

O-150-10

TRADE MARKS ACT 1994

**IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 965230
IN THE NAME OF TRI-COSTAL DESIGN GROUP, INC**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 71909 BY JOOP! GMBH**

BACKGROUND

1. On 7 May 2008, Tri-Costal Design Group, Inc (TC), requested protection in the United Kingdom of the international registration (IR) of the trade mark **LOOP**. The UK Trade Marks Registry considered that the request satisfied the requirements for protection in accordance with Article 3 of the Trade Marks (International Registration) Order 2008 and particulars of the IR were published in Trade Marks Journal No. 6757 on 17 October 2008 for the following specification in class 18:

“Handbags.”

2. On 19 January 2009, JOOP! GmbH (Joop) filed a notice of opposition. This consisted of a single ground based upon section 5(2)(b) of the Trade Marks Act 1994 (as amended) (the Act). Joop indicate that their opposition is based upon the following trade mark:

Trade Mark	No.	Application Date	Registration Date	Goods in Class 18
JOOP!	CTM 3665114	13.2.2004	5.7.2005	Although applied for in a range of classes the registration includes the following goods in class 18: Briefcases, document wallets, beach bags, packaging bags (envelopes, pouches) of leather, trimmings of leather for furniture, wallets, camping bags, blankets, coverings of skins (furs), attaché cases, boxes of leather or leatherboard, boxes and cases of vulcanised fibre, net bags for shopping, shopping bags; key cases (leatherwear); casings, of leather, for springs, skins (furs), umbrella cases, purses (pouches), chain mesh purses (not of precious metal), travelling bags, handbags, hunting bags, card cases (wallets), cases of leather or leatherboard, garment bags for travel, suitcases, trunks, vanity cases, umbrellas, travel bags, rucksacks, boxes of leather or leatherboard, satchels, school bags, parasols, walking sticks, wheeled shopping bags, haversacks (knapsacks), toolbags of leather, kid leather.

3. In the Statement of Grounds accompanying their opposition Joop said:

“4. The Opponents submit that the mark the subject of the Designation LOOP is almost identical to the Earlier Mark, JOOP!, there being only one letter difference – JOOP! V LOOP. The addition of the exclamation mark to the end of JOOP makes no difference to this assessment. The Opponents submit that the goods in

class 18 covered by the Designation are identical goods “handbags” and that “handbags” are also similar to many of the other goods and services covered by the Earlier Mark...”

4. On 1 April 2009, TC filed a counterstatement which although commenting on, inter alia, the state of various trade mark registers, trade channels and the purchasing environment consists, in essence, of a denial of the ground on which the opposition is based.

5. While neither party filed evidence, Joop filed written submissions at the evidential stage whereas TC filed written submissions at the conclusion of the evidential stages in lieu of attendance at a hearing. I will refer to these written submissions as necessary below. However, for the sake of completeness I should perhaps mention that a review of the official file indicates that on 22 December 2009 TC’s professional representatives’ Birketts LLP filed what they described as:

“..submissions on behalf [sic] applicant.”

6. In an official letter dated 8 January 2010 the Trade Marks Registry wrote to Birketts. The letter included the following:

“Upon review, it appears that the majority of the applicant’s statement, and all of the attached exhibits are evidence of fact, and not submissions. In light of this, I must advise you that the Registry is unable to accept this, as there has not been a Witness Statement sufficiently filed.”

7. The official letter went on to say:

“Consequently, I am returning the applicant’s statement you have sent to us. If you wish the registry to re-consider the evidence, please re-submit the witness statement in the appropriate format as outlined above....”

8. I note that TC were allowed until 28 January to decide how they wished to proceed. In their reply dated 27 January Birketts said:

“The applicant does not wish to re-submit their evidence.”

9. The consequence of TC’s approach to the official letter is that I cannot take those parts of its written submissions which constitute evidence into account when reaching a decision. That said, having reviewed the submissions to identify which parts are in fact submissions as opposed to evidence, I note that they all relate to the co-existence of Joop’s trade marks with trade marks consisting of or containing, inter alia, the word LOOP in various jurisdictions including the United Kingdom. As per the comments of Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281, this sort of evidence is rarely persuasive and I propose to say no more about it in this decision.

DECISION

10. The opposition is based solely upon section 5(2)(b) of the Act which 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,

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

11. 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.”

12. In these proceedings Joop is relying on the registered Community trade mark shown in paragraph 2 above which has an application date prior to that of TC’s Designation; as such, it qualifies as an earlier trade mark under the above provisions. TC’s Designation was published for opposition purposes on 17 October 2008 and Joop’s earlier trade was registered on 5 July 2005. As Joop’s earlier trade mark had not been registered for five years at the point at which TC’s Designation was published, it is not (despite TC’s request contained in Box 5 of their Form TM8) subject to The Trade Marks (Proof of Use, etc) Regulations 2004.

Section 5(2)(b) – case law

13. The European Court of Justice (ECJ) has provided guidance in a number of judgments germane to this issue. The principal cases are: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Mayer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG V*

Thomson multimedia Sales Germany & Austria GmbH (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05).

It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all the relevant factors; *Sabel BV v. Puma AG*, paragraph 22;

(b) the matter must be judged through the eyes of the average consumer of the good/services in question; *Sabel BV v. Puma AG*, paragraph 23, who is deemed to be reasonably well informed and 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* paragraph 27;

(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*, paragraph 23;

(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*, paragraph 23;

(e) when considering composite marks, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element; *Shaker di L. Laudato & Co. Sas* (C-334/05), paragraph 42;

(f) an element of a mark may play an independent distinctive role within it without necessarily constituting the dominant element; *Medion AG V Thomson multimedia Sales Germany & Austria GmbH*, paragraph 30;

(g) 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*, paragraph 17;

(h) 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*, paragraph 24;

(i) 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*, paragraph 26;

(j) 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 + Adidas Benelux BV*, paragraph 41;

(k) 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*, paragraph 29.

The average consumer and the nature of the purchasing decision

14. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods; I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In reaching a conclusion on this point, I must proceed on the basis that the respective parties' trade marks will be used on all the goods for which they have either been applied or are registered.

15. The goods at issue in these proceedings are handbags. Collins English Dictionary (2000) defines handbag as a noun meaning inter alia:

“a woman's small bag carried to contain personal articles.”

16. While this confirms my own general impression of how the average consumer is in the main likely to construe the term, I am aware that the reference to a handbag being a “small bag” may no longer be entirely accurate. I am also aware (as I believe would be the average consumer) that such bags are now becoming increasingly popular with men and are often referred to as manbags. Consequently, while I still believe that (subject to my comment above regarding size) the principal meaning of handbag is likely to be that mentioned above, I accept that the term is (probably) wide enough to include the type of bags that might be described as manbags. With those considerations in mind, **the average consumer of the goods in question is likely, in my view, to be a member of the general public wishing to purchase such a bag either for themselves or as a gift.**

17. I have no evidence as to how the goods are likely to be purchased. However, in their written submissions Joop refer to guidance issued by the Trade Marks Registry which indicates that:

“..purchase of clothing is likely to be on the basis of visual selection...”

18. Joop comment on this extract in the following terms:

“10. It is submitted that the comments in the above extract, which explicitly mention clothing, also relate to handbags...”

19. I agree with Joop. In my experience the selection of the goods at issue is most likely (initially at least) to consist of a visual act made on the basis of self selection in either a retail environment, from a catalogue or on-line. Whilst this is likely, in my view, to be the principal means by which the goods are selected, I do not rule out that orders may also be placed by telephone.

20. I am aware that there are many different types of handbags used for a range of informal and formal occasions. In addition, I am also aware that the cost of the goods at issue is likely to vary from quite modest sums to many thousands of pounds. In my view, the average consumer when selecting a handbag is likely to be conscious of, inter alia, its cost, its design, its material, its size, its colour and ultimately if it was suitable for the purpose for which they intended to use it. **All of these factors point to the average consumer paying a reasonable level of attention to their purchase.**

Comparison of goods

21. The specification of TC's Designation consists solely of handbags; Joop's earlier trade mark contains an explicit reference to handbags. **The goods are self evidently identical.**

Comparison of trade marks

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

TC's trade mark	Joop's trade mark
LOOP	JOOP!

23. 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, as the case law dictates, then go on and compare the respective trade marks from the visual, aural and conceptual perspectives.

24. Given the manner in which the competing trade marks are presented, neither can, in my view, be said to contain a distinctive or dominant element. In their written submissions TC say:

“3. Also, the inclusion of the exclamation mark as part of the opponent’s mark should not be ignored or forgotten. It is a distinctive element of the opponent’s mark. The mark applied for does not include any punctuation marks.”

25. I disagree with TC’s assessment. The use of an exclamation mark in, for example, advertising to add emphasis is now commonplace; this combined with its positioning at the end of Joop’s trade mark renders it, in my view, neither a distinctive nor dominant element of Joop’s trade mark. **In my view the distinctiveness of each trade mark resides in the words LOOP and JOOP respectively.**

Visual similarity

26. TC’s trade mark consists of the four letter word LOOP presented in upper case; Joop’s trade mark also consists of a four letter word presented in upper case; it is of course accompanied by an exclamation mark but this (as explained above) adds very little to the trade mark’s appearance. In their written submissions Joop say:

“6...these marks both have the same number of letters and are identical in all but their opening letter. Furthermore, in both cases the opening letter is chiefly vertical, with a brief horizontal element at the base of the vertical letter. Depending on typography, an L can be the mirror image of a J. Accordingly, the trade marks are almost identical visually, and at a glance the customer in both cases will see the unusual letters OOP.”

27. In their written submissions TC say:

“2. Both marks do include the letters OOP. However, the letters OOP are not that unusual in the English language. There are a number of commonly used words that include these letters. The average consumer is unlikely to consider the letters OOP to be unique and particularly memorable.

3. When comparing the marks visually, both marks are relatively short, therefore their different letters is very noticeable.” [They also comment on the presence of the punctuation mark – see paragraph 24 above].

28. Both trade marks consist (essentially) of four letter words the final three letters of which are identical. I note that in *Inter-Ikea Systems BV v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) Case T-112/06*, the Court of First Instance (now the General Court) said at paragraph 54:

“As regards the visual comparison between the verbal element of the contested mark and the earlier word marks, the applicant claims that the only difference between them is the presence of the letter ‘d’ in the contested mark and the letter ‘k’ in the earlier word marks. However, the Court has already held in Case T-185/02 *Ruiz-Picasso and Others v OHIM – DaimlerChrysler(PICARO)* [2004] ECR II-1739, paragraph 54) that, in the case of word marks which are relatively

short, even if two marks differ by no more than a single consonant, it cannot be found that there is a high degree of visual similarity between them.”

Whilst I note that in that case the GC characterised the degree of visual similarity between the word only trade mark “IKEA” and the word element of the contested trade mark “idea” as low, in my view, **there is a reasonable degree of visual similarity between the competing signs in these proceedings.**

Aural similarity

29. In their written submissions Joop say:

“7. Aurally and orally, the trade marks are not identical in their initial consonant, but in both cases the initial consonant is a short and frontal sound which does not affect the sound of the following letters. Accordingly, there is a strong aural similarity between the marks: the sound which dominates is OOP.”

30. In their written submissions TC say:

“4. Phonetically, the different first letters of the mark applied for and the opponent’s mark, result in the marks sounding sufficiently different despite the common OOP element.”

31. No evidence has been provided as to how the average consumer is likely to pronounce either trade mark; I must of course make up my own mind. In this regard, I think it is highly unlikely that the average consumer will articulate the exclamation mark present in Joop’s trade mark. As both trade marks consist of single syllable words to which the OOP element will make a significant contribution, and notwithstanding the difference in the first letters, **I think there is a reasonable degree of aural similarity between them.**

Conceptual similarity

32. In their written submissions Joop say:

“8. Conceptually, the word JOOP is an invented word whereas LOOP is a known English word, being a noun. However, in relation to handbags, neither trade mark has any particular descriptive quality and neither has any adjectival function. Therefore, in both cases, the conceptual effect is simply that of a trade mark.”

33. In their written submissions TC say:

“5. There is no conceptual similarity between the marks. The opponent’s mark JOOP! includes the meaningless made up word JOOP, whilst the mark applied for, LOOP, is a commonly used and recognised English word.”

34. Here I find myself in agreement with TC. I note that in their counterstatement TC say:

“In the case of the opposing party JOOP! is a designer clothing and cosmetics company founded by German fashion designer Wolfgang Joop..”

(A point admitted by Joop in their written submissions).

35. While that may be the case, I have no evidence as to how famous Wolfgang Joop is or how well known JOOP is as a surname. In my view, the average consumer is unlikely to be familiar with the surnominal significance of the word JOOP and is more likely (as Joop argue above) to treat it as an invented word. The word LOOP is of course a well known English word which, in my view, will be recognised by the average consumer as meaning, inter alia:

“the round or oval shape formed by a line, string, etc., that curves around to cross itself” (Collins English Dictionary 2000).

In those circumstances, TC’s trade mark is likely to convey a clear conceptual message to the average consumer whereas Joop’s trade mark would not. If JOOP was well known to the average consumer as a surname the respective trade marks would send quite different conceptual messages.

36. In summary, regardless of how the word JOOP may be construed by the average consumer, the respective trade marks would be either conceptually dissimilar (a surname as opposed to a word with a well known English meaning), or it is only the word LOOP which would convey any conceptual meaning.

Distinctive character of Joop’s earlier trade mark

37. As Joop have not provided any evidence of the use they may have made of their trade mark, I have only the inherent characteristics to consider. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought 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.

38. As I mentioned above the word JOOP is likely, in my view, to be treated by the average consumer as an invented word (a view with which I note TC agree – see paragraph 33). **In those circumstances it is, in my view, a trade mark possessed of a high level of inherent distinctive character.**

Likelihood of confusion

39. 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 keep in mind the distinctive character of Joop's trade mark, as the more distinctive this trade mark is 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 they have retained in their mind.

40. In summary, I have concluded that:

- (i) the respective goods at issue are identical;
- (ii) the average consumer is a member of the general public;
- (iii) given the nature of the goods at issue the visual aspect of the comparison is likely to be the most important although aural considerations will also play a part in the selection process;
- (iv) the average consumer is likely to pay a reasonable level of attention to the selection of the goods;
- (v) that the exclamation mark present in Joop's trade mark is neither a distinctive or dominant element, the distinctiveness residing in the word JOOP and LOOP respectively;
- (vi) there is a reasonable degree of visual and aural similarity between the respective trade marks;
- (vii) depending on how they are perceived the respective trade marks are either conceptually dissimilar or only TC's trade mark will convey any conceptual significance;
- (viii) Joop's earlier trade mark is possessed of a high level of inherent distinctive character.

41. I must now apply the global approach advocated to my findings to determine whether direct confusion (where one trade mark is mistaken for the other) or indirect confusion (where the goods would be assumed to come from economically linked undertakings) is likely to occur.

42. I have found that the respective goods at issue are identical and that there is, inter alia, a reasonable degree of both visual and aural similarity between the respective trade marks. However, I have also found that depending on how they are perceived by the average consumer the respective trade marks will either be conceptually quite different, or that TC's trade mark will convey a conceptual message whereas Joop's will not.

43. I note that in *Phillips-Van Heusen Corp v Pash Textilvertrieb und Einzelhandel GmbH* Case T-292/01 [2004] ETMR 60 the CFI (now the GC) held:

“54. Next, it must be held that the conceptual differences which distinguish the marks at issue are such as to counteract to a large extent the visual and aural similarities pointed out in paragraphs 49 and 51 above. For there to be such a counteraction, at least one of the marks at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately. In this case that is the position in relation to the word mark BASS, as has just been pointed out in the previous paragraph. Contrary to the findings of the Board of Appeal in paragraph 25 of the contested decision, that view is not invalidated by the fact that that word mark does not refer to any characteristic of the goods in respect of which the registration of the marks in question has been made. That fact does not prevent the relevant public from immediately grasping the meaning of that word mark. It is also irrelevant that, since the dice game Pasch is not generally known, it is not certain that the word mark PASH has, from the point of view of the relevant public, a clear and specific meaning in the sense referred to above. The fact that one of the marks at issue has such a meaning is sufficient - where the other mark does not have such a meaning or only a totally different meaning - to counteract to a large extent the visual and aural similarities between the two”

44. In reaching a conclusion I have kept in mind the nature of the purchasing process and that the average consumer is likely to pay a reasonable level of attention when purchasing the goods at issue. Having done so, and notwithstanding the high level of inherent distinctive character Joop's earlier trade mark possesses, the clear conceptual message likely to be sent to the average consumer by TC's trade mark (which will be immediately grasped by them) is sufficient, in my view, to counteract the visual and aural similarities between the competing trade marks and to avoid a likelihood of confusion.

45. In reaching this conclusion I have not overlooked the decision of the Opposition Division of the OHIM dated 18 June 2007 which was drawn to my attention by Joop in their written submissions (a copy of which is provided at Exhibit C). In this regard, I note the comments of Mr Geoffrey Hobbs QC acting as the Appointed Person (albeit in the context of ex-parte proceedings) in BL-O-201-04 *Zurich Private Banking Trade Mark* when he said:

“So far as the second ground of appeal is concerned, it is necessary to bear in mind that the Registrar is not only permitted but required to apply the provisions of the Trade Marks Act 1994 with full regard for circumstances prevailing in the United Kingdom. In addition, it is clearly recognised and accepted in Community law that the meaning and significance of a designation may vary from one member state to another as a result of linguistic, cultural and social differences between their populations.

Finally, it must be appreciated that all assertions of inconsistency between acceptances and refusals within a national Registry and all assertions of inconsistency between acceptances and refusals in different registries are, by their very nature, question-begging as to the correctness of each of the various acceptances and refusals that are brought into contention.

However, the position as between different national registries and the Community Trade Marks Office is that they are not competent to adjudicate on the correctness of each other's determinations and, as a corollary of that, not required to treat each other's determinations as binding upon them in the independent exercise of their own powers. That is not to say that each of them should or will simply ignore determinations of the others. The general principle is that each of them should give determinations of the others such weight (if any) as they might fairly and properly be said to bear in the decision-taking processes they are required to undertake independently of one another.”

46. Keeping in mind Mr Hobbs' comments, I note that in that decision OHIM's Opposition Division were considering the same trade marks as I am here i.e. LOOP v JOOP! and although the goods were different (the clash involved, inter alia, furniture etc. in class 20, textiles and textile goods in class 24 and carpets etc. in class 27), visual considerations are also likely, in my view, to be the principal means by which those goods would be selected by the average consumer. Having found that the goods were identical, the Opposition Division found that visually and aurally:

“The number and weight of the similarities between the conflicting marks are greater than that of the differences.”

47. However, having noted earlier in their decision that:

“...it is the impression that the signs make on the consumers in all the Member States, which is of relevance”,

I note that in relation to the position regarding conceptual similarity (and having explained how LOOP is defined in the Compact Oxford English Dictionary) they said:

“It [i.e. LOOP] does not have a meaning in the other languages of the European Union. The word JOOP does not have any meaning. Since one of the signs does not have a meaning, a conceptual comparison cannot be made.”

48. As a result of those conclusions the Opposition Division determined that there was a likelihood of confusion. Of course I am only considering the position in the United Kingdom. As I explained above, the word LOOP will be very well known to the average consumer in this country and its meaning grasped immediately. Whilst I do not ignore the conclusions of the Opposition Division, they do not persuade me (for the reasons indicated at paragraph 44 above), that the competing trade marks will lead to a likelihood of confusion in the United Kingdom

49. In summary, the opposition has failed and the Designation should be protected.

Costs

50. As TC have been successful they are entitled to a contribution towards their costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide, I award costs to TC on the following basis:

Preparing a statement and considering the other side's statement:	£200
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Written submissions:	£200
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Total:	£400
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51. I order JOOP! GmbH to pay to Tri-Costal Design Group, Inc the sum of £400. 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 14 day of May 2010

**C J BOWEN
For the Registrar
The Comptroller-General**