

o/186/06

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2348433
BY HYUNDAI MOBIS, CO LTD
TO REGISTER THE TRADE MARK:**

MOBIS

IN CLASSES 7, 9, 11 AND 12

AND

**THE OPPOSITION THERETO
UNDER NO 92664
BY EXXONMOBIL OIL CORPORATION**

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In the matter of application no 2348433

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by ExxonMobil Oil Corporation

BACKGROUND

1) On 11 November 2003 Hyundai Mobis, Co Ltd, which I will refer to as Hyundai, applied to register the trade mark **MOBIS** (the trade mark). The application was published for opposition purposes in the "Trade Marks Journal" on 23 April 2004 with the following specification:

door openers and closers; painting machines and apparatus; power transmission and gearing for machine other than for vehicles; shock absorbers (machine elements not for vehicles); brakes (machine elements not for land vehicles); parting apparatus and machine; current generators and motors other than for vehicles; air cleaner filters, alternators, compressors, condensers, crank cases (metal), engine oil filters, overhaul seals (sealing joints for engine), radiators and spark plugs for automobiles; crank cases for machines, motors and engines; exhaust pipes; fuel filters; mufflers; timing belts; turbochargers;

meters and testers for motor vehicles; power distribution or controlling machines and apparatus for motor vehicles; batteries and cells for motor vehicles; electric wires and cables for motor vehicles; communication machines and apparatus for motor vehicles; navigational position and functional monitoring and control equipment and related software for motor vehicles; audio, video systems and devices for motor vehicles; socket, magnetic cores, and electrodes for motor vehicles; electronic apparatus, and their parts for motor vehicles; electronic control units, heat control boxes, quick connectors, remote keyless entries, signal indicators (direction signals), spark plug cables; parts and accessories for automobiles;

electric lamps and lighting components and instruments and parts for motor vehicles; refrigerating components and instruments and parts for motor vehicles; heating components and instruments and parts for motor vehicles; ventilating components and instruments and parts for motor vehicles; air conditioners, fog lamps, head lamps, rear combination lamps and stop lamps for automobiles; parts and accessories for automobiles;

motor vehicles and parts, components, and accessories thereof; power transmissions and gearings for motor vehicles; shock absorbers for motor vehicles; brakes for motor vehicles; motors for motor vehicles; tyres and tubes for motor vehicles; air bag modules, air pumps, brake disks, brake forks, brake linings, brake shoes, burglar alarms, chassis, clutch disks, disk brake pads, door panels, driving chains, electric motors, electromotive chains, electromotive shafts, engines, fender panels, front

bumper covers, front bumper grills, front bumper rails, front bumpers, front mask, gear boxes, gears, grill cover for automobiles; head rests, hood panels, hood protectors, horns, idle servos, instrument panels, links, luggage racks, mudguards, radiator grills, rear bumper covers, rear bumpers, rearview mirrors, roller chain, roof carriers, rubber belts for automobiles; rims for wheels of automobiles; safety belts for the seats of automobiles; safety seat for children, seat covers, seats, servomotor, shafts, shock absorbers using oil pressure and spring force, shock absorbing springs, short engines, side mirrors, ski carriers, spiral springs, spoilers, springs, steering wheels and sun roofs for automobiles; spokes for wheels of automobiles; tyres, torque converters, torsion bars, trans-axles, transmission, tubes, wheel hub bearings, wheels, windows, windshield glasses, windshield wipers and wood-grain for automobiles; parts and accessories for automobiles; alarms for backward motion of automobiles; sun visors for automobiles; crank cases for land vehicles (other than for engines).

The above goods are in classes 7, 9, 11 and 12 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

2) On 21 July 2004 ExxonMobil Oil Corporation, which I will refer to as Exxon, filed a notice of opposition to the application. Exxon is the owner of the following Community trade mark registrations:

- No 82412 for the trade mark **MOBIL**. It is registered for:

all services in class 36, including credit card, debit card, charge card, purchase authorisation card, discount card and cash card service; financing of purchases; electronic funds-transfer and cash dispensing services; services relating to the issue of statement of account and analysis for all the aforesaid services; payment processing; financial clearing services;

all services in class 37, including motor vehicle servicing, maintenance and repair; motor vehicle greasing and lubrication; motor vehicle cleaning and polishing; motor vehicle wash; anti-rust treatment for motor vehicles; painting of motor vehicles; tyre fitting and puncture repair; vehicle service station services, including filling services;

all services in class 41, including organising of sports and entertainment competitions;

verification of the identity of a person in conjunction with financial matters such as credit services.

The above services are in classes 36, 37, 41 and 42 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

- No 82453 for the trade mark **MOBIL**. It is registered for:

all goods in class 1, including chemical products for use in industry and science, all being petroleum products or derivatives; sizing agents, dessicants, plasticisers, defoamants, wax emulsions, diluents for epoxy resins and coatings (not in the nature of paints), fire extinguishing compositions, all being chemical products for use in industry; chemical products included in class 1 for use in agriculture, horticulture and forestry; manures; tempering substances and chemical preparations for soldering and for use in metal working; tanning substances and chemical substances for the treatment of skins and of leather; adhesive substances for use in industry; unprocessed plastics in the form of pastes, liquids, dispersions, emulsions and granulates, including polyethylene and polyethylene glycol, synthetic resins, hydraulic fluids, automatic transmission fluids, brake fluids and additives for fuels; chemical preparations for use as coolants and anti-freezing and icing preparations;

all goods in class 3, including cleaning, polishing, scouring and abrasive compositions; car wash preparations; windshield wash compositions; cleaning fluid for textile fabrics; wax polish;

all goods in class 4, including industrial oils and greases (other than edible oils and fats and essential oils) including circulating oil, engine oil, machinery oil, metal processing oil, lubricating oil, motor oil, penetrating oil, lubricants including synthetic lubricants, lubricants (including engine oils) and greases; fuels (including motor spirit) and solvents being petroleum derivatives, all in class 4; oils for heating and illuminating purposes; waxes for use in manufacture; petroleum products in this class for industrial purposes and dirt laying and absorbing compositions; candles, tapers, nightlights, wicks;

all goods in class 9, including magnetic data carriers such as magnetic and machine-readable cards bearing encoded information; automated teller and card reading machines; authorisation cards, charges cards and personal identification cards, all incorporating active components and being data carriers; data processing equipment and computers and programs therefor; monitoring apparatuses and instruments; parts and fittings for the aforesaid goods including electric and electronic installations and apparatuses for use in the supervision, checking and control of industrial operations and mini-computers for monitoring of preventative maintenance and lubrication work on production and moveable machinery; apparatus and instruments for measuring the viscosity of liquids;

all goods in class 16, including printed publications; printed matter; newspapers, periodicals and magazines; vouchers; stationary, with the exception of tapes, labels and supplies for printing devices; posters: document files; cards; travellers' cheques; charge cards. debit cards, personal identification cards; credit cards; advertising signs; travel maps and guides; instructional and teaching material (other than apparatus);

all goods in class 19, including building materials and road making materials (all being non-metallic); asphalt, pitch and bitumen, macadams and materials for coating, maintaining and repairing roads.

The above goods are in classes 1, 3, 4, 9, 16 and 19 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

- No 165704 for the trade mark:



It is registered for the following goods:

all goods in class 4 including industrial oils and greases (other than edible oils and fats and essential oils) including circulating oil, engine oil, machinery oil, metal processing oil, lubricating oil, motor oil, penetrating oil, lubricants including synthetic lubricants; fuels (including motor spirit) and solvents being petroleum derivatives, all in class 4; oils for heating and illuminating purposes; waxes for use in manufacture; petroleum products in this class for industrial purposes and dirt laying and laying and absorbing compositions; candles, tapers, nightlights, wicks;

all goods in class 9, including magnetic data carriers such as magnetic and machine-readable cards bearing encoded information; automated teller and card reading machines; authorisation cards, charges cards and personal identification cards, all incorporating active components and being data carriers; data processing equipment and computers and programs therefor; monitoring apparatuses and instruments; parts and fittings for the aforesaid goods including electric and electronic installations and apparatuses for use in the supervision, checking and control of industrial operations and mini-computers for monitoring of preventative maintenance and lubrication work on production and moveable machinery; apparatus and instruments for measuring the viscosity of liquids;

all goods in class 16, including printed publications; printed matter; newspapers, periodicals and magazines; vouchers; stationery, with the exception of tapes, labels and supplies for printing devices; posters; document files; cards; travellers' cheques; charge cards, debit cards, personal identification cards; credit cards; advertising signs; travel maps and guides; instructional and teaching material (other than apparatus);

all goods in class 19, including building materials and road making materials (all being non-metallic); asphalt, pitch and bitumen, macadams and materials for coating, maintaining and repairing roads.

The above goods are in classes 1, 3, 4, 9, 16 and 19 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

- No 165480 for the trade mark:



It is registered for the following services:

all services in class 36, including credit card, debit card, charge card, personal identification card, purchase authorisation card, discount card and cash card service; financing of purchases; electronic funds-transfer and cash dispensing services; services relating to the issue of statement of account and analysis for all the aforesaid services; payment processing; sale on credit; financial clearing services;

all services in class 37, including motor vehicle servicing, maintenance and repair; motor vehicle greasing and lubrication; motor vehicle cleaning and polishing; motor vehicle wash; anti-rust treatment for motor vehicles; painting of motor vehicle; tyre fitting and puncture repair; vehicle service station services, including filling services;

all services in class 41, including organising of sports and entertainment competitions.

The above services are in classes 36, 37 and 41 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

The date of application for registration of all Exxon's trade marks is 1 April 1996.

3) Exxon claims that its trade marks and that of Hyundai are similar. It states that its registrations for services encompass services that are identical or similar to the class 9 and 12 goods of the application, and that all the goods of the application are similar or identical to the goods of its registrations for goods. Consequently, there is a likelihood of confusion and registration of the trade mark would be contrary to section 5(2)(b) of the Trade Marks Act 1994 (the Act).

4) Exxon claims that in relation to registration no 82412 it has a reputation for all services in class 37, in relation to registration no 82453 it claims a reputation in respect of all goods in classes 1, 3 and 4, in relation to registration no 165704 it claims a reputation in respect of all goods in classes 1, 3, 4, 9, 16 and 19 and in relation to

registration no 165480 a reputation in relation to all services in classes 36, 37 and 41. Exxon claims that use of the trade mark in relation to all of the goods of the application would take advantage of or be detrimental to the distinctive character or reputation of its earlier trade mark. Consequently, registration of the trade mark would be contrary to section 5(3) of the Act.

5) Exxon claims that the sign MOBIL has been used throughout the United Kingdom in the last fifty years and as early as 1954 in relation to vehicle lubricants, oils, greases, synthetic lubricants and service station services. It claims that registration of the trade mark would be contrary to section 5(4)(a) of the Act. It makes no specific reference to the law of passing-off but it is presumed that is the basis of the claim.

6) Exxon claims that it is the owner of the well-known trade mark MOBIL, which has been used in the United Kingdom since at least 1954 in relation to a range of goods and services; consequently, it is entitled to restrain by injunction the use in the United Kingdom of a trade mark which is similar to its trade mark in relation to similar goods or services where the use is likely to cause confusion. It states that the reputation and goodwill attached to the MOBIL trade mark in the United Kingdom is very substantial and extensive. It claims protection as per section 56 of the Act.

7) Hyundai filed a counterstatement. It denies that the respective trade marks are so similar to the trade mark that there is a likelihood of confusion. Hyundai denies that all of the goods of the application are identical or similar to the goods or services of Exxon's trade marks. It denies all the grounds and does not accept that Exxon's trade mark is well-known. Hyundai states that its trade mark has already been registered in forty five countries, including the United States of America. It states that it has already successfully defended oppositions by Exxon to the registration of the trade mark in Ecuador, South Korea, the Czech Republic, Chile and Finland. It states that in each case it was found that there were sufficient visual, phonetic and conceptual differences between the trade marks MOBIS and MOBIL to allow registration of MOBIS, even for vehicle parts.

8) Hyundai states that it is prepared to concede that Exxon enjoys some limited reputation in the United Kingdom in relation to the sale of vehicle lubricants, oils, greases and synthetic lubricants and in relation to certain vehicle service station services. It asserts that because of that narrow use Exxon does not enjoy a reputation in the trade mark MOBIL outside of these specific goods and services. Hyundai, in relation to use of the trade mark being "without due cause", points out that the trade mark is part of its name.

9) Hyundai attached a list of MOBIS trade mark registrations in other jurisdictions and a printout of the details of a United States registration for MOBIS in class 12. Hyundai also made comments about the lack of specificity and detail in the grounds of Exxon.

10) Both sides filed evidence.

11) The sides were advised that they had a right to a hearing and that if neither side requested a hearing a decision would be made from the papers and any written submissions that were received. Neither side requested a hearing. Both sides filed

written submissions. Consequently, this decision is made from the evidence and written submissions before me.

EVIDENCE

Evidence of Exxon

12) This consists of a witness statement by Mr Harayda, who is the assistant controller of Exxon Mobil Corporation (Exxon Mobil) and a vice president of its wholly owned affiliate, Exxon. Mr Harayda states that Exxon Mobil is the parent company of the Mobil and Exxon/Esso companies in the United Kingdom. He gives a brief history of the Exxon/Esso and Mobil companies which merged on 30 November 1999. He exhibits at REH-1 various material:

- Pages downloaded from the Exxon Mobil website on 6 July 2005. One of the pages is headed “History in the UK” but tells nothing about use of MOBIL in the United Kingdom. There is an index for operations in the United Kingdom which lists: company information, offshore oil and gas, refining and marketing, chemicals and technology. Another page deals with use of a device of Pegasus.
- A copy of a publication entitled ‘Mobil at 125’. This publication was created to celebrate the 125th anniversary of Mobil on 4 October 1991. The publication says little about the use of the trade mark MOBIL in either the United Kingdom or the European Union.
- A copy of a publication entitled “A brief history of Mobil”. This is a very similar publication to ‘Mobil at 125’, but taking the history up to 1997.
- A copy of a publication entitled ‘Pioneers in Aviation Fuels and Lubricants since 1903’. From the pictures of aeroplanes and references to the Belgian Congo, TWA and PAWA, the publication appears to be quite old.

13) Mr Harayda states that the Exxon Mobil companies, including Exxon, are a premier petroleum and petrochemical organisation with a presence in around two hundred countries and territories around the world.

14) Mr Harayda states that the MOBIL trade mark was derived from the trade marks Mobiloil and Mobilgas. Mobilgas was first marketed in the United Kingdom in 1899. He states that MOBIL has been extensively used by the Mobil companies since at least 1934, when it made its first appearance in the United States of America. By 1954 the Mobil companies had adopted the MOBIL trade mark as the principal feature of their worldwide corporate logo. He states that for many years the MOBIL trade mark has been used continuously and extensively in relation to the Mobil companies’ worldwide business of manufacturing and selling lubricants and oils. Mr Harayda states that even after the merger of the Exxon/Esso and Mobil organisations, the trade mark MOBIL has continued to form a prominent part of the names of Exxon, various affiliated companies and Exxon Mobil. He states that in the United Kingdom in 2004, the Exxon Mobil companies invested around £318 million in their upstream, downstream and chemical operations. The Exxon Mobil companies paid £5.1 billion in direct and indirect taxes and duties and invested around £2.4 million on community projects and initiatives. Mr Harayda states that Exxon Mobil is currently ranked fourth by the Forbes list, which is a comprehensive list of the biggest

companies in the world; as measured by a composite of rankings of sales, profits, assets and market value. He exhibits at REH-2 a copy of the list for 2005. In 2003 Exxon Mobil (including subsidiaries) was ranked second in 'The Fortune' 500 list of the biggest companies of the United States of America; exhibited at REH-3 is a copy of the list. It shows revenue for the year being \$182,446 million. Exhibited at REH-4 are copies of articles from 'Business Week' from August 2002 and 2004, listing the top 100 brands. The list aims to assess the economic worth of the brand. Exhibited at REH-5 are various financial details for Exxon Mobil. These show that the total revenue from 1998 to 2004 rose from \$168.9 billion to \$291.3 billion. Mr Harayda states the figures for the sale of MOBIL lubricants in the United Kingdom for passenger car, commercial vehicle, industrial and distributor products were as follows:

2002	189,000,000 barrels
2003	167,000,000 barrels
2004	165,000,000 barrels

He states that Exxon Mobil companies changed their accounting programme in 2002 and are unable to locate figures prior to the change. (A barrel of oil is equal to 35 imperial gallons or 159 litres.)

15) Mr Harayda states that Exxon Mobil companies advertise their products extensively throughout the United Kingdom and worldwide. He states that one of the most prominent advertising promotions the Exxon Mobil companies use is that of Formula One racing. He states that television coverage lasts for approximately six days from Thursday to Tuesday every fortnight during the season. Mr Harayda states that when the audience for all Formula One programming was aggregated in 2004 the total viewership in Western Europe was found to be 2,080,051,100 viewers (sic). As the entire population of the twenty five member states of the European union (which of course includes countries in Eastern Europe) is currently estimated to be 456,953,258, it would seem that at best the figure relates to viewings rather than viewers. No supporting evidence is given in relation to these figures. Mr Harayda states that the MOBIL brand has been the sponsor of the McLaren team since 1995. He exhibits at REH-6 a picture of the McLaren car from 1995. The car shows the brands of various sponsors, the most prominent being Marlboro. Exhibited at REH-7 are photographs of McLaren cars from 1996 – 2004 inclusive. All of the indications on the car are for Mobil 1; various brands are shown on the cars, from 1996 onwards Mobil 1 is more obvious, appearing behind and above the driver's cockpit. Mr Harayda states that the cumulative live race audiences for Formula One in the United Kingdom from 1998 to 2004 is approximately 58,000,000. There is no supporting documentation re this figure; if there is one Formula One race in the United Kingdom each year, this would equate to over eight million people per race. Exhibited at REH-8 and REH-9 are compact discs showing television advertisements for Mobil 1 oil. Mr Harayda states that the advertisements shown on REH-8 were aired in the United Kingdom in March 2003. One of the recordings on REH-8 is a promotion for West McLaren Mercedes and the other seems to be a promotion for Mercedes. They run respectively at 4.33 and 3.25 and so would not seem designed for television advertising. Two advertisements are for Mobil 1 oil and a third for Mobil oils, in which the Mobil 1 product appears. Mr Harayda states that the third advertisement of REH-9 was made in 2001. However, REH-9 contains only one advertisement,

entitled 'Tunnels'; it is for Mobil 1 oil. There are no details of when and where in the United Kingdom the advertisements were broadcast, or on what channels.

16) Exhibited at REH-10 are various brochures and leaflets which Mr Harayda states were produced in 2003:

- A booklet about Mobil lubricants for VW engines. The booklet was printed in November 2003.
- A sheet advising on the results of an oil check.
- A leaflet for Mobil lubricants with a printing date of November 2004.
- A leaflet on Mobil grease lubrication. It has a printing date of April 2003. It deals with greases for use in industrial processes and for automotive and outdoor equipment.
- A leaflet on Mobil lubricant products for the cement industry. It has a printing date of October 2003.
- A leaflet on Mobil lubricants for the metal working industry. It has a printing date of May 2003.
- A leaflet for Mobil Delvac 1 fully synthetic engine oil, printed in January 2003.
- A booklet on the alliance between ExxonMobil and DaimlerChrysler, printed in November 2003. It relates to the use of Mobil lubricants in DaimlerChrysler vehicles.

Exhibited at REH-11 is a copy of the ExxonMobil publication 'LubeWorld', issue no 1. Exhibited at REH-12 are copies of a leaflet on ExxonMobil lubricants and specialities, a 2004 version of a leaflet exhibited at REH-10, and a leaflet entitled 'Mobil Command Performance', the same leaflet is exhibited at REH-10. Exhibited at REH-13 is a booklet that Mr Harayda states was produced in 2004, it is a product guide to Mobil lubricants. Exhibited at REH-14 is a booklet about Mobil industrial synthetic lubricants, this was produced in 2004. Exhibited at REH-15 is an ExxonMobil booklet from 2004 about lubrication management services. A 2004 booklet about using Mobil lubricants in cars is exhibited at REH-16. Exhibited at REH-17 is a 2004 leaflet about Mobil 1 engine oil; at REH-18 there is a 2004 booklet about the use of Mobil 1 in Volvo engines; at REH-19 is a 2004 leaflet about checking and topping up oil in cars. A 2004 price guide for Mobil motorcycle lubricants is exhibited at REH-20. Exhibited at REH-21 is a list of trade mark registrations across the world for trade marks comprising or including Mobil. Exhibited at REH-22 are copies of decisions from the Taiwanese, Danish and Peruvian trade mark offices, which Mr Harayda states acknowledge that Mobil is a well-known trade mark.

Evidence of Hyundai

17) This consists of a witness statement by Stephen James Wise. Mr Wise is a senior partner of Raworth, Moss & Cook, who are acting for Hyundai in this case. Mr Wise states that Hyundai registered a Belgian company under the name Mobis Parts Europe with a branch office in Lichfield. He states that this undertaking is actively trading in the United Kingdom. Mr Wise states that he has spoke to the manager of the Lichfield office of Mobis Parts Europe, Mr Lee Kang Hoon, who has informed him that his company is currently using the trade mark MOBIS in connection with its

trading business with Kia Motors (UK) Ltd and that no complaint has been received about the use of MOBIS by Exxon. Mr Wise states that Hyundai has successfully registered the trade mark MOBIS in class 12 in forty five countries. He exhibits at SJW-2 a list of these registrations, together with the current details of United States registration no 2698373 for the trade mark MOBIS. Mr Wise states that in several countries Exxon has sought to prevent Hyundai registering the trade mark MOBIS but was unsuccessful. Exhibited at SJW-3 to SJW-7 are copies of decisions from Ecuador, Korea, the Czech Republic, Chile and Finland and English translations therefor.

18) Mr Wise states that a search of the Registry's database has revealed several trade marks which have been accepted in class 12; details of these are exhibited at SJW-8: MOBIK, Moby, Mobilan and Mobil (in the name of Exxon). Mr Wise also exhibits a copy of the judgment of the European Court of Justice (ECJ) in Case C-106/03 P.

Evidence in reply of Exxon

19) This consists of a witness statement by Helen Jane Cawley, a trade mark associate of D Young & Co, who are acting for Exxon. Ms Cawley states that she exhibits at HJC1 copies of decisions from the Intellectual Property Institute of Ecuador and the Spanish Trade Marks Registry, where successful oppositions to the registration of the trade mark MOBIS by Hyundai were filed by Exxon. There are translations of the two decisions but only the original of the Spanish decision. Ms Cawley exhibits at HJC2 copies of decisions in other jurisdictions where Exxon has been successful against trade marks containing the element MOBI -. Included amongst the decisions is a copy of a decision from the Registry made under the 1938 Act, in relation to the trade mark MORMIL. Exhibited at HJC 3 is a report from Farncombe International into the use in the United Kingdom of the prefix MOBI in classes 1, 3, 5, 9, 16 and 19. Of the references found, a number commence with Mobile and a number appear to be in the ownership of ExxonMobil companies. A number of others are for the word Mobius.

Conclusions from the evidence

20) Parts of the evidence relate to decisions in other jurisdictions. I do not find these decisions of assistance. I have to consider the position in the United Kingdom, on the basis of the evidence, in relation to the relevant goods and services as of the material date. A very limited state of the register evidence has been filed by Hyundai. The state of the register evidence does not tell me what is happening in the market place and that is what is important (see *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 and *GfK AG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-135/04). Mr Wise gives the hearsay evidence that a Mr Hoon has told him that MOBIS is being used in connection with its business with Kia Motors. There is no evidence from Mr Hoon, there is no evidence of the nature of the use, of the duration or scale of use. This hearsay evidence tells me nothing. Exxon has commissioned a study in relation to use of Mobil-. However, it restricts the exercise to classes of its interest and not those of the application, other than class 9. So the study says nothing about what is happening in classes 7, 11 and 12. Nothing turns upon this in the end, as there is an absence of

any evidence that the average consumer is used to distinguishing between various Mobil trade marks; even less so those with one letter difference at the end.

21) Exxon makes the very bold claim that it has a reputation in respect of the trade mark Mobil in respect of all goods and services of its registrations in classes 1, 3, 4, 9, 16, 19, 36, 37 and 41. Surprisingly, in the face of its evidence, it continues to make this claim in its submissions. So inter alia it is claiming that it has a reputation for computers, higher educational services, books, photographs, banking services etc etc. This claim is clearly not supported by the evidence. A lot of the evidence of Mr Harayda is unhelpful; it is about the business of ExxonMobil across the world, not about the use of the trade mark Mobil in the United Kingdom and the European Union. That ExxonMobil is an enormous company with an enormous turnover is not in doubt but that is not necessarily indicative of the perspective of the average consumer for the goods of the application in the United Kingdom. It would appear that a very large part of the revenue of Exxon and/or ExxonMobil derives from the production of gas and oil. That ExxonMobil or Exxon might have North Sea oil platforms producing vast amounts of oil and revenue is not necessarily going to have an impact on the average consumer of the goods of the application. The evidence of Mr Harayda goes all one way, that in the United Kingdom the trade mark Mobil is used in relation to lubricants. A large part of that evidence indicates that marketing is aimed at the trade and industry rather than the public at large. No doubt a good number of people will have had the opportunity to see Mobil 1 upon McLaren racing cars. However, as I have indicated, there are question marks about the figures that Mr Harayda uses in relation to the number of viewers and spectators. There is also no way of knowing as to how many people will have noticed or taken in the sponsorship of Mobil; such a matter will depend on the quality of their televisions, their eyesight and the degree of their interest. As I have indicated above, there is a lack of detail in relation to the television advertising. Flesh needs to be put onto the bones to discover the extent and likely effect of the advertising. At the worst the advertising could have been for a short period on an obscure cable channel. The figures that Mr Harayda gives for sales of MOBIL lubricants in the United Kingdom are not very illuminating. They include all sales of lubricants, including those for industrial use. How does one pick out from that what the state of knowledge of the average consumer for the various goods is? Also, the nature of the consumer and the purchasing decision for industrial lubricants or by a fleet manager or a car company are going to be very different to the car driver topping up or changing oil. Evidence is given showing Mobil being in the top 100 brands; the rating is assessed on the economic worth of the brand rather than, necessarily, knowledge by the public at large or in particular in the United Kingdom or the European Union. Well-known brands such as Coca Cola and Microsoft appear in the list but also brands such as GE, Citibank, AT&T, SAP and Merck.

22) The evidence shows that Mobil has been used in relation to lubricants in the United Kingdom; including engine oil, usually by reference to Mobil 1. Its claim under section 5(3) of the Act is based upon its Community trade marks, it has to establish a reputation in the European Community; not a reputation in the United Kingdom. In *General Motors Corporation v Yplon SA* Case C-375/97 [2000] RPC 572 (*Chevy*) the ECJ set out the requirements for reputation under section 5(3) of the Act:

“The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.”

This application was filed on 11 November 2003, at which time the European Union consisted of 15 member states. Consequently, Exxon needs to demonstrate that the Mobil trade mark is known by a significant part of the public concerned in the European Union. On the basis of the evidence before me I do not consider that the claim that the trade marks are known by a significant part of the public of the then European Union, even for lubricants, is established. **Consequently, in relation to its Community trade marks Exxon cannot benefit from the provisions of section 5(3) of the Act. However, the evidence does establish a goodwill in relation to lubricants at large, including engine oils.**

23) Exxon also claims that MOBIL is a well-known trade mark and entitled to protection under section 56 of the Act. Section 56 of the Act states:

“56. - (1) References in this Act to a trade mark which is entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark are to a mark which is well known in the United Kingdom as being the mark of a person who-

- (a) is a national of a Convention country, or
- (b) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country, whether or not that person carries on business, or has any goodwill, in the United Kingdom.

References to the proprietor of such a mark shall be construed accordingly.

(2) The proprietor of a trade mark which is entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark is entitled to restrain by injunction the use in the United Kingdom of a trade mark which, or the essential part of which, is identical or similar to his mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.”

In its claim Exxon is vague, it states that its trade mark has been used in relation to a range of goods and services. It refers to its ability to restrain use of a similar trade mark in relation to similar goods or services. It is difficult to consider this claim choate when the goods and services for which it states it has a reputation are not identified in the first instance. As section 6(c) of the Act classifies well-known trade marks as earlier trade marks and Exxon has registrations that cover a gamut of goods and services far wider than has been demonstrated in the evidence, I cannot see that this claim, even if it were substantiated (see *Stokke Gruppen AS v Trip Trap A/S* [2005] ETMR 90 for an exposition of the criteria to establish a well-known trade mark), could bring it any greater protection; I, therefore, intend to confine my considerations to Exxon’s registered trade marks in relation to the section 5(2)(b) issues. In its submissions, Exxon states that Mobil is entitled to enhanced protection because it claims that the trade mark is a well-known trade mark. It still does not say in relation to what. In the words of Millet LJ in another context, “to be known to

everyone is not to be known for everything”; making the enormous assumption that Mobil is known to everyone. Exxon does not even clarify for what goods and services it claims Mobil has a reputation in its submissions. I am not aware of the authorities that state that being a well-known trade mark grants a trade mark enhanced protection of itself. It may be that a reputation will assist in the global appreciation of a likelihood of confusion, nothing more. Of course, in relation to passing-off, the primary matter is goodwill and not reputation, goodwill is firmly rooted in the jurisdiction whilst a party relying upon 6bis protection is likely not to have use and/ or registration in the jurisdiction (as per the South African McDonald’s cases – Case 547/95 (AD) [1996] 4 All SA 1(A)).

Likelihood of confusion -Section 5(2)(b) of the Act

24) According to section 5(2)(b) of the Act a trade mark shall not be registered if because:

“it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Section 6 (1) of the Act defines the term earlier trade mark:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(b) a Community trade mark which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK), or

(c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark.”

The Community trade marks of Exxon are earlier trade marks as per section 6 of the Act.

25) In determining the question under section 5(2)(b), I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* [2000] FSR 77, *Marca Mode CV v Adidas AG and Adidas Benelux BV* [2000] ETMR 723 and *Vedial SA v Office for the Harmonization of the Internal Market (marks, designs and models) (OHIM) C-106/03 P*.

Comparison of trade marks

26) The word only trade marks upon which Exxon rely encompass all of the goods and services of the stylised word trade marks and so I cannot see that it can be in any better position in relation to the latter trade marks. I will, therefore, make a comparison between MOBIL and MOBIS.

27) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Sabel BV v Puma AG*). 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*). Consequently, I must not indulge in an artificial dissection of the trade marks, although taking into account any distinctive and dominant components. The average consumer rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind and he/she is deemed to be reasonably well informed and reasonably circumspect and observant (*Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*). “The analysis of the similarity between the signs in question constitutes an essential element of the global assessment of the likelihood of confusion. It must therefore, like that assessment, be done in relation to the perception of the relevant public” (the Court of First Instance (CFI) in *Succession Picasso v OHIM - DaimlerChrysler (PICARO)* Case T-185/02).

28) MOBIL and MOBIS are invented words; they are, therefore, neither linked by conceptual similarity nor distanced by conceptual dissonance. Aurally and visually the difference between the trade marks lies in the final letter. They are short words of only five letters, as a result I consider that the endings will carry a good deal of weight and effect (they will not suffer the degradation as contemplated in *Les Editions Albert René v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-336/03 and *Tripcaströid* (1925) 42 RPC 264). The final letters have very different sounds and taking into account the shortness of the words will allow aural differentiation between them. I consider that any normal pronunciation, the sibilant in MOBIS will sound strongly. The visual consideration and perception of the trade marks will be determined to a great extent by the fact that we are schooled to differentiate between letters. Of course, certain letters do look similar eg the letters I and l, in certain contexts the letters m and n. I find it unlikely that the letters L and S will be seen as being similar; whether in upper or lower case. I consider that the experience of differentiating between different letters means that, despite the other identical elements, the trade marks are unlikely to be seen as being similar. I am of the view that this is the case whether the purchasing decision is likely to be considered and researched or off the cuff. My overall analysis is that despite the similarities of the trade marks that they are not similar. Similarities in trade marks should not be conflated into the trade marks being considered similar; it will be an odd opposition where there are not any similarities between the contested signs. I would add that my immediate and continuing reaction to the respective trade marks is that they are not similar. It would be easy to build a case to justify a finding that the trade marks are similar, on the basis that the four of the first five letters are the same. I am aware that in some jurisdictions such a mechanistic approach is adopted. However, I am of the view that such a finding would be a legal chimera rather than representing the perception of an average consumer; whether for motor vehicles or for their various

parts and fittings. **I find that the trade marks are not similar.** The judgment in *Vedial SA v Office for the Harmonization of the Internal Market (marks, designs and models) (OHIM)* tells me that I need go no further. If it is decided that the trade marks are not similar, that is the end of the matter, in relation to a likelihood of confusion; whether there is reputation and/or identical goods counts for nought. One of the two essential requirements for a finding of likelihood of confusion has not been satisfied and that is the end of the matter. However, for the sake of completeness I will consider the similarity of the respective goods/services.

Comparison of goods and services

29) Registration no 82453 encompasses all goods in class 9 and so the class 9 goods of the application must be identical to them. In its grounds of opposition Exxon does not give any indication as to how or why the other goods or services are similar. The sum total of its submissions in relation to the similarity of the class 7, 11 and 12 goods of the application to its goods and services is:

“The opponent’s Community trade mark registrations numbers 82412 MOBIL and 165480 MOBIL cover services in Class 37. These services are closely similar and closely related services to the goods covered in the applicant’s trade mark application, specifically the goods covered in class 12.”

On the absence of any other argument and a lack of specificity in the grounds of opposition, I will confine my deliberations to considering the claim that the class 37 services of the application are similar to the goods of the application in class 12, and as there is a relationship between the class 7 and 11 goods with these also. Exxon’s class 37 registrations encompass all services in the class. The goods of the application are:

door openers and closers; painting machines and apparatus; power transmission and gearing for machine other than for vehicles; shock absorbers (machine elements not for vehicles); brakes (machine elements not for land vehicles); parting apparatus and machine; current generators and motors other than for vehicles; air cleaner filters, alternators, compressors, condensers, crank cases (metal), engine oil filters, overhaul seals (sealing joints for engine), radiators and spark plugs for automobiles; crank cases for machines, motors and engines; exhaust pipes; fuel filters; mufflers; timing belts; turbochargers;

electric lamps and lighting components and instruments and parts for motor vehicles; refrigerating components and instruments and parts for motor vehicles; heating components and instruments and parts for motor vehicles; ventilating components and instruments and parts for motor vehicles; air conditioners, fog lamps, head lamps, rear combination lamps and stop lamps for automobiles; parts and accessories for automobiles;

motor vehicles and parts, components, and accessories thereof; power transmissions and gearings for motor vehicles; shock absorbers for motor vehicles; brakes for motor vehicles; motors for motor vehicles; tyres and tubes for motor vehicles; air bag modules, air pumps, brake disks, brake forks, brake linings, brake shoes, burglar alarms, chassis, clutch disks, disk brake pads, door panels, driving chains, electric

motors, electromotive chains, electromotive shafts, engines, fender panels, front bumper covers, front bumper grills, front bumper rails, front bumpers, front mask, gear boxes, gears, grill cover for automobiles; head rests, hood panels, hood protectors, horns, idle servos, instrument panels, links, luggage racks, mudguards, radiator grills, rear bumper covers, rear bumpers, rearview mirrors, roller chain, roof carriers, rubber belts for automobiles; rims for wheels of automobiles; safety belts for the seats of automobiles; safety seat for children, seat covers, seats, servomotor, shafts, shock absorbers using oil pressure and spring force, shock absorbing springs, short engines, side mirrors, ski carriers, spiral springs, spoilers, springs, steering wheels and sun roofs for automobiles; spokes for wheels of automobiles; tyres, torque converters, torsion bars, trans-axles, transmission, tubes, wheel hub bearings, wheels, windows, windshield glasses, windshield wipers and wood-grain for automobiles; parts and accessories for automobiles; alarms for backward motion of automobiles; sun visors for automobiles; crank cases for land vehicles (other than for engines).

30) In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, Jacob J considered that the following should be taken into account when assessing the similarity of goods and/or services:

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

In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, the European Court of Justice held in relation to the assessment of the similarity of goods and services that the following factors, inter alia, should be taken into account: their nature, their end users and their method of use and whether they are in competition with each other or are complementary. I do not consider that there is any dissonance between the two tests. However, taking into account the judgment of the European Court of Justice, I may need to consider whether the goods and services are complementary. Neuberger J in *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267 stated:

“I should add that I see no reason to give the word "cosmetics" and "toilet preparations" or any other word found in Schedule 4 to the Trade Mark Regulations 1994 anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context. In particular, I see no reason to give the words an unnaturally narrow meaning simply because registration under the 1994 Act bestows a monopoly on the proprietor.”

I also bear in mind the comments of Jacob J in *British Sugar Plc v James Robertson & Sons Ltd* where he stated:

“When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all a trade mark specification is concerned with use in trade.”

I take on board the class in which the goods or services are placed is relevant in determining the nature of the goods and services (see *Altecnic Ltd's Trade Mark Application* [2002] RPC 34). In relation to the comparison with services I firmly bear in mind the comments of Jacob J in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16 (also see *Reed Executive plc and Reed Solutions plc v Reed Business Information Ltd and Reed Elsevier (UK) Ltd, totaljobs.com Ltd* [2004] ETMR 56):

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

Although it dealt with a non-use issue, I consider that the words of Aldous LJ in *Thomson Holidays Ltd v Norwegian Cruise Line Ltd* [2003] RPC 32 are also useful to bear in mind:

“In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use.”

31) Class 37 encompasses building construction, repair and installation services. This covers an enormous gamut of services. How can one test each and every possible service encompassed by the specification with the goods of the application in classes 7, 9 and 12? The Registry data base lists 1750 terms in relation to class 37 and this will not be an exhaustive list. In opposition proceedings the onus is upon the opponent. It is Exxon's job to make out its case. It should put forward evidence and/or submissions addressing the issues which it has raised. In the absence of any specificity, any clarity, certainty or direction in either the pleadings or the submissions, it becomes an impossible task for Hyundai to answer the claims. Exxon has avoided stating which goods and services clash and how or why they clash, within any parameters, let alone the parameters of the case law. In these circumstances, I consider it neither feasible nor appropriate to attempt an analysis of the potential clash between all the variations of the class 37 specification and the goods of the application. Exxon has said nothing about the alleged clash between the other goods

and services of its registrations and the goods of the application. Making the best I can of a very bad job, I will first undertake a comparison of the class 12 goods of the application, which are specifically identified in the submissions of Exxon (see paragraph 29), and the services specifically identified in the class 37 specification. At least this will make a consideration of the merits of the case feasible. So the services upon which I will make the comparison against the class 12 goods of the application are:

motor vehicle servicing, maintenance and repair; motor vehicle greasing and lubrication; motor vehicle cleaning and polishing; motor vehicle wash; anti-rust treatment for motor vehicles; painting of motor vehicle; tyre fitting and puncture repair; vehicle service station services, including filling services.

Hyundai's goods can reasonably be described as motor vehicles and parts, fittings and accessories for them. It is the common practice for manufacturers of motor vehicles to also provide the servicing, maintenance and repair of those goods. The spare parts that they use will in most cases bear their trade mark. They also commonly fit accessories to cars, if requested by their customers. There is a definite and historic complementary relationship between *motor vehicle servicing, maintenance and repair; motor vehicle greasing and lubrication; anti-rust treatment for motor vehicles; painting of motor vehicle* of the earlier relationship and the class 12 goods of the application. Owing to this long historical relationship between the maintenance and servicing of motor vehicles and motor vehicles and their parts and fittings, I have no hesitation in coming to the conclusion that the specifically named services of the class 37 registrations are similar to the class 12 goods of the application. Applying the logic of this argument, in relation to parts and fittings for motor vehicles, I am of the view that there must also be a clash with goods in classes 7 and 11 which are for motor land vehicles. So the following goods will be similar to the named class 37 services of the earlier registrations:

air cleaner filters, alternators, compressors, condensers, crank cases (metal), engine oil filters, overhaul seals (sealing joints for engine), radiators and spark plugs for automobiles; crank cases for machines, motors and engines; exhaust pipes; fuel filters; mufflers; timing belts; turbochargers;

electric lamps and lighting components and instruments and parts for motor vehicles; refrigerating components and instruments and parts for motor vehicles; heating components and instruments and parts for motor vehicles; ventilating components and instruments and parts for motor vehicles; air conditioners, fog lamps, head lamps, rear combination lamps and stop lamps for automobiles; parts and accessories for automobiles.

On the basis of the pleadings and submissions of Exxon I do not consider that I have any basis to find the following, remaining goods of the class 7 of the application similar to the other goods or services of its registration:

door openers and closers; painting machines and apparatus; power transmission and gearing for machine other than for vehicles; shock absorbers (machine elements not for vehicles); brakes (machine elements not for land vehicles); parting apparatus and machine; current generators and motors other than for vehicles.

I, therefore, find that the above listed goods are not similar to the goods and services of the registrations of Exxon. The rest of the goods of the application are either identical or similar to the goods and services of Exxon's registrations.

Conclusion

32) As the ECJ has stated the likelihood of confusion is cumulative. There must be a similarity between the signs and a similarity between the goods/services before a global appreciation can be made (see *Vedial SA v Office for the Harmonization of the Internal Market (marks, designs and models) (OHIM)*). It is, of course, what the Directive and the Act require. So, as I have decided that the respective trade marks are not similar Exxon cannot succeed under section 5(2)(b). Most of the goods of the application will be bought with some care and consideration; some are expensive purchases, others, even though they may be of low cost, will involve a careful and educated purchasing decision as they will need to be compatible with the goods with which they are being used. One does not, for instance, buy an air filter on the off-chance that it will be suitable. The purchase of such goods as a trans-axle, an air bag module or radiator grill will not only be the result of a careful purchasing decision but the average consumer for such goods is likely to be a specialist; if the enthusiastic amateur purchases such goods to fit, that amateur is going to be very knowledgeable and careful in the purchasing decision. For motor vehicles the purchasing decision is one that is careful, educated and researched; even the smallest difference between trade marks would be likely to allow the purchaser to distinguish the goods. This was a matter dealt with in *Lancer Trade Mark [1987] RPC 303*, although that case was under the old act, I do not consider that the considerations have changed because of the advent of the new act. I am happy to adopt the position of the hearing officer at first instance in that case:

“Mr. Hamer for the opponents suggested that a verbal recommendation of one of the opposed marks might lead to the mistaken purchase of a car under the other mark. With respect, I find that suggestion too extravagant. Taking a business-like view of the matter, I consider that, even with due regard to the considerable user built up of the mark LANCIA for specialist cars, registration of LANCER for the applicants' particular model of car will not involve a real tangible danger of confusion such as to disqualify LANCER under section 11.

The position is not materially different if considered under section 12(1). In that regard, I have to consider the opponents' normal and fair user of Fiat not only on vehicles but also on parts and fittings. But, even here, the specialist nature of the goods has to be borne in mind. Relying on my own experience as a motorist, I know that parts and fittings are mostly sold from depots of particular car manufacturers and are called up by reference to model name, chassis numbers of vehicles, and catalogue numbers of parts. This process must, it seems to me, make it hard to conceive of a purchaser, even if confused or simply careless, being sold a LANCIA part when he really wanted a LANCER part, or vice versa. The opposition under section 12 does not succeed, whether considered in terms of subsection 12(1) or 12(3).”

On the basis of the evidence, Exxon might be able to claim a reputation for MOBIL in respect of engine oils and other lubricants. It appears to me that MOBIL is readily capable of distinguishing the goods of one undertaking from those of another and, consequently, enjoys a reasonable degree of inherent distinctiveness. Some of the goods are identical, some are highly similar but this cannot benefit Exxon owing to the differences between the trade marks and the nature of the purchasing decisions that are likely to be made. I have noted that in its submissions Hyundai has referred to the preliminary indication that was given. I have not looked at the preliminary indication and Hyundai's reference to it has had no influence upon me at all.

The grounds of opposition under section 5(2)(b) of the Act are dismissed.

Passing-off – section 5(4)(a) of the Act

33) Section 5(4)(a) of the Act states:

“4) 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,”

In this case, the law relied upon by Exxon appears to be the law of passing-off. To succeed in this claim Exxon has to satisfy the classical trinity of: goodwill, deception or confusion and damage. I have no doubt that Exxon has a goodwill related to the sign Mobil in relation to lubricants. On the basis of the evidence I cannot go any further than that. On the basis of the limited scope of its goodwill, compared to its trade mark registrations, the difference between Hyundai's trade mark and Exxon's earlier sign, the distance between lubricants (including engine oils) and the goods of the application, I cannot see that there would be deception/confusion and so this ground of opposition must fail.

COSTS

34) Hyundai Mobis, Co Ltd having been successful is entitled to a contribution towards its costs. I order ExxonMobil Oil Corporation to pay Hyundai Mobis, Co Ltd the sum of £1,300. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6th day of July 2006

**David Landau
For the Registrar
the Comptroller-General**