

O-164-08

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2308193
BY FILM IDOL LIMITED
TO REGISTER THE TRADE MARKS:**

**FILM IDOL
&
film idol**

IN CLASS 9, 16, 18, 21, 24, 25, 28, 35, 38 & 41

AND

IN THE MATTER OF OPPOSITION NO 94072 BY:

**FREMANTLE MEDIA OPERATIONS B.V
&
19 TV LTD**

TRADE MARKS ACT 1994

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By Film Idol Limited

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IN THE MATTER OF Opposition No 94072

By Freemantle Media Operations B.V. & 19 TV LTD.

BACKGROUND

1. On 15 August 2002 Film Idol Limited (“FILM”) applied to register the following series of two trade marks for the following goods and services:

FILM IDOL

film idol

Class 09: Cinematographic films, electronic books and publications, multi-media discs recordings and publications; digital recordings, holograms, floppy discs, compact discs (CDs), records, audio tapes, video tapes, laser discs, CD ROMs; digital video discs (DVDs); (all of the aforesaid bearing information about or relating to talent competitions); animated cartoons; sound, video and data recording and reproducing instruments and apparatus; audio-visual teaching apparatus; electronic games; electrical and video amusement apparatus and instruments; slot machines and gaming devices; parts and fittings for all the aforesaid goods.

Class 16: Printed matter; books, annuals, publications, comic books, magazines, newsletters, newspapers, albums, periodicals, pamphlets, leaflets, book marks, (all of the aforesaid bearing information about or relating to talent competitions); stationery, labels, tags, gift wrap, gift wrap cards, paper party goods and decorations, greetings cards, printing sets, pencil top ornaments (not in the nature of figurines); paper, cardboard, cardboard articles, catalogues, instrumental and teaching materials in the form of games, apparatus and instruments, rulers, erasers, writing instruments, pens, pencils, paintbrushes, parts and fittings for all the aforesaid goods.

Class 18: Travelling bags; holdalls; school bags; shopping bags; rucksacks; tote bags; articles of luggage; wallets; handbags; pouches; purses; brief cases; umbrellas.

Class 21: Small domestic utensils and containers; glassware; porcelain; earthenware; tableware.

Class 24: Textile goods; bedcovers; quilts; blankets; table linen; pennants; badges; handkerchiefs; tea towels; towels.

Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).

Class 28: Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods.

Class 35: The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; and to purchase those goods by mail order; advertising services.

Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting; communications by telephone; interactive telephone services; communication services by means of radio waves, telephones, the Internet, the World Wide Web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes; telephony for entertainment purposes; (all of the aforesaid bearing information about or relating to talent competitions).

Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education and entertainment by or relating to television and radio; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, the World Wide Web and the Internet; organisation of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs and radio entertainment; television entertainments services involving telegraphic audience participation; (all the aforesaid bearing information about or relating to talent competitions); organisation of competitions (education or entertainment); interactive telephone competitions; publishing; game shows.

2. As can be seen, the two marks in the series are identical save that one is presented in upper case lettering whilst the other is in lower case. Nothing will turn of this difference and therefore I will refer to FILM's trade marks in the singular.

3. On 19 January 2006 Freemantle Media Operations B.V. and 19 TV Ltd jointly opposed FILM's application. I will refer to the joint opponents as POP. The opposition is based on grounds under sections 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(d), 3(3)(b), 5(2)(b), 5(3), 5(4)(a) and 56 of the Trade Marks Act 1994 ("the Act"). I will provide more detail on these grounds and POP's basis for relying on them when I address each of them in turn.

4. FILM filed a counterstatement denying the grounds of opposition.

5. Only POP filed evidence, this is summarised below. Neither side requested a hearing. POP filed written submissions in lieu of attending a hearing; these were filed by their trade mark attorneys Marks & Clerk. No submissions were received from FILM, but, I note that some observations on the merits of the dispute were given as part of their counterstatement which was filed on FILM's behalf by Field Seymour Parkes Solicitors. FILM is no longer represented by them or any other representative. I should add that recent letters sent to FILM as part of the proceedings have been returned by the Post Office marked "addressee gone away". The case must nevertheless be determined, so nothing turns on this. All submissions and observations that have been made will be taken into account in this decision, but I do not intend to summarise them separately.

POP's evidence

First witness statement of Michael Arthur Lynd

6. Mr Lynd is a trade mark attorney at Marks & Clerk and is POP's representative in this matter. The information he gives comes from his own knowledge, information from the Internet or information provided to him by POP. There are two main themes in the evidence: the first relates to the fame and reputation of POP's television programme called POP IDOL; the second relates to the non-distinctive/descriptive nature of the words FILM IDOL. The primary facts that emerge from the evidence are:

In relation to the POP IDOL television programme

The POP IDOL television programme was broadcast between 6th October 2001 and 9th February 2002. Evidence in exhibits MAL1 & 2 demonstrates that the show was very popular capturing large viewing numbers and large shares of the viewing audience.

The programme involves the audience voting for pop singers that appear on the programme, the singer with the least number of votes per week is eliminated until an overall winner emerges. The programme received large number of votes from the audience (32.2 million). The programme claimed the record for the highest telephone vote (9 million votes in 2 hours).

11,000 people auditioned to take part in the programme. The programme generated the largest ever web-chat, after one particular broadcast the web-chat

received 70,000 Internet hits. The programme won a number of awards: The Golden Globe of Montreux, a BAFTA and a TRIC award.

The winner of the programme was the artist Will Young who went on to sell a triple platinum album entitled *Evergreen*. The runner-up, Gareth Gates, went double platinum with his album *Unchained Melody*.

A book entitled POP IDOL was sold to accompany the programme, it sold over 100,000 copies making it a number one bestseller.

The programme received a huge amount of press coverage as demonstrated in MAL4. Most of this in the tabloid press, but some coverage is also provided in the broadsheets.

In relation to the words FILM IDOL

Evidence from various sources on the Internet (9 in total), all of which appear to be UK based, show use of the words FILM IDOL as a term used to describe a famous and/or iconic person from the world of film. For example, James Bond, Timothy Dalton, James Dean and Humphrey Bogart are referred to as film idols.

Second witness statement of Michael Arthur Lynd

7. Mr Lynd's second witness statement consists of an archive extract from FILM's website dated 27 May 2003 (nine months after the filing of the application). It shows that FILM IDOL is a film based talent search in which prospective cast members must audition and get through to finals with the successful individuals being cast in a film. A television documentary was/is to be filmed of the process.

DECISION

8. The grounds of opposition are varied as are the goods and services sought to be registered. From an initial examination of the case, there does not appear to be a single ground that will determine the opposition as a whole. I will therefore examine each ground in turn starting with what I consider to be POP's best case. To deal with matters as efficiently and succinctly as possible, I will not assess the merits of a particular ground of opposition in detail in relation to goods or services that I have already found to fall foul of another ground of opposition.

SECTION 5(4)(a) OF THE ACT

The legislation

9. Section 5(4)(a) of the Act reads:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

Case-law

10. The necessary elements that need to be present for a successful finding under this ground are: 1) goodwill, 2) misrepresentation and 3) damage. This is clear from two decisions of the House of Lords: *Erven Warnick BV v J Townshend & Sons (Hull) Ltd* [1980] R.P.C. 31 and *Reckitt & Colman Products Ltd v Borden Inc* [1990] R.P.C. 341. Lord Oliver summarised the position quite succinctly in the latter of these cases when he stated at page 406:

“The law of passing off can be summarised in one short general proposition--no man may pass off his goods as those of another. More specifically, it may be expressed in terms of the elements which the plaintiff in such an action has to prove in order to succeed. These are three in number. First he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff. ... Thirdly he must demonstrate that he suffers, or in a *quia timet* action that he is likely to suffer, damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff.”

Material date

11. Before determining the matter I must decide what the material date is in relation to POP's claim. A number of cases¹ have established that the material date is the date of the behaviour complained of. I also bear in mind that section 5(4)(a) is derived from article 4(4)(b) of First Council Directive 89/104 which states:

“(b) rights to a non-registered trade mark or to another sign used in the course of trade were acquired prior to the date of application for registration of the subsequent trade mark, or the date of the priority claimed for the application for registration of the subsequent trade mark and that non-registered trade mark or other sign confers on its proprietor the right to prohibit the use of a subsequent mark;”

12. On the basis of the above, the date complained of can be no later than the date on which FILM applied for their trade mark. It can however be before the date of application if there is such a complaint from POP together with appropriate evidence; there is neither. The behaviour complained of must therefore be the date of application of FILM's trade mark, namely, 15 August 2002. This is the material date against which POP's case will be judged.

Goodwill

13. The starting point is to consider whether POP possessed a goodwill on which they can rely at the material date. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at 223 as follows:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first.

14. The above statement was utilised by the Court of Appeal in *Phones 4u Ltd v Phone4u.co.uk Internet Ltd*, [2007] R.P.C. 5, so it still holds true today. I also note from the case-law that to qualify for protection under the tort, the goodwill must be of more than a trivial nature².

15. The evidence shows that POP were responsible for a high profile and successful national television programme broadcast between 6th October 2001 and 9th February 2002. The programme was in the nature of a talent competition in the field of popular music. The viewing figures are impressive to say the least. There is also a high degree of viewing audience participation by way of lodging votes by telephone and text message. The programme won a number of awards. There is also significant press coverage. The

¹ *Cadbury Schweppes Pty Ltd v Pub Squash Co Pty Ltd* [1981] R.P.C. 429 and *Inter Lotto (UK) Ltd v Camelot Group PLC* [2004] R.P.C. 8 and 9

² *Hart v Relentless Records* [2002] EWHC 1984

use of the sign POP IDOL forms the primary element of the attractive force of this business. The material date is 15th August 2002, although this is 6 months after the final programme in its run, I have little doubt that due to its success and popularity the goodwill still existed, and strongly so. **I therefore conclude that POP had a very strong goodwill associated with the sign POP IDOL at the material date.**

Misrepresentation

16. In relation to misrepresentation, Lord Oliver stated in *Reckitt & Colman v Borden* that:

“[The plaintiff] must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff. Whether the public is aware of the plaintiff’s identity as the manufacturer or supplier of the goods or services is immaterial, as long as they are identified with a particular source which is in fact the plaintiff. For example, if the public is accustomed to reply upon a particular brand name in purchasing goods of a particular description, it matters not at all that there is little or no public awareness of the identity of the proprietor of the brand name”

17. On the basis of the above, the question I must answer is whether the public would believe that the goods and services offered for sale under the FILM IDOL mark are the goods and services of POP? There are a number of factors to consider, particularly the closeness (or otherwise) of the respective signs, and the relationship between the goods and services sought to be registered with the nature of POP’s goodwill and the services to which this goodwill relates.

18. POP’s best chance of success must come in relation to their attack against FILM’s services listed in Class 41, specifically those that relate to entertainment. I note that the majority of the services covered in Class 41 of FILM’s specification are qualified as “all the aforesaid bearing information about or relating to talent competitions”. This means that the entertainment, be it in the form of a television programme or some other medium, relates to a talent competition. This is little different from POP’s core service, albeit, the evidence shows that POP’s use is limited to the medium of television. In relation to the respective signs, there are some clear visual, aural and conceptual qualities that are shared between the two, however, there is one point of difference in that one refers to film whereas the other refers to pop. Whilst the public is likely to recognise and appreciate this difference, I am of the view that due to the strong goodwill possessed by POP, the public is likely to believe that a talent competition marketed under the mark FILM IDOL is the responsibility of POP; in other words, FILM IDOL will be seen as an off-shoot or new venture brought to the public by the people responsible for POP IDOL. Therefore, at the narrowest end of the proposition, I am of the clear view that a misrepresentation will occur if FILM’s trade mark were put into use in relation to a television entertainment service.

19. I must also consider whether the other goods and services sought by FILM should be excluded from registration for similar reasons. Before considering the specifications in detail, I note that there is no requirement in passing-off for goods or services to be similar. However, in *Harrods Ltd v Harrodian School* [1996] RPC 697 Millett LJ stated:

“The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration.”

and

“The name "Harrods" may be universally recognised, but the business with which it is associated in the minds of the public is not all embracing. To be known to everyone is not to be known for everything.”

and

“It is not in my opinion sufficient to demonstrate that there must be a connection of some kind between the defendant and the plaintiff, if it is not a connection which would lead the public to suppose that the plaintiff has made himself responsible for the quality of the defendant’s goods or services.”

20. In relation to the remainder of FILM’s class 41 specification, I consider that any form of talent based entertainment service, regardless of the medium on which it is provided, would create a misrepresentation if offered under the FILM IDOL mark. The public would, I believe, consider that the makers of POP IDOL are responsible for it. FILM’s specification also covers education services about talent competitions. I have no submissions on how an education service can relate to a talent competition and have some difficulty in imagining what this service constitutes, nevertheless, on the face of it, if the training provided related to a talent competition, and if this was marketed under the FILM IDOL mark then, again, I consider that the public would well believe that this was all associated with a new venture from POP.

21. There are other services to consider in Class 41, namely: “organisation of competitions (entertainment and education); interactive telephone competitions; publishing; game shows”. I consider that the connection described by Millett J. operates for some of these. Game shows, although not specifically limited, could be similar in nature to talent competitions and hence this could cause confusion. I would make similar observations in relation to interactive telephone competitions on the basis that there is a clear link between POP’s goodwill and the use of telephonic voting. Organisation of competitions would also be seen to possess a similar connection. However, publishing, on the basis of a normal understanding of this term, relates to arranging for works of the written word to be published. I can see no real connection between this and POP’s television programme that would give rise to an assumption that FILM IDOL publishing services were the services of POP. No evidence has been provided to demonstrate any greater form of connection than I would otherwise have appreciated. **In summary, the**

use of FILM's trade mark in relation to the services in Class 41 (with the exception of publishing) will constitute a misrepresentation.

22. Similar considerations to Class 41 apply in relation to the Class 38 services. They all relate either to broadcasting services or to telephony. Although broadcasting is normally associated with the broadcast of multiple programmes and channels rather than specific programmes, it is quite feasible that a channel could be dedicated to a particular programme or related programmes, or, alternatively, it is also possible to offer a broadcast (over the Internet for example) of a particular programme. The public encountering FILM IDOL will therefore conclude that there is some form of connection with POP and their successful programme. Similar observations apply to telephony; as already discussed, telephonic interaction is a key feature of POP's programming and the close relationship and connection would result in the public believing that the telephonic service was something to do with POP. **Misrepresentation will occur for all the services in Class 38.**

23. In relation to the goods in Classes 18, 21, 24, 25 & 28 and the service in Class 35, I note that they all relate to various consumer goods and to the retailing of general merchandise. Whilst I accept that all these goods (and the service in respect of their sale) could relate to merchandising associated with an entertainment programme, there is nothing in the evidence to suggest that POP have merchandised on a significant scale. The inherent connection between these goods and services with POP's goodwill is therefore weaker. This, balanced against the degree of similarity between the signs, leads me to conclude that there are too many leaps required of me to be able to find in favour of POP. I am being asked to conclude that a consumer encountering, for example, an article of clothing or a game marketed under FILM IDOL will regard it as an item of merchandising relating to a yet to be broadcast off-shoot of POP IDOL; I can not comfortably make such a conclusion. **Misrepresentation will not occur in Classes 18, 21, 24, 25, 28 and 35 of the application.**

24. In relation to Class 16, there are essentially two sets of goods. Firstly there are those that are qualified as being about or relating to talent competitions such as promotional flyers, books, pamphlets etc; against this backdrop, and with the goods relating to talent competitions, I believe the public would, again, consider them to be connected with POP. However, the second set of goods covers various items such as stationery; for similar reasons given in relation to the goods in Classes 18, 21, 24, 25 & 28, I do not consider that a misrepresentation will occur. **Misrepresentation occurs for the qualified goods but not for the unqualified ones.**

25. Finally, in relation to Class 9 goods, there are also two sets of goods. Similar observations to those made in Class 16 apply here in that the various types of recorded media relating to talent competitions would, in my view, cause a misrepresentation to occur. But, I do not consider that misrepresentation would extend to the other goods which consist mainly of various pieces of apparatus; again, there is too great a leap to make when one balances the connection in trade with the similarity of the signs with the

nature of the goodwill. **Misrepresentation occurs for the qualified goods but not for the unqualified ones.**

Damage

26. Having made the above findings, I turn to consider the final element of passing-off, namely, damage. The question I must answer is whether the misrepresentations will result in damage to POP's business or goodwill? Damage is not limited to direct loss of sales. In *Bulmer (H P) Ltd v J Bollinger SA* [1978] R.P.C. 79 Buckley L.J. stated:

“It is well settled that the plaintiff in a passing-off action does not have to prove that he has actually suffered damage by loss of business or in any other way. A probability of damage is enough, but the actual or probable damage must be damage to him in his trade or business, that is to say, damage to the goodwill in respect of that trade or business.”

27. If FILM's mark were put into use, POP is unlikely to have direct loss of sales through diversion of trade. However, damage to goodwill in respect of the trade or business must also be considered. I can see two areas where damage of this broader nature may occur. Firstly, damage could occur in relation to POP's loss of opportunity to expand their field of programming to a variation on the POP IDOL theme. Secondly, damage could occur if the goods and services offered by FILM were of a lower quality to POP and thus injured POP's goodwill by diminishing its subsequent attractive force; for example, if FILM IDOL was not as entertaining or was only enjoyed by a smaller target audience (as opposed to the large scale enjoyment of POP IDOL) then POP's subsequent programming could suffer through this. **Damage to POP's trade and business is likely to be caused.**

Conclusions under section 5(4)(a)

28. Taking all my findings into account, this ground of opposition succeeds in relation to the following goods and services:

Class 9: Cinematographic films, electronic books and publications, multi-media discs recordings and publications; digital recordings, holograms, floppy discs, compact discs (CDs), records, audio tapes, video tapes, laser discs, CD ROMs; digital video discs (DVDs); (all of the aforesaid bearing information about or relating to talent competitions)

Class 16: Printed matter; books, annuals, publications, comic books, magazines, newsletters, newspapers, albums, periodicals, pamphlets, leaflets, book marks, (all of the aforesaid bearing information about or relating to talent competitions);

Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting; communications by telephone; interactive telephone services; communication services by means of

radio waves, telephones, the Internet, the World Wide Web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes; telephony for entertainment purposes; (all of the aforesaid bearing information about or relating to talent competitions).

Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education and entertainment by or relating to television and radio; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, the World Wide Web and the Internet; organisation of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs and radio entertainment; television entertainments services involving telegraphic audience participation; (all the aforesaid bearing information about or relating to talent competitions); organisation of competitions (education or entertainment); interactive telephone competitions; game shows.

SECTION 5(2)(b) OF THE ACT

29. I have already found that a large part of FILM's goods and services should not be registered. Do the remaining goods and services fall foul of section 5(2)(b) of the Act?

POP's earlier trade marks

30. Under this ground of opposition POP relies on the following trade marks (full details of the earlier marks can be found in the annex to this decision):

UK Registration 2277479 in Classes 9, 16, 25, 30, 35 & 38	POP IDOL	Filed: 9 August 2001 Registered: 9 th July 2004
CTM ³ Registration 2624591 in Classes 9 & 38	POP IDOL	Filed: 20 th March 2002 Registered: 3 rd November 2005
UK Registration 2298224A in Classes 9, 16, 25, 28, 35, 38 & 41	IDOLS	Filed: 17 th April 2002 Registered: 31 st January 2003
UK Registration 2298224B in Classes 9, 16, 25, 28, 35, 38 & 41		Filed: 17 th April 2002 Registered: 7 March 2003
CTM Registration 2656205 in Classes 9, 38 & 41	IDOLS	Filed: 16 th April 2002 Registered: 30 th October 2003

The legislation and case-law

31. Section 5(2)(b) of the Act states:

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

(a)

(b) it is similar to an earlier trade mark and it 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.”

32. 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 –

³ Community Trade Mark

(a) a registered trade mark, international trade mark (UK), 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.”

33. Of potential relevance to a ground of opposition under section 5(2)(b) are the provisions that relate to proof of use. Section 6A(1) details the circumstances where these provisions apply:

“6A Raising of relative grounds in opposition proceedings in case of non-use

(1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.”

34. FILM’s trade mark was applied for on 15 August 2002. All of POP’s trade marks were filed before this date and therefore all count as earlier trade marks as defined in section 6(1) of the Act. In relation to the proof of use requirements, FILM’s trade mark was published on 21 October 2005; none of POP’s earlier marks had been registered for five years or more at this date. **Therefore, the proof of use provisions do not apply and, as a consequence, all of the goods and services covered by POP’s trade marks must be taken into account.**

35. When reaching my decision I have taken into account the helpful guidance provided by the European Court of Justice (“ECJ”) in a number of judgments relating to Article 7(2) of the Directive (Section 5(2) as incorporated into the Act), notably in: *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. 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) 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;

(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*, paragraph 24;

(g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG*, paragraph 26;

(h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG + Adidas Benelux BV*, paragraph 41;

(i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 29.

Relevant public and the purchasing act

36. As matters must be judged through the eyes of the average or relevant consumer (*Sabel BV v. Puma AG*, paragraph 23) it is important that I assess who this is. There are various goods and services involved. Most relate to what I would describe as general consumer items/services and will be purchased by the general public. These are not goods and services that will be purchased or utilised with the highest degree of attention or consideration but, as with most goods and services, this does not mean that the purchasing act will be undertaken without any thought or consideration. Although this is a fairly broad brush analysis I will, of course, identify any departures from this general rule should I need to do so.

Similarity of trade marks

37. When assessing this factor I must do so with reference to the visual, aural and conceptual similarities between the respective trade marks bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23). Of POP's five

earlier marks relied on, two represent the widest form of protection: 2277479 for the mark POP IDOL & 2298224A for the mark IDOLS; I will consider POP's position from the perspective of these. For ease of reference, the respective trade marks are:

<u>Applicant's trade mark</u>	<u>Opponent's trade marks</u>
FILM IDOL	1) POP IDOL 2) IDOLS

Comparison with the POP IDOL mark

38. From a visual point of view, there is a shared element between the trade marks that is likely to be noticed by the eye, namely, the word IDOL. This word does not however dominate the overall impact of either mark to the extent that the other element in each of them is negligible – indeed, both elements in each mark have the same visual degree of impact with neither standing out more than the other. There is no visual similarity between the words FILM and POP, however, in the context of the marks as a whole and the overall visual impressions they create, the fact that both the words FILM and POP are relatively short words and that both are followed by the word IDOL does give them a similar visual construction.

39. Similar observations apply in relation to aural similarity. Although there are differences in overall pronunciation due to the differing elements FILM and POP, there is still a similar phonetic structure and some similarity from an aural point of view in relation to the shared element IDOL. Again, neither word in each mark dominates the aural impression.

40. In relation to conceptual similarities, I note POP's submissions (although made in the context of the ground under section 5(3) of the Act) that FILM have adopted the same formulation as POP. I agree. The word FILM and POP in the respective marks serve a qualifying purpose designating the type of IDOL concerned. The only difference between the marks on a conceptual level is the field to which the idol relates, one being an idol in the world of film the other in the world of pop. Whilst this renders the marks non-identical from a conceptual point of view, it does not make them dissonant. There is therefore conceptual similarity. **On the basis of the above analysis, I consider the marks to be reasonably similar.**

Comparison with the IDOLS mark

41. Following on from the above comparisons, there is still some similarity due to the common presence of the word IDOL in both marks. Although the structural symmetry of the marks as whole is lessened and although the conceptual similarity is perhaps not as strong (although they are still not dissonant in concept) **there is still some similarity.**

Similarity of goods/services

42. All relevant factors relating to the goods and services in the respective specifications should be taken into account in determining this issue. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the ECJ stated at paragraph 23:

‘In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.’

43. Other factors may also be taken into account such as, for example, the distribution channels of the goods concerned (see, for example, paragraph 53 of the judgment of the Court of First Instance (CFI) in Case T-164/03 *Ampafrance v OHIM – Johnson & Johnson (monBeBé)*).

Comparison with the POP IDOL mark

FILM’s Class 9 goods

44. FILM’s remaining goods in this class are:

Class 9 - Animated cartoons; sound, video and data recording and reproducing instruments and apparatus; audio-visual teaching apparatus; electronic games; electrical and video amusement apparatus and instruments; slot machines and gaming devices; parts and fittings for all the aforesaid goods.”

45. POP’s specification covers:

Class 9: Audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; amusement apparatus adapted for use with television receivers, in the nature of karaoke apparatus; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; electrical and video amusement apparatus and instruments, in the nature of karaoke apparatus; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; floppy disks; recording disks; slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; parts and fittings for all the aforesaid goods.

46. FILM’s goods, with the exception of “animated cartoons”, are listed in virtually identical terminology to terms within POP’s specification. I can however see nothing identical or even broadly similar to the term animated cartoons. **With the exception of animated cartoons, the rest of FILM’s goods are identical to those of POP.**

FILM's Class 16 goods

47. FILM's remaining goods in this class are:

Stationery, labels, tags, gift wrap, gift wrap cards, paper party goods and decorations, greetings cards, printing sets, pencil top ornaments (not in the nature of figurines); paper, cardboard, cardboard articles, catalogues, instrumental and teaching materials in the form of games, apparatus and instruments, rulers, erasers, writing instruments, pens, pencils, paintbrushes, parts and fittings for all the aforesaid goods.

48. POP's specification covers:

Paper; cardboard; cardboard articles; maps; stationery; office requisites; drawing and painting materials, apparatus and instruments; writing instruments; instructional and teaching materials; book binding materials; book covers; printing sets; pens; pencils; pencil top ornaments; paints; paintbrushes; paint kits; gift boxes; paper napkins and other decorative paper items; paper party goods and paper party decorations; rulers; erasers; parts and fittings for all the aforesaid goods.

49. POP's specification includes broad terms such as cardboard articles, stationery, paper party goods and instructional and teaching material. Most of FILM's goods would fall within the ambit of these broad terms and must therefore be considered identical⁴. The only goods that require detailed consideration are "catalogues". I cannot see that a catalogue falls within the ambit of any of POP's broad terms. The only printed matter of a potentially relevant nature covered by POP's specification are maps and book covers. These, in my view, are specific items with little similarity to a catalogue. **Therefore, with the exception of catalogues, the rest of FILM's goods are identical to those of POP**

FILM's Class 18 goods

50. FILM's goods cover:

Travelling bags; holdalls; school bags; shopping bags; rucksacks; tote bags; articles of luggage; wallets; handbags; pouches; purses; brief cases; umbrellas.

51. POP does not have any goods that fall in Class 18. They do however have goods in Class 25 covering clothing at large, goods in Class 28 covering sporting articles and services in Class 35 covering the retail sale of general merchandise.

52. In relation to any potential clash between FILM's Class 18 goods and POP's clothing in Class 25, it has been held by the CFI⁵ that there is some similarity, based primarily on complementary uses and (to a lesser extent) distribution channels, between

⁴ See to that effect the judgment in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T-133/05.

⁵ The Court of First Instance of the European Communities – a court of binding precedent.

certain leather goods in Class 18 and clothing in Class 25. In *El Corte Inglés SA v OHIM* the CFI stated:

“45. On the other hand, as regards the first group of goods in class 18, namely leather and imitation leather goods not included in other classes such as, for example, handbags, purses or wallets, it should be noted that those goods are often sold with goods in class 25 at points of sale in both major retail establishments and more specialised shops. That is a factor which must be taken into account in assessing the similarity of those goods.

46. It must be recalled that the Court has also confirmed the existence of a slight similarity between ‘ladies’ bags’ and ‘ladies’ shoes’ (*SISSI ROSSI*, paragraph 42 above, paragraph 68). That finding must be extended to the relationships between all the goods in class 25 designated by the mark applied for and the leather and imitation leather goods not included in other classes, in class 18, designated by the earlier mark.

47. In light of the foregoing, it must be held that there is a slight similarity between the goods in class 25 and the first group of goods in class 18. Consequently, the Board of Appeal could not conclude that there was no likelihood of confusion on the part of the relevant public solely on the basis of a comparison of the goods concerned.

48. As to whether clothing, footwear and headgear in class 25 are complementary to ‘leather and imitations of leather, and goods made of these materials and not included in other classes’ in class 18, it must be recalled that, according to the case-law, 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 the production of those goods lies with the same undertaking (*SISSI ROSSI*, paragraph 42 above, paragraph 60).

49. Goods such as shoes, clothing, hats or handbags may, in addition to their basic function, have a common aesthetic function by jointly contributing to the external image (‘look’) of the consumer concerned.

50. The perception of the connections between them must therefore be assessed by taking account of any attempt at coordinating presentation of that look, that is to say coordination of its various components at the design stage or when they are purchased. That coordination may exist in particular between clothing, footwear and headgear in class 25 and the various clothing accessories which complement them such as handbags in class 18. Any such coordination depends on the consumer concerned, the type of activity for which that look is put together (work, sport or leisure in particular), or the marketing strategies of the businesses in the sector. Furthermore, the fact that

the goods are often sold in the same specialist sales outlets is likely to facilitate the perception by the relevant consumer of the close connections between them and strengthen the perception that the same undertaking is responsible for the production of those goods.”

51. It is clear that some consumers may perceive a close connection between clothing, footwear and headgear in class 25 and certain ‘leather and imitations of leather, and goods made of these materials and not included in other classes’ in class 18 which are clothing accessories, and that they may therefore be led to believe that the same undertaking is responsible for the production of those goods. Therefore, the goods designated by the mark applied for in class 25 show a degree of similarity with the clothing accessories included in ‘leather and imitations of leather, and goods made of these materials and not included in other classes’ in class 18 which cannot be classified as slight.”

53. On the basis of the above, I must therefore find that the applicant’s wallets, handbags and purses are similar to clothing in Class 25. I would extend this to include the term “tote bags” which the dictionary⁶ informs me is a “large roomy handbag or shopping bag” thus, the complementary and/or distribution channel link is present here. However, absent evidence to the contrary, the other goods in Class 18 do not strike me as having an obvious complementary/distribution channel link with articles of clothing.

54. In relation to the potential clash with Class 28, the term sporting articles would cover bags that have been adapted for carrying sporting articles and therefore there is some similarity in nature, intended purpose and use with sports style bags (holdalls are often sporting in nature) even though they have not been specifically adapted to carry a particular sporting article.

55. In relation to the potential clash with the Class 35 service I note that POP’s specification does not list any specific goods being retailed. The specification does, however, refer to the retailing being provided via general merchandise catalogues, websites etc. An issue arises from this when taking into account the judgment of the ECJ in *Praktiker Bau- und Heimwerkermärkte AG* (“*Praktiker*”) (Case 418/02): where it was stated:

“50 However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings (see paragraph 11 of this judgment).

51 Such details will make it easier to apply Articles 4(1) and 5(1) of the directive without appreciably limiting the protection afforded to the trade mark. They will also make it easier to apply Article 12(1) of the directive, which states that ‘[a] trade mark shall be liable to revocation if, within a continuous period of five years,

⁶ Collins English Dictionary – 5th Edition

it has not been put to genuine use in the Member State in connection with the services in respect of which it is registered, and there are no proper reasons for non-use’.

52 The answer to the first two questions referred for a preliminary ruling must therefore be that the concept of ‘services’ referred to by the directive, in particular in Article 2, covers services provided in connection with retail trade in goods.

For the purposes of registration of a trade mark for such services, it is not necessary to specify the actual service(s) in question. However, details must be provided with regard to the goods or types of goods to which those services relate.”

56. Also, in his opinion in the *Praktiker* proceedings Advocate-General Leger stated:

“81. The description of the goods or kinds of goods to which the services provided in connection with the retail sale of goods apply could, in my opinion, take the form of a list of the goods or a statement of the sector of activity concerned or the type of shop in which the services are provided, where the wording clearly refers to a particular type of goods, such as sports clothing or a furniture shop. On the other hand, a mere reference to services supplied in a ‘department store’ or ‘in a supermarket’, which may be appropriate for specifying the context in which the services in question are supplied, does not seem to me sufficient for ascertaining the products to which the services apply, in view of the great diversity of the goods which may be sold in outlets of that kind. In the case of retailing in department stores, the difficulty which may arise in listing the different types of goods sold because of their number does not seem to me a sufficient reason for waiving this requirement of specification.”

57. The specification does not, in my view, meet the requirements laid down by the ECJ in *Praktiker*. Although the specification refers to “general merchandise” in the context in which the services are supplied, this does not strike me as an indication of the goods or type of goods being retailed; it is far too vague a term for this purpose. It is also no better than the “supermarket” example given by the Advocate-General. Although the earlier mark was registered and its specification drafted prior to the ECJ giving its judgment in *Praktiker*, this does not make it any more compliant. I also note that no request has been made to revise the specification to make it so compliant.

58. Even if the inclusion of the words “general merchandise” was sufficient to meet the *Praktiker* requirements, the range and variety of goods that could fall within this description is so great that the retailer would be seen as operating in the sale of non-specialist goods (e.g. as a general trader or merchandiser). In those circumstances it is unlikely that the consumer would make any form of association between that and between goods branded with an identical or closely similar mark. The combination of these factors leads me to conclude that POP’s Class 35 specification should not be regarded as similar to anything within FILM’s Class 18 specification.

59. Therefore, on the basis of all of the above, holdalls, tote bags, handbags, purses and wallets are similar to goods covered by POP's earlier mark (particularly clothing and sporting articles) but travelling bags, school bags, shopping bags, rucksacks, articles of luggage, pouches, brief cases and umbrellas are not similar to any goods or services covered by POP's earlier mark.

FILM's Class 21 goods

60. FILM's goods cover:

Small domestic utensils and containers; glassware; porcelain; earthenware; tableware.

61. POP does not have any goods that fall in Class 21. I have no submissions on which goods in POP's earlier mark are similar to FILM's Class 21 goods. I can see nothing obvious myself. POP's Class 35 specification does not assist for the reasons given in relation to Class 18. **Therefore, these goods are not similar to those of POP.**

FILM's Class 24 goods

62. FILM's goods cover:

Class 24: Textile goods; bedcovers; quilts; blankets; table linen; pennants; badges; handkerchiefs; tea towels; towels.

63. POP does not have any goods that fall in Class 24. I have no submissions on which goods in POP's earlier mark are similar to FILM's Class 24 goods. I can see nothing obvious myself. POP's Class 35 specification does not assist for the reasons given in relation to Class 18. **Therefore, these goods are not similar to those of POP.**

FILM's Class 25 goods

64. FILM's goods cover:

Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).

65. POP's specification covers:

Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).

66. POP's earlier mark includes all items of clothing, footwear and headgear. **Identical goods are therefore involved here.**

FILM's Class 28 goods

67. FILM's goods cover:

Class 28: Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods.

68. POP's specification covers:

Class 28: Gymnastic and sporting articles; teddy bears; dolls' clothing; games, toys, electronic toys and electronic games; parts, fittings and accessories for all the aforesaid goods.

69. As can be seen, POP's goods in this class cover similar broad terminology to FILM's goods. **The goods involved are therefore identical.**

FILM's Class 35 services

70. FILM's services cover:

Class 35: The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; and to purchase those goods by mail order; advertising services.

71. POP's specification covers:

Class 35: The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; the bringing together, for the benefit of others, of a variety of images of, or descriptions of, general merchandise, thereby to enable customers conveniently to view and to purchase that merchandise on-line; the bringing together in a general merchandise catalogue for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods by mail order; advertising services

72. The relevant terms in POP's Class 35 specification are worded in almost identical terminology. **The services involved are therefore identical.**

FILM's Class 41 service

73. FILM's remaining service in this class is "publishing". POP do not have any services in Class 41. No submissions have been received to identify what goods or services in POP's mark conflict with publishing. The only potential conflicting goods that I can see would be the forms of printed matter in Class 16. POP's specification covers goods such as book covers and maps. This does not strike me as a particularly strong aspect of similarity, but there is, nonetheless, some connection albeit, **this equates to any similarity being on the low side.**

Comparison with the IDOLS mark

74. The position is virtually identical when comparing FILM's goods and services and the goods and services covered by POP's IDOLS mark. The only difference is that this earlier mark covers animated cartoons in Class 9, printed matter in Class 16 and publishing in Class 41. The consequence of this is that FILM's animated cartoons in Class 9, catalogues in Class 16 and publishing in Class 41 are identical to goods and services covered by the IDOLS mark in addition to those outlined in the analysis for the POP IDOL mark.

75. For sake of clarity, I should add at this stage that in view of the above, the following goods are not similar or identical to any of POP's goods or services. The consequence of this is that these goods cannot be prevented from achieving registration under this ground of opposition:

“Travelling bags, school bags, shopping bags, rucksacks, articles of luggage, pouches, brief cases and umbrellas.

All goods covered in Classes 21 & 24.”

Distinctiveness of the earlier trade marks

76. The distinctiveness of the earlier marks is another important factor to consider because the more distinctive (based either on inherent qualities or because of use made) an earlier mark, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 23). Neither POP IDOL nor IDOLS strikes me as a highly distinctive trade mark from an inherent point of view. They do not consist of invented words and do not appear to be highly fanciful or unusual for the goods and services concerned. Neither can the marks rely on any form of enhanced distinctiveness. There are two primary reasons for this: firstly, because the POP IDOL mark relied on under this ground of opposition does not cover Class 41 which is where the core service of television entertainment would fall; secondly, because in respect of the IDOLS mark, there is little evidence to support the proposition that the POP IDOL programme is abbreviated in use or recognition to IDOLS.

77. On the basis of the above, I am left with the view that the marks allude to the goods and services, on the basis that they may give the user (in respect of bags, clothing etc) the feel of a pop star, or perhaps that they are themed on the world of pop. The IDOLS mark is less specific in that the nature of the idol is not given, but still, this does not make for a highly distinctive trade mark. **In summary, POP IDOL is a mark of low distinctiveness; IDOLS is a mark of average distinctiveness.**

Likelihood of confusion

78. In my view, the degree and the nature of similarity between FILM IDOL and POP IDOL is such that one could easily be seen as a variation on the theme of the other and therefore the relevant consumer could well regard the goods sold under the respective trade marks to come from an economically linked undertaking; this is a relevant form of confusion to take into account (see *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 29). I am conscious that many of the goods in question are identical and, in this respect, my conclusion is that the relevant consumer will make an association between the marks that would lead to them being confused as outlined above. In respect of the goods that are only similar (holdalls, handbags etc) then, in my view, the link between the respective goods is strong enough, taking into account the degree and nature of the similarity between the marks, for the relevant consumer to also be confused here. This does not, however, extend to publishing services because here I consider the link between the respective goods and services to not be strong enough, bearing in mind the respective marks, to lead to confusion.

79. POP's position on the basis of the IDOLS mark must also be considered from the perspective of the goods/services covered by this earlier mark that were not covered by the POP IDOL mark, namely, the clash with FILM's animated cartoons in Class 9 and catalogues in Class 16 and, due to publishing not being excluded by virtue of the conflict with the POP IDOL mark, publishing services in Class 41. The analysis here is similar, and, although I have found the similarity between the marks to not be as strong as between FILM IDOL and POP IDOL, I am conscious that I have found the IDOLS mark to be more distinctive and, further, that identical goods and services are involved. In my view, this seems to be the sort of case where due to the point of difference between the marks (the word FILM) being a qualifying term, then there is likely, based on the principle of imperfect recollection (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27) to be confusion on the part of the relevant consumer in relation to the goods and services under consideration.

Conclusions under Section 5(2)(b)

80. The ground of opposition succeeds in respect of the following goods and services:

Class 9 - Animated cartoons; sound, video and data recording and reproducing instruments and apparatus; audio-visual teaching apparatus; electronic games; electrical and video amusement apparatus and instruments; slot machines and gaming devices; parts and fittings for all the aforesaid goods."

Class 16 - Stationery, labels, tags, gift wrap, gift wrap cards, paper party goods and decorations, greetings cards, printing sets, pencil top ornaments (not in the nature of figurines); paper, cardboard, cardboard articles, catalogues, instrumental and teaching materials in the form of games, apparatus and instruments, rulers, erasers, writing instruments, pens, pencils, paintbrushes, parts and fittings for all the aforesaid goods.

Class 18 – Holdalls, tote bags, wallets, handbags, purses.

Class 25 - Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).

Class 28 - Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods.

Class 35 - The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; and to purchase those goods by mail order; advertising services.

Class 41 – Publishing.

SECTION 5(3) OF THE ACT

81. The only goods not yet excluded from registration are:

Class 18 - Travelling bags, school bags, shopping bags, rucksacks, articles of luggage, pouches, brief cases and umbrellas.

All goods covered in Classes 21 & 24.

82. Under this ground I will focus on the above goods but in doing so I will inevitably comment on some of the other goods and services even though I have already found them to be excluded from registration under other grounds of opposition.

POP's earlier trade marks

83. Under this ground POP relies on the following trade marks (full details of the earlier marks can be found in the annex to this decision):

UK Registration 2277463 in Classes 9, 16, 25, 28, 30, 35, 38 & 41		Filed: 9 August 2001 Registered: 13 th September 2002
UK Registration 2277479 in Classes 9, 16, 25, 28, 30, 35 & 38	POP IDOL	Filed: 9 August 2001 Registered: 9 th July 2004
CTM Registration 2624591 in Classes 9 & 38	POP IDOL	Filed: 20 th March 2002 Registered: 3 rd November 2005

The legislation and case-law

84. Section 5(3)⁷ of the Act reads:

“5-(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of Community trade mark or

⁷ As amended by The Trade Marks (Proof of Use, etc) Regulations 2004 (SI 2004 No. 946) giving effect to the judgments of the ECJ in *Davidoff & Cie SA and Zino Davidoff SA v Gofkid Ltd* (C- 292/00) and *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd* (C-408/01)

international trade mark (EC) in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

85. The scope of Section 5(3) has been considered in a number of cases notably *General Motors Corp v Yplon SA (Chevy)* [1999] ETMR 122 and [2000] R.P.C. 572, *Premier Brands UK Limited v Typhoon Europe Limited (Typhoon)* [2000] R.P.C. 767, *Daimler Chrysler v Alavi (Merc)* [2001] R.P.C. 42, C.A. *Sheimer (M) Sdn Bhd's TM Application (Visa)* [2000] R.P.C. 484, *Valucci Designs Ltd v IPC Magazines (Loaded)* O/455/00, *Mastercard International Inc and Hitachi Credit (UK) Plc* [2004] EWHC 1623 (Ch), *Electrocoin Automatics Limited and Coinworld Limited and others* [2005] FSR 7 and *Davidoff & Cie SA v Gofkid Ltd (Davidoff)* [2003] ETMR 42, *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd (Adidas-Salomon)* (C-408/01) .

86. The points that come out of these cases are as follows:

a) “Reputation” for the purposes of Section 5(3) means that the earlier trade mark is known by a significant part of the public concerned by the products and services covered by that trade mark (paragraph 26 of the ECJ’s judgement in *Chevy*);

b) Protection is available where the respective goods or services are similar or not similar (paragraph 29 of the Advocate General’s opinion in *Chevy* and *Davidoff*);

c) The provision is not intended to give marks “an unduly extensive protection” – there must be actual detriment or unfair advantage (not merely risks) which must be substantiated to the satisfaction of the national court or tribunal (paragraph 43 of the Advocate General’s opinion in *Chevy* and paragraph 88 of Pumfrey J’s judgment in the *Merc* case);

d) The provision is not aimed at every sign whose use may stimulate the relevant public to recall a trade mark which enjoys a reputation with them (per Neuberger J in the *Typhoon* case);

e) The stronger the earlier mark’s distinctive character and reputation the easier it will be to accept that detriment has been caused to it (paragraph 30 of the ECJ’s judgment in the *Chevy* case);

f) Confusion as to the trade source of the goods or services offered for sale under the later mark is not a necessary condition before there can be detriment; but is one form of detriment (paragraph 88 of Pumfrey J’s judgment in the *Merc* Case);

g) It is not conditional for a finding that there exists a likelihood of confusion; it is sufficient for the degree of similarity between a mark with a reputation and the applied for mark to have the effect that the relevant consumer establishes a link between the marks (paragraph 31 of the ECJ’s judgment in *Adidas-Salomon*);

h) Detriment can take the form of either making the earlier mark less attractive (tarnishing) or less distinctive (blurring) (paragraph 88 of Pumfrey J's judgment in the *Merc* Case);

i) Unfair advantage can take the form of feeding on the fame of the earlier mark in order to substantially increase the marketability of the goods or services offered under the later trade mark (per G Hobbs QC in *Visa* at page 505. lines 10-17).

87. I also note the following comment from Mr Geoffrey Hobbs Q.C. (sitting as a Deputy Judge) in *Electrocoin Automatics Limited and Coinworld Limited and Others* [2005] FSR 7:

“102. I think it is clear that in order to be productive of advantage or detriment of the kind prescribed, ‘the link’ established in the minds of people in the market place needs to have an effect on their economic behaviour. The presence in the market place of marks and signs which call each other to mind is not, of itself, sufficient for that purpose.”

Reputation

88. In relation to this ground, POP's best chance of success must come in relation to earlier mark 2277463 given that this is the only mark relied on which covers the service of television entertainment which, on the face of it, is where any reputation will lie. The evidence is strong here and I have little hesitation in concluding that a significant proportion of the relevant public would have known of the POP IDOL television programme at the date on which FILM's mark was filed. Some caution should be exercised because the mark relied on is a stylised version of the words POP IDOL, however, given that the mark's dominant element are the words themselves and given the strength of the reputation and also given the fact that some of the evidence (including some of the many press articles) use the stylised form, then this is of little significance. **The earlier trade mark has a reputation associated with their well known television programme.**

The required link

89. Taking the above case law into account, the relevant consumer must make a link between the respective marks, bearing in mind the respective services, which has an effect on their economic behaviour. I would have little doubt that when assessing FILM's mark in relation to the service of entertainment (or to goods closely allied to this, DVD's etc) that the consumer would make a link between the respective marks. To this extent, I can easily see that FILM's prospective use of their mark will take unfair advantage of POP's goodwill and reputation. I have already found that the use by FILM of their trade mark in respect of entertainment will result in the relevant public believing this service to be the service of POP, given this finding, it is clear that FILM will benefit from POP's immense reputation. However, the question I must move on to is whether this finding would extend to the remaining goods under consideration, namely, the remaining goods in Class 18 and all the goods specified in Classes 21 & 24?

90. When balancing the respective factors, it is my view that the required link is not present in respect of these remaining goods. I consider the relevant consumer (even those who know of the POP IDOL television programme) will regard the mark as an allusion to a property of the goods themselves rather than forming any real link with the POP IDOL television programme. I doubt even if the POP IDOL programme will even be brought to mind. **This ground of opposition does not improve POP's position for the remaining goods.**

SECTION 56 OF THE ACT

91. POP explains in correspondence that this ground of opposition does nothing more than to substantiate the earlier rights and marks relied on. **Given this, this ground of opposition does not improve POP's case and I shall say no more about it.**

SECTION 3(1) OF THE ACT

92. POP's claims relate to sections 3(1)(a), (b), (c) and (d) of the Act. I will set the section 3(1)(d) objection to one side and return to it later. In relation to the grounds under sections 3(1)(a), (b) and (c), the claims are made on the basis that the phrase FILM IDOL is a recognised descriptive term. Although each of these grounds has full and independent scope⁸, I am conscious that if POP is saying that the mark FILM IDOL lacks any capacity to distinguish (3(1)(a)) and is devoid of distinctiveness (3(1)(b)) because it is descriptive (3(1)(c)), then the primary ground to consider is section 3(1)(c) itself. If POP cannot succeed in relation to 3(1)(c) then there is no separate and independent claim under sections 3(1)(a) and (b).

Section 3(1)(c)

Legislation and case-law

93. Section 3(1)(c) states that the following shall not be registered:

“trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering services, or other characteristics of goods or services”

94. The ECJ has dealt with the purpose and scope of section 3(1)(c) many times. A helpful summary of the position was given in *Wm. Wrigley Jr. Company v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case - 191/01 P, where it was stated⁹:

“29. Article 7(1)(c) of Regulation No 40/94 provides that trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographic origin, time of production of the goods or rendering of the service, or other characteristics of the goods or service are not to be registered.

30. Accordingly, signs and indications which may serve in trade to designate the characteristics of the goods or service in respect of which registration is sought are, by virtue of Regulation No 40/94, deemed incapable, by their very nature, of fulfilling the indication-of-origin function of the trade mark, without prejudice to the possibility of their acquiring distinctive character through use under article 7(3) of Regulation No 40/94.

31. By prohibiting the registration as Community trade marks of such signs and indications, Article 7(1)(c) of Regulation No 40/94 pursues an aim which is in the

⁸ See, for example, the decision of the High Court in *Have A Break* [2002] EWHC 2533 (Ch).

⁹ The judgment was in relation to the analogous provision of Article 7(1)(c) of Council Regulation 40/94 (the Community Trade Mark Regulation).

public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see, inter alia, in relation to the identical provisions of Article 3(1)(c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of Member States relating to trade marks (OJ 1989 L 40, p. 1), *Windsurfing Chiemsee*, paragraph 25, and Joined Cases C-53/01 to C-55/01 *Linde and Others* [2003] ECR I-3161, paragraph 73).

32. In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned.”

Application of law to the facts

95. The question to answer is whether the words FILM IDOL could be used for the purpose of describing a characteristic of the goods sought? Although the ground of opposition is raised against the application as a whole, POP's submissions focus on goods such as books, DVDs and television programmes. However, there are two reasons why I do not intend to delve into this ground in relation to these goods and services in any great detail. Firstly, I have already found that these goods should not be registered in view of my findings under other grounds of opposition. Secondly, these goods are all clearly limited to goods and services bearing information about or relating to talent competitions. The effect of this is that the phrase FILM IDOL is therefore unlikely to be the sort of language utilised by others as a description of the subject matter of books, DVDs or television programmes that relate to talent competitions. The objection may have succeeded in relation to unqualified goods as this would cover programmes in the nature of biographies or documentaries about film idols. The consequence of this is that in relation to the qualified goods the mark moves away from being a descriptor to one that is merely suggestive in that the talent competition may have a film based theme.

96. I therefore move on to consider the only goods that remain in the application, namely:

Class 18 - Travelling bags, school bags, shopping bags, rucksacks, articles of luggage, pouches, brief cases and umbrellas.

All goods covered in Classes 21 & 24.

97. POP has filed evidence to show that FILM IDOL is a known phrase relating to a person or character from the world of film. The evidence relates to use of the phrase in a journalistic sense rather than in a trading sense. Taken in the context of the dictionary definition of the word “idol”¹⁰, the phrase as a whole relates to a revered, admired and much loved person from the world of film. POP suggests that the descriptive quality inherent in the phrase lends itself to describing the subject matter of certain goods. However, POP has filed no evidence to establish that any of the goods, let alone those that I am considering here, are commonly based on particular subject matters. Whilst I would have been prepared to accept that goods such as books, DVDs and television programmes are, as a matter of general knowledge, based on particular subjects, in the absence of any evidence, I am not prepared to accept that this is the case in relation to the remaining goods in Class 18 and all of the goods covered by Classes 21 & 24.

98. In conclusion, the section 3(1)(c) ground, and by extension the section 3(1) (a) and (b) grounds, do not take POP’s case any further forward.

Section 3(1)(d)

The legislation

99. Section 3(1)(d) states that the following shall not be registered:

“trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade”.

Application of law to the facts

100. As highlighted above, the only evidence filed by POP relates to articles on various Internet web-site where the phrase FILM IDOL is used in a journalistic sense. However, the legislation stresses that what needs to be demonstrated is that the sign has become customary in the current language or in the *bona fide* and established practices of the trade. The reference to “the trade” relates to the trade in the goods and services sought to be registered. There is certainly no evidence to show that FILM IDOL is used in relation to the trade of the remaining goods, indeed, I would have also found that the evidence fails to show that FILM IDOL is used in the trade for any of the goods and services sought. **This ground of opposition fails completely.**

Conclusions under section 3(1)

101. None of the grounds under section 3(1) take POP’s case, in respect of the remaining goods, any further forward.

¹⁰ Collins English Dictionary – 5th Edition.

SECTION 3(3)(b)

The legislation and case-law

102. Section 3(3)(b) prevents the registration of trade marks that are:

“of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods of service”

103. Section 3(3)(b) of the Act derives directly from article 3(1)(g) of First Council Directive 89/104 of December 21, 1988 (the Directive). In *Elizabeth Florence Emanuel v Continental Shelf 128 Ltd* Case C-259/04 the European Court of Justice (ECJ) held:

“47 Nevertheless, the circumstances for refusing registration referred to in Article 3(1)(g) of Directive 89/104 presuppose the existence of actual deceit or a sufficiently serious risk that the consumer will be deceived (Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 41).”

Application of law to the facts

104. In relation to the remaining goods, these cover items such as luggage, household articles and textile based goods. A consumer encountering these types of items is unlikely, in my view, to take any specific form of promise from the mark with regard to the make-up of the goods such that deception will arise. The words are not, in my view, precise enough to lead to deception. I am also conscious that these sorts of goods are likely to be purchased on the basis of what they look like and that they will be examined accordingly. Therefore, even if the words were closer in nature to a particular promise, any deception will not survive the purchasing act. If I had to determine the matter for the rest of the goods and services, I would have made similar observations, for example, the FILM IDOL television programme relating to talent competitions is more suggestive rather than descriptive, therefore, there is no real promise to the consumer that he will rely on and consequently no real deception can occur. **This ground of opposition fails.**

CONCLUSION

105. Taking into account the various grounds, earlier marks and goods and services sought, the opposition is successful in relation to the goods and services of FILM's trade mark with the exception of:

Class 18: Travelling bags, school bags, shopping bags, rucksacks, articles of luggage, pouches, brief cases and umbrellas.

Class 21: Small domestic utensils and containers; glassware; porcelain; earthenware; tableware.

Class 24: Textile goods; bedcovers; quilts; blankets; table linen; pennants; badges; handkerchiefs; tea towels; towels.

106. Absent appeal, FILM's application will be refused other than in relation to the above goods.

COSTS

107. POP has been successful to a large extent and is entitled to a contribution towards costs. I order Film Idol Limited to pay Freemantle Media Operations B.V. and 19 TV LTD (jointly) the sum of £1300. This sum is calculated as follows:

Filing notice of opposition	£300
Official fee	£200
Considering counter-statement	£200
Preparing and filing evidence	£400
Preparing written submissions	£200
Total	£1300

108. The above sum should 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 16th day of June 2008

**Oliver Morris
For the Registrar
The Comptroller-General**

ANNEX

List of POP's earlier trade marks

Trade Mark	Filing date	Specification
<p>2277479</p> <p>POP IDOL</p>	<p>09/08/2001</p>	<p>Class 9: Audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; amusement apparatus adapted for use with television receivers, in the nature of karaoke apparatus; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; electrical and video amusement apparatus and instruments, in the nature of karaoke apparatus; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; floppy disks; recording disks; slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; parts and fittings for all the aforesaid goods.</p> <p>Class 16: Paper; cardboard; cardboard articles; maps; stationery; office requisites; drawing and painting materials, apparatus and instruments; writing instruments; instructional and teaching materials; book binding materials; book covers; printing sets; pens; pencils; pencil top ornaments; paints; paintbrushes; paint kits; gift boxes; paper napkins and other decorative paper items; paper party goods and paper party decorations; rulers; erasers; parts and fittings for all the aforesaid goods.</p> <p>Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).</p> <p>Class 28: Gymnastic and sporting articles; teddy bears; dolls' clothing; games, toys, electronic toys and electronic games; parts, fittings and accessories for all the aforesaid goods.</p> <p>Class 30: Coffee; coffee substitutes; coffee-based beverages; tea; cocoa; preparations made from cereals; bread; pastry; confectionery.</p> <p>Class 35: The bringing together, for the benefit of others,</p>

		<p>of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; the bringing together, for the benefit of others, of a variety of images of, or descriptions of, general merchandise, thereby to enable customers conveniently to view and to purchase that merchandise on-line; the bringing together in a general merchandise catalogue for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods by mail order; advertising services.</p> <p>Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting; communications by telephone; interactive telephone services; communication services by means of radio waves, telephones, the Internet, the worldwide web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes; telephony for entertainment purposes.</p>
CTM - 2624591 POP IDOL	20/03/02	<p>Class 9: Audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; computer software; computer programs; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; floppy disks; slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; parts and fittings for all the aforesaid goods.</p> <p>Class 38: Communications by telephone; interactive telephone services; communication services by means of radio waves, telephones, the Internet, the worldwide web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes.</p>
2298224a IDOLS	17/04/02	<p>Class 9: Cinematographic films; animated cartoons; film strips; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; electronic books and publications; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; laser-readable discs; video discs</p>

		<p>and publications; digital recordings; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; holograms; floppy disks; sound recordings; pre-recorded disks; recording disks; compact discs; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; compact discs; digital video discs (DVD); slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; printed audio cassette containers; printed video cassette containers; printed compact disc, video disc, laser disc and computer container disc containers; parts and fittings for all the aforesaid goods.</p> <p>Class 16: Paper; cardboard; paper articles; cardboard articles; printed matter; books; annuals; publications; comic books; song books; magazines; newsletters; newspapers; albums; periodicals; journals; catalogues; manuals; maps; pamphlets; leaflets; posters; stationery; labels; office requisites; drawing and painting materials, apparatus and instruments; writing instruments; instructional and teaching materials; instructional and teaching materials in the form of games, apparatus and instruments; book binding materials; book covers; book marks; printing sets; drawings; paintings; photographs; prints; pictures; calendars; pens; pencils; pencil top ornaments; paints; paintbrushes; paint kits; tags; gift wrap; gift wrap cards; gift wrap tissue; gift boxes; wrapping paper; note pads; playing cards; decalcomanias; paper napkins and other decorative paper items; paper party goods and paper party decorations; paper tablecloths and table covers; paper mats; paper party streamers; embroidery patterns; decorative transfers; rulers; erasers; greetings cards; stickers; paper signs; banners; charts; parts and fittings for all the aforesaid goods.</p> <p>Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).</p> <p>Class 28: Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods.</p>
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		<p>Class 35: The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise Internet web site; advertising services.</p> <p>Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting.</p> <p>Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education by or relating to television and radio; entertainment by or relating to television and radio; organization of competitions (education or entertainment); interactive telephone competitions; publishing; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, telephone, the World Wide Web and the Internet; organization of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs; radio entertainment; television entertainment; cinema entertainment; theatre entertainment; game shows; television entertainment services involving telephonic audience participation.</p>
<p>2298224b</p> 	<p>17/04/02</p>	<p>Class 9: Cinematographic films; animated cartoons; film strips; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; electronic books and publications; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; laser-readable discs; video discs and publications; digital recordings; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; holograms; floppy disks; sound recordings; pre-recorded disks; recording disks; compact discs; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; compact discs; digital video discs (DVD); slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; printed audio</p>

	<p>cassette containers; printed video cassette containers; printed compact disc, video disc, laser disc and computer container disc containers; parts and fittings for all the aforesaid goods.</p> <p>Class 16: Paper; cardboard; paper articles; cardboard articles; printed matter; books; annuals; publications; comic books; song books; magazines; newsletters; newspapers; albums; periodicals; journals; catalogues; manuals; maps; pamphlets; leaflets; posters; stationery; labels; office requisites; drawing and painting materials, apparatus and instruments; writing instruments; instructional and teaching materials; instructional and teaching materials in the form of games, apparatus and instruments; book binding materials; book covers; book marks; printing sets; drawings; paintings; photographs; prints; pictures; calendars; pens; pencils; pencil top ornaments; paints; paintbrushes; paint kits; tags; gift wrap; gift wrap cards; gift wrap tissue; gift boxes; wrapping paper; note pads; decalcomanias; paper napkins and other decorative paper items; paper party goods and paper party decorations; paper tablecloths and table covers; paper mats; paper party streamers; embroidery patterns; decorative transfers; rulers; erasers; greetings cards; stickers; paper signs; banners; charts; parts and fittings for all the aforesaid goods.</p> <p>Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).</p> <p>Class 28: Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods; playing cards.</p> <p>Class 35: The bringing together, for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise Internet web site; advertising services.</p> <p>Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting.</p>
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		<p>Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education by or relating to television and radio; entertainment by or relating to television and radio; organization of competitions (education or entertainment); interactive telephone competitions; publishing; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, telephone, the World Wide Web and the Internet; organization of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs; radio entertainment; television entertainment; cinema entertainment; theatre entertainment; game shows; television entertainment services involving telephonic audience participation.</p>
<p>CTM- 2656205</p> <p>IDOLS</p>	<p>16/04/02</p>	<p>Class 9: Cinematographic films; animated cartoons; film strips; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; electronic books and publications; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; multi-media discs and publications; multi-media recordings and publications; laser-readable discs; video discs and publications; computer software; computer programs; digital recordings; media bearing, or for recording, sound and/or video and/or data and/or information; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; holograms; floppy disks; sound recordings; pre-recorded disks; recording discs; compact discs; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; compact discs-interactive CD ROMS; digital video discs (DVD); slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; printed audio cassette containers; printed video cassette containers; printed compact disc, video disc, laser disc and computer disc containers; parts and fittings for all the aforesaid goods.</p> <p>Class 38: Broadcasting; television broadcasting; radio</p>

		<p>broadcasting; satellite television broadcasting; cable television broadcasting; communications by telephone; interactive telephone services; communication services by means of radio waves, telephones, the Internet, the worldwide web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes; telephony for entertainment purposes.</p> <p>Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education by or relating to television and radio; entertainment by or relating to television and radio; organization of competitions (education or entertainment); interactive telephone competitions; publishing; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, telephone, the worldwide web and the Internet; organization of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs; radio entertainment; television entertainment; telephone voting services as part of entertainment services; premium rate telephone voting services as part of entertainment services; cinema entertainment; theatre entertainment; game shows; television entertainment services involving telephonic audience participation.</p>
<p>UK Registration 2277463</p> 	<p>9/8/2001</p>	<p>Class 9: Cinematographic films; animated cartoons; film strips; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; audio-visual teaching apparatus; amusement apparatus adapted for use with television receivers; electronic books and publications; electronic games; games adapted for use with television receivers; electrical and video amusement apparatus and instruments; multi-media discs and publications; multi-media recordings and publications; laser-readable discs; video discs and publications; computer software; computer programs; digital recordings; media bearing, or for recording, sound and/or video and/or data and/or information; apparatus and instruments for recording and/or reproducing sound and/or video and/or information; holograms; floppy disks; sound recordings; pre-recorded disks; recording disks; compact discs; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; compact discs-interactive CD ROMS;</p>

	<p>digital video discs (DVD); slot machines and gaming devices; communications apparatus and instruments; telephones; mobile phones; chargers; chargers for mobile phones; hands-free apparatus for mobile phones; printed audio cassette containers; printed video cassette containers; printed compact disc, video disc, laser disc, and computer disc containers; parts and fittings for all the aforesaid goods.</p> <p>Class 16: Paper; cardboard; paper articles; cardboard articles; printed matter; books; annuals; publications; comic books; song books; magazines; newsletters; newspapers; albums; periodicals; journals; catalogues; manuals; maps; pamphlets; leaflets; posters; stationery; labels; office requisites; drawing and painting materials, apparatus and instruments; writing instruments; instructional and teaching materials; instructional and teaching materials in the form of games, apparatus and instruments; book binding materials; book covers; book marks; printing sets; drawings; paintings; photographs; prints; pictures; calendars; pens; pencils; pencil top ornaments; paints; paintbrushes; paint kits; tags; gift wrap; gift wrap cards; gift wrap tissue; gift boxes; wrapping paper; note pads; playing cards; decalcomanias; paper napkins and other decorative paper items; paper party goods and paper party decorations; paper tablecloths and table covers; paper mats; paper party streamers; embroidery patterns; decorative transfers; rulers; erasers; greetings cards; stickers; paper signs; banners; charts; parts and fittings for all the aforesaid goods.</p> <p>Class 25: Articles of clothing; footwear; boots; shoes; slippers; sandals; socks; hosiery; trainers; headgear; hats; caps; scarves; gloves; mittens; belts (being articles of clothing).</p> <p>Class 28: Games, toys; playthings; gymnastic and sporting articles; electronic toys and electronic games; dolls and dolls' clothing; teddy bears; parts, fittings and accessories for all the aforesaid goods.</p> <p>Class 30: Coffee; coffee substitutes; coffee-based beverages; tea; cocoa; preparations made from cereals; bread; pastry; confectionery.</p> <p>Class 35: The bringing together, for the benefit of others,</p>
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	<p>of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods from a general merchandise web site; the bringing together, for the benefit of others, of a variety of images of, or descriptions of, general merchandise, thereby to enable customers conveniently to view and to purchase that merchandise on-line; the bringing together in a general merchandise catalogue for the benefit of others, of a variety of images of, or descriptions of, goods, thereby to enable customers conveniently to view and to purchase those goods by mail order; advertising services.</p> <p>Class 38: Broadcasting; television broadcasting; radio broadcasting; satellite television broadcasting; cable television broadcasting; communications by telephone; interactive telephone services; communication services by means of radio waves, telephones, the Internet, the worldwide web, cable, satellite, microwaves and the electricity grid; telephony for voting purposes; telephony for entertainment purposes.</p> <p>Class 41: Education and entertainment services all relating to television, cinema, radio and theatre; production and presentation of radio and television programmes, films and shows; education by or relating to television and radio; entertainment by or relating to television and radio; organization of competitions (education or entertainment); interactive telephone competitions; publishing; production of cinematographic films, shows, radio programmes and television programmes; provision of education and entertainment by means of radio, television, satellite, cable, telephone, the worldwide web and the Internet; organization of shows; rental of sound recordings and of pre-recorded shows, films, radio and television performances; production of video tapes and video discs; radio entertainment; television entertainment; cinema entertainment; theatre entertainment; game shows; television entertainment services involving telephonic audience participation.</p>
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