

O-133-05

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2313416
BY REALTORS UK LIMITED TO REGISTER
A TRADE MARK IN CLASSES 36 AND 42**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER No. 92264
BY NATIONAL ASSOCIATION OF REALTORS**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No. 2313416
by Realtors UK Limited to register a Trade Mark
in Classes 36 and 42**

and

**IN THE MATTER OF Opposition thereto under No. 92264
by National Association of Realtors**

BACKGROUND

1. On 17 October 2002 Realtors UK Limited (Realtors UK) applied to register the following mark:



realtors UK

in relation to:

Class 36:

Real estate affairs; building society services, financial services provided via the Internet.

Class 42:

Legal services.

2. The application was published with a disclaimer, to the effect that “the applicant claims no exclusive rights in, separately, the word “Realtors” or the letters “UK””. The applicant also claims the colours blue for the letter “U” and red for the letter “K” as an element of the mark.

3. On 26 January 2004 National Association of Realtors (the Association) filed notice of opposition to this application. The Association is the proprietor of the following Community Trade Mark registration and application:

No.	Mark	Class	Specification
1467760		<p>35</p> <p>36</p>	<p>Provision of organizational, regulatory, and support services to real estate brokers.</p> <p>Real estate services, including brokerage, management, appraisal, sale and rental of real estate, and advisory and consulting services relating to real estate; provision of information relating to real estate; land use consulting services; dissemination of news, analysis, features and information relating to real estate; provision of data relating to sales of homes and other real estate; rental and sale of interval ownership properties; real estate management services; providing information and support services to members of an organisation of real estate brokers and real estate professional relating to their activities in the real estate industry, including development of standards of conduct, research and analysis about real estate and business conditions affecting real estate, news about recent legislation relating to real estate, and provision of standardised forms relating to real estate transactions; financial affairs services, and advisory and consulting services relating thereto; monetary affairs services, and advisory and consulting services relating thereto; mortgage brokerage services; provision of financial and insurance information; insurance services, and advisory and consulting services relating thereto;</p>

		<p>provision of the aforesaid services over the Internet or through a computer network or other communications network.</p> <p>41 Educational services including provision of the aforesaid services by way of television, radio, film, computer program, the Internet or communications network, or other audio and/or visual media; educational services including electronic multi-player or role-playing games, chat rooms, provided via computer, the Internet, or other communications network; entertainment services, including live entertainment; arranging and conducting of conferences and symposiums; organization of competitions and award ceremonies; publication services, including electronic publication services; health club services.</p> <p>42 Computer services; providing and leasing access time to a computer data base in the field of the real estate industry; providing an online interactive computer data base in the field of real estate information; rental of computer software; software design services; accommodation services, hotel, resort, and hotel reservation services; technical studies and research services; vocational guidance; association services, namely real estate trade association services and services promoting the interests of real estate agents, brokers and</p>
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			professionals; land survey services; legal services.
1390855	REALTOR	09	Audio and audiovisual recordings, including phonograph records, pre-recorded magnetic tapes, videotapes, discs, cassettes and CD-ROM's; computer software; motion picture films; electronic publications.
		16	Printed matter, books, manuals, publications, magazines, newsletters, newspapers; teaching materials (except apparatus); stationery.
		35	Advertising services, and consulting and advisory services relating thereto; business management, and consulting and advisory services relating thereto; business administration, and consulting and advisory services relating thereto; provision of business information; public relations, and consulting and advisory services relating thereto; marketing research services, and advisory and consulting services relating thereto; compilation and systematization of information into computer databases; office functions, and consulting and advisory services relating thereto; personnel services, and consulting and advisory services relating thereto; provision of the aforesaid services over the Internet or through a computer network or other communications network.

		36	<p>Real estate services, including brokerage, management, appraisal, sale and rental of real estate, and advisory and consulting services relating to real estate; provision of information relating to real estate; land use consulting services; dissemination of news, analysis, features and information relating to real estate; provision of data relating to sales of homes and other real estate; rental and sale of interval ownership properties; real estate management services; provision of organizational, regulatory, informational and support services to real estate brokers; financial affairs services, and advisory and consulting services relating thereto; monetary affairs services, and advisory and consulting services relating thereto; mortgage brokerage services; provision of financial and insurance information; insurance services, and advisory and consulting services relating thereto; provision of the aforesaid services over the Internet or through a computer network or other communications network.</p>
		41	<p>Educational services including provision of the aforesaid services by way of television, radio, film, computer program, the Internet or communications network, or other audio and/or visual media; educational services including electronic multi-player or role-playing games, chat rooms, provided via computer, the Internet, or</p>

		<p>other communications network; entertainment services, including live entertainment; arranging and conducting of conferences and symposiums; organization of competitions and award ceremonies; publication services, including electronic publication services; health club services.</p> <p>42 Computer services; providing and leasing access time to a computer data base in the field of the real estate industry; providing an on-line interactive computer data base in the field of real estate information; provision of information (not included in other classes) provided on-line from a computer data base by means of web pages on the Internet, or via computer network, other communications network; rental of computer software; software design services; accommodation services, hotel, resort, and hotel reservation services; technical studies and research services; services relating to vocational guidance; association services, including real estate trade association services and services promoting the interests of real estate agents and brokers, and services relating to membership in an association of real estate professionals; land survey services; services relating to membership in a organization of the real estate industry.</p>
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4. The opponent says that the respective marks are similar and the services identical and/or similar such that the application should be refused under the provisions of Section 5(2)(b).

5. The applicant filed a counterstatement denying the above ground and setting out its views on why the respective marks are not similar. I note in particular that it says “The opposition fails to deal with the fact that the word “realtors” (the only common part) is not in common use in the UK and is not per se distinctive.”

6. Both sides filed evidence. Neither side has asked to be heard. Written submissions have been received from D Young & Co, the Association’s professional representatives in this matter, under cover of a letter dated 21 March 2005. Acting on behalf of the Registrar and with the above material in mind I give this decision.

EVIDENCE

Opponent’s evidence

7. The Association filed an affidavit by Miriam Meyer Lowe, its Vice President of International Operations. Ms Lowe says that the Association has been using the trade mark REALTORS since 1916 in the United States of America to designate the Association and its members. The Association is said to have some 1 million members who belong to 1500 local associations and 54 State and territorial associations in the USA. The Association has been active in almost all EU Member States for many years including the UK. The Association has two international REALTOR members in the UK plus 6 CIPS designees. The CIPS network is a Certified International Property Specialist network, a speciality membership group for international practitioners of The National Association of REALTORS. The CIPS network is comprised of 1500 real estate professionals who deal in all types of real estate, but focusing specifically on the international market. CIPS is said to run around 7 classes in the UK every year and has done since 1999. At those classes printed materials including REALTOR magazine are distributed. A copy of the magazine and sample pages from its on-line equivalent are at Exhibits XX1 and XX2. The Association also operates a website at www.realtor.com and is a participant in a further website, www.worldproperties.com run by the International Consortium of Real Estate Associations.

8. Ms Lowe goes on to give information on usage of the mark in the United States and exhibits (XX3) newspaper articles demonstrating that REALTOR is recognised as being a trade mark in that country. Also exhibited (XX4) is a copy of a decision of the USPTO dated 18 November 2003 in which the petitioner failed to show that the terms REALTOR and REALTORS were generic in the US. Ms Lowe suggests that if that is the position in the US then, a fortiori, the words would not be generic in the UK.

9. Ms Lowe exhibits (XX5) copies of letters supplied to the Community Trade Mark Office by the National Association of Estate Agents in the UK and the Irish Auctioneers and Valuers Institute confirming their recognition that REALTORS is a trade mark of the Association. She also exhibits (XX6) copies of recent British newspaper articles making use of the term REALTORS in recognition of the Association. The generic terms used in relation to the relevant profession is estate agency.

10. Ms Lowe goes on to provide extracts from four dictionaries (XX7) showing that the term REALTOR is recognised as being a proprietary name. These appear to be US dictionaries save for The Concise Oxford Dictionary. At exhibit XX8 are examples of letters sent by the Association complaining about mis-use of the word REALTOR along with (XX9) copies of newspaper articles reporting the Association’s successful efforts to protect the trade mark.

The final exhibit (XX10) is an extract from the International Trade Mark Association trade mark checklist showing REALTOR as “real estate broker, member of the National Association of Realtors”.

11. There is also a witness statement by Angela Clare Thornton-Jackson of D Young & Co exhibiting a letter from the Chief Executive of the National Association of Estate Agents indicating that the term REALTOR is not commonly used in the UK to refer to a real estate agent but rather a member of the Association. As this letter appears to have been generated for the purposes of these proceedings it should in my view have complied with the provisions of Section 69 of the Act and Rule 55 of the Trade Marks Rules 2000 and been in proper evidential form. Accordingly, I can give it no weight.

Applicant’s evidence

12. A witness statement has been filed by Neil Jopson, the Managing Director of, and principal shareholder in, the applicant company.

13. Mr Jopson firstly explains the background to the company and the application. The principal object of the company is, in anticipation of the Housing Bill 2003, to market private residential freehold properties via the Internet together with a home condition report. The website will allow prospective buyers to make appointments to view direct with sellers and to make offers for the property. Mr Jopson says this is a unique system to the UK. Related companies within the group will deal with conveyancing and the provision of mortgage finance and insurance. He says that this is a complete property service and not just an estate agency. It is not at present possible to combine all activities within one company because of actual and potential regulation issues. For instance Realtors UK Ltd could not both deal with sales and act in respect of legal matters.

14. The anticipated changes to the UK regulatory regime arising from the Housing Bill and the Land Registration Act 2002 (which paved the way for electronic conveyancing) will, it is suggested, result in the separate rules for estate agents and property lawyers disappearing.

15. Mr Jopson goes on to deal with the background to the word REALTOR. He draws attention to the fact that the Oxford English Dictionary describes ‘Realtor’ as a proprietary word in the United States but also indicates that it is also in general use to mean an estate agent. It records the origin of the word as being in 1916 and an adaptation of the word ‘realty’, itself a contraction of ‘real property’. Mr Jopson suggests that the word had been absorbed into the language before the Association claimed it as its own. He exhibits the results of various searches of the USPTO Register which reveal, inter alia, a number of marks not in the ownership of the Association containing the word REALTOR (disclaimed in each case). Also exhibited is a screen print from yell.com. This is the result of feeding in the search term ‘realtors’. Mr Jopson says that there are 100 companies who describe themselves as such and most seem to be estate agents.

16. The next Section of Mr Jopson’s statement details his findings as a result of investigating the Association’s website and linked sites. The material exhibited in support of this is said to show that the Association is primarily a US operation with limited activity in the UK. Thus a search conducted on the linked worldproperties.com website showed only 8 results for the whole of the UK.

17. In relation to his company's trade mark application Mr Jopson points out no exclusive right is claimed in respect of the word realtors.

18. The remainder of the statement deals with Mr Jopson's submissions in relation to the opponent's objections and the evidence relating thereto. The main points to emerge are that:

- in Mr Jopson's view the opponent is not active in the UK market and the opponent's evidence does not support a contrary position;
- the decision of the USPTO holding that REALTOR(S) was not a generic term is not binding in the UK;
- the letters from the National Association of Estate Agents and the Irish Auctioneers and Valuers Institute to the Community Office should not be given weight. The former is in no position to formally recognise the Association's US trademark and the latter is a foreign country. Furthermore, the NAEA does not speak for other bodies involved in property matters in the UK.

Opponent's evidence in reply

19. Angela Clare Thornton-Jackson has filed a further witness statement. Much of it consists of submission or goes to matters that are of marginal relevance to the central issue before me. I will, however, record that Ms Thornton-Jackson gives further information on the history of the term REALTOR in the US. The term is said to have been coined by the National Association of Real Estate Boards (the Association's previous name) in 1916. It was not possible to register the word REALTOR as a trade mark until the passage of the Lanham Act in 1946 as US law did not previously recognise marks whose purpose was to identify the members of an organisation, nor did it provide for registration of service marks prior to that date.

20. In relation to the US registrations identified by Mr Jopson which incorporate the word REALTOR, he says that the proprietors are members of the Association. Members are automatically licensed to use the REALTOR mark, but none are entitled to claim exclusive rights because every other member enjoys the same rights. An extract from the Association's rules dealing with use of the mark is exhibited at ACTJ3.

21. That completes my review of the evidence to the extent that I consider it necessary at this stage.

DECISION

Section 5(2)(b)

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

“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.”

23. The term earlier trade mark is defined in Section 6 as follows:

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

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

- (b)

- (c)

(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.”

24. I have included Section 6(2) because one of the marks relied on by the opponent (No. 1390855) is a pending Community Trade Mark. It has the capacity to be an earlier trade mark based on its filing date, but will only achieve that status if and when it is registered. The other mark (No. 1467760) is registered and is an earlier trade mark having a filing date of 20 January 2000.

25. I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] E.T.M.R. 1, *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.

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

27. In essence, the test under Section 5(2) is whether there are similarities in marks and goods which would combine to create a likelihood of confusion. 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 differing elements, taking into account the degree of similarity in the services, the category of services in question and how they are marketed. I must compare the marks in issue having regard to the distinctive character of each and assuming normal and fair use of the marks across the full range of the services within their respective specifications.

Comparison of services

28. The applicant has not specifically commented in the counterstatement on the respective sets of services. The parties are in the same line of business. It is clear that Realtor UK's specification includes real estate affairs which must be identical to the Association's real estate services (in both 1467760 and 1390855). The applicant's remaining Class 35 services have identical or closely similar counterparts in the financial affairs services which are to be

found in the specifications of the Association's registration and application. Legal services (Class 42) also appears as a self-contained term in No. 1467760. I conclude that identical and/or closely similar services are involved.

Distinctive character of the respective marks

29. The guidance from *Sabel v Puma* requires me to have regard to the marks as wholes but within that overall consideration to have regard to the distinctive and dominant components (*Sabel v Puma*, paragraph 23). At the heart of the debate in this case is the issue of the descriptiveness/distinctiveness of the word REALTOR. Both sides appear to accept that whatever view is taken on this matter is likely to have a critical bearing on the outcome of the case.

30. On the evidence before me REALTOR is recognised in the US as being a proprietary term indicating the Association and its members. The Association makes the point that, if it is not generic in the country of origin, then a fortiori it would not be generic in the UK. That may seem a logical starting point but it cannot, I think, be a complete answer. Words may have different connotations in different countries.

31. What will the word REALTOR(S) mean to the notional average consumer and what does the evidence tell me about recognition of the term in the UK? In relation to the services at issue I take the average consumer to be the public at large. Most adults will have a need from time to time (and probably on an irregular basis) for the services of an estate agent or solicitor. There are also likely to be commercial users of such services (companies and such like).

32. I have been referred to various dictionary references and the publication 'A Manual of Real Property' by way of explanation of the meaning, derivation and history of the word. These *may* be indicators as to how the word would be perceived in this country but neither dictionaries nor specialist manuals can be wholly relied upon as fair reflections of consumer understanding.

33. The applicant says that the name 'realtor' was chosen as it was the only word in use in the English language to describe a person with the dual role of estate agent and lawyer/conveyancer. The applicant is of the view that it is the practice in the US to combine such roles and that changes in the legislative framework in the UK will open the door to such combined practices here. It is not clear from the evidence how far these legislative changes have progressed or what impact they have had on the professions concerned or consumers. Nor is it clear from the evidence whether, or to what extent, practitioners in the property field will wish to avail themselves of future opportunities to combine roles or whether they will choose to describe themselves as realtors in doing so. These issues appear to remain matters of speculation at this point in time.

34. The word REALTOR is said to have been coined by the Association in 1916 and to have been registered since 1947. On the face of it, there would seem to have been ample time for the word to have crossed the Atlantic and come into currency in this country either as a trade mark or as a generic term. There is, in my view, scant evidence that either form of usage is recognised here. The Association's evidence suggests there has been low level activity in the UK and some press reference to the Association itself. The evidence does not shed much light on consumer reaction to the word REALTOR(S). There may be some recognition of the

word amongst the estate agency profession in the UK, but even that much is uncertain and it does not tell me anything about the end consumer's reaction.

35. The applicant, for its part, has referred to a search conducted on yell.com using REALTORS as the search term. It is said that some 100 companies describe themselves as such. Only a first page screen print has been provided (page 28 of NJ1). The firms listed do not describe themselves as 'realtors'. In each case against the sub-head 'classification' they indicate that they are estate agents. I infer there is an underlying link employing the word 'realtors' but it would not, on this evidence, be apparent to end users.

36. I, therefore, find the evidence to be inconclusive in establishing either that REALTOR(S) is recognised as a trade mark in this country or that it would be understood to be a generic term meaning estate agent. Indeed, I note that even Mr Jopson says that:

“[The applicant] says that it is reasonably foreseeable that the word “Realtors” while not in customary use in the United Kingdom, given the existing use in the US, and the proposed changes of law in the UK will come into regular use in the future.”

37. I agree that the word has not been shown to be in customary use. I would differ from Mr Jopson to the extent that I do not feel it is reasonably foreseeable that the word will come into regular use in the future.

38. But there is still the question of what the average consumer will make of the word based on its inherent make-up. Trade marks must also, of course, be seen in the context of the goods or services in respect of which they are to be used. In this case that includes real estate services. I think it is not unlikely that the average consumer possessing the characteristics set out in *Lloyd Schuhfabrik and Sabel v Puma* would think that the element REAL- may signify something to do with real estate services. Some consumers may also be familiar with the term realty (real property) but whether that word commands widespread recognition is debatable. But the word/element at issue here is REALTOR/realtors and not realty, real property or real estate. It is discernibly different to such words and does not in and of itself convey any clear descriptive message. It is true that it may be said to allude to the underlying services (or some of them) but so do a great many trade marks whilst retaining a distinctive character. Making the best I can of it, I find that REALTOR is not a term that has been shown to be in anything like common use to mean an estate agent or estate agency in the UK and that, taken on its own, it must be assumed to have a distinctive character.

39. That is not an end to the matter because there remains the question of the impact of the element, REALTOR(S) within the totality of the respective marks (save for No. 1390855 where the mark is the word REALTOR solus). The Association's registration No. 1467760 consists of a stylised letter R and the word REALTOR. The former is visually the dominant element, but the word REALTOR is also given some prominence in the mark and would in my view feature in the recollections and perceptions of consumers as making a material contribution to the overall distinctive character of the mark.

40. The applied for mark consists of the word realtors (in lower case lettering) and the letters UK represented in blue and red respectively. I note that the word realtors has been disclaimed but am not aware why this is the case. If or to the extent that the disclaimer was offered with a view to overcoming the opponent's marks then it is ineffective because an admission made by an applicant cannot of itself affect the scope of protection of an earlier

trade mark. The position might have been different if the applicant had been able to show that the element concerned is non-distinctive but for the reasons I have given that is not, in my view, the case here.

41. I, therefore, regard 'realtors' as contributing to the distinctive character of the applied for mark. The letters UK will simply be taken as indicating the geographical coverage/availability of the services and, in my view, contribute little to the overall character of the mark, save that they are in colour and in upper case in contrast to the preceding element. That element of get-up should not be ignored but it does not detract from the fact that on the basis of my appraisal of the position it is realtors which is more likely to fix itself in the minds of consumers and be the element by which they remember the mark.

Comparison of marks

42. This is a matter of considering the visual, aural and conceptual similarities and differences from the perspective of the average consumer bearing in mind the distinctive and dominant elements. I have already indicated that I regard the average consumer as being any member of the general public who has a need for the services in question. There may also be business/commercial users as well. Use of estate agency and related services is likely for most people to be sporadic rather than regular. Imperfect recollection may, therefore, play a part. The latter point is of some importance in relation to the Association's composite mark where the precise details of the stylised R device may not be accurately recorded in the memory and it may in any case simply be seen as an additional mark (a housemark say). It is rather more likely that consumers will recollect the word REALTOR notwithstanding that they may never have encountered it before.

43. There is, therefore, some visual similarity arising from the common element REALTOR/realtors but the differences resulting from the presence of other matter in each case means that that similarity is certainly not of the highest order though, as I have suggested, the presence of the letters UK (in their coloured form) does not add a distinctively different element to the applicant's mark.

44. Aurally, the opponent's case is stronger because I anticipate that consumers are more likely to use and respond to the word REALTOR/realtors than the other elements of the marks or, in the case of No. 1467760, they will refer to it as an R REALTOR mark where the REALTOR element is the more dominant and distinctive feature.

45. Conceptually, consumers' attention will, in my view, focus on the common element REALTOR/realtors. I think it unlikely that the presence of the letters UK (coloured), being purely indicative of country, will contribute materially to the idea behind the applicant's mark or create a significantly different idea. The R device of No. 1467760 may be said to add a conceptual reference point to that mark but it is not one, in my view, that will serve to displace or override the effect of the common element.

Likelihood of confusion

46. This is a matter of global appreciation. Although I am of the view that the term realtors is not generally recognised or used in this country and therefore is more likely to be seen as a distinctive component of the marks at issue (or in the case of No. 1390855 is the only element

of the mark) I think it unlikely that the composite mark (No. 1467760) would be mistaken for the applied for mark when all the features that make up those marks are taken into account.

47. But the element REALTOR/realtors is sufficiently prominent and distinctive within those marks to persuade me that consumers will make an association between them. Mere association in the sense that one mark brings to mind the other is not in itself enough. The guidance from the *Canon* case is that only if that association causes the public to wrongly believe that the respective services come from the same or economically linked undertakings is there a likelihood of confusion within the meaning of the Section. In the light of my views on the marks, and given that identical and/or closely similar services are involved, I think that is the likely position here. Accordingly, there is a likelihood of confusion within the meaning of the Section.

48. The opposition succeeds in its entirety based on No. 1467760. The opponent's position is even stronger if No. 1390855 is considered but, as that application is still pending, the current proceedings would need to be stayed to await the outcome of the CTM application if my decision based on the opponent's registered mark was found on appeal to be wrong.

COSTS

49. The opposition has succeeded under Section 5(2)(b). The opponent is entitled to a contribution towards its costs. I order the applicant to pay the opponent the sum of £1600. 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 11th day of May 2005

M REYNOLDS
For the Registrar
the Comptroller-General