEU said:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

38. However, I also note that in *Nokia Oyj, v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) – Case T-460/07 the GC said:

“66. Furthermore, it must be recalled that, in this case, although there is a real conceptual difference between the signs, it cannot be regarded as making it possible to neutralise the visual and aural similarities previously established (see, to that effect, Case C-16/06 P *Éditions Albert René* [2008] ECR I-0000, paragraph 98).”

39. Although the competing trade marks share the same first three letters, in short trade marks such as these the inclusion of an additional letter (even at the end of a trade mark) can have a significant impact. In its submissions Hama said:

“20...However, it is submitted that [Ms Robinson] is misguided in its assessment of similarity and further that, to the extent that the registrar considers the opposed mark to have a meaning, such meaning does not outweigh the similarities in the marks.”

40. Considered overall, I am satisfied that notwithstanding the identity/high degree of similarity in the competing goods, the reasonable degree of visual and aural similarity between the competing trade marks and the high level of inherent distinctive character Hama’s earlier trade marks possess, that the very clear and immediate surnominal message Ms Robinson’s trade mark will convey to the average consumer is, even when considered in the context of inexpensive goods and imperfect recollection, sufficient to counteract the visual and phonetic similarities between the competing trade marks. Hama’s opposition to Ms Robinson’s application fails.

41. In reaching the above conclusions, it has not been necessary for me to comment on Ms Robinson's evidence. In her submissions Ms Robinson explains that the purpose of her statement is: "to provide context relating to the manner of usage but furthermore to demonstrate that there has been no confusion with [Hama's] rights", and, in respect of Mr Marsh's statement: "to address the context of perceived notional use of [Hama's] earlier rights." However, as Hama's earlier trade marks are not subject to proof, it is the specifications of goods as registered I must bear in mind. The fact that Ms Robinson may have made some use of her trade mark prior to the material date and there have been no instances of confusion, is not relevant to my decision which is taken on a notional basis.

Conclusion

42. Hama's opposition to Ms Robinson's application fails in all classes.

Costs

43. As Ms Robinson has been successful, she is entitled to a contribution towards her costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide, but making no award in respect of Ms Robinson's evidence which served no purpose but which Hama still had to review, I award costs to Ms Robinson on the following basis:

Preparing a statement and considering Hama's statement:	£300
Written submissions:	£200
Total:	£500

44. I order Hama GmbH & Co KG to pay to Ms Jo Robinson the sum of **£500**. This sum is 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 14th day of March 2013

C J BOWEN
For the Registrar
The Comptroller-General