

O-205-10

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2422044
BY JAMES FLEMING TO REGISTER THE TRADE MARK:**

MODEL IDOL

IN CLASS 35

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 94687
BY FREMANTLE MEDIA LIMITED AND 19 TV LTD**

TRADE MARKS ACT 1994

**IN THE MATTER OF application No. 2422044
by James Fleming to register the trade mark
MODEL IDOL in Class 35**

and

**IN THE MATTER OF Opposition thereto under No. 94687
by FremantleMedia Limited and 19 TV Ltd**

BACKGROUND

1) On 17 May 2006, James Fleming of 11 Kitchener Street, Woodlesford, Leeds, LS26 8ST applied under the Trade Marks Act 1994 for registration of the trade mark MODEL IDOL in respect of the following Class 35 services:

Advertising, organising, operating and supervising loyalty and incentive schemes, advertising services provided on the Internet, producing television and radio adverts, trade fairs, opinion polling, data processing.

2) The application was published on 14 July 2006 and on 4 October 2006, FremantleMedia Limited of 1 Stephen Street, London, W1T 1AL and 19 TV Ltd of 55 Harley Place, Harley Street, London, W1N 1HB filed notice of opposition to the application. The grounds of opposition are in summary:

- a) The application offends under Section 5(2) (b) of the Trade Marks Act 1994 ("the Act") because it is for a mark similar to earlier marks, numbers 2277479 and 2277463, and is in respect of identical or similar services as the earlier marks. The relevant details of the two earlier marks are annexed to this decision.
- b) The application offends under Section 5(3) of the Act because the mark is identical or similar to the two earlier marks, namely numbers 2340202 and 2277463, that have a reputation in respect of all Class 41 services listed in the respective registrations. As mentioned above, the relevant details of the latter registration are identified in the annex to this decision, but for convenience, its Class 41 specification reads:

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.

With respect to the former registration, it is in respect of the mark POP IDOL, has a filing date of 8 August 2003 and completed its registration procedures on 12 May 2006. Its Class 41 specification is in respect of the following list of services:

Entertainment by television; organisation of television competitions; television entertainment; television entertainment services involving telephone audience participation; production and presentation of television programmes; all of the aforesaid being in the nature of competitions in the field of popular music.

- c) The application offends under Section 5(4) (a) of the Act because it conflicts with the sign POP IDOL and also the sign, consisting of the words POP IDOL and a device, shown in the annex in respect of registration 2277463 and in respect of television programmes and associated merchandise. The signs were first used on 6 October 2001.

3) Mr Fleming subsequently filed a counterstatement denying the Opponents' claims.

4) Both sides filed evidence in these proceedings, but neither side requested a hearing. Only the Opponents filed written submissions in lieu of a hearing. Both sides ask for an award of costs. After a careful consideration of the papers, I give my decision.

Opponents' Evidence

5) This takes the form of a witness statement by Isabel Brender, Trade Mark Manager of FremantleMedia Limited ("Fremantle"), a position she has held since April 2001. She states that Fremantle made a series of television programmes shown on ITV1 between 6 October 2001 and 9 February 2002. These programmes were called, variously, POP IDOL, POP IDOL FINAL, POP IDOL RESULTS and POP IDOL RESULT. At Exhibit IB1, Ms Brender provides a copy of a spreadsheet showing the specific dates each of the twenty one episodes were broadcast, viewing numbers and market share captured. As Ms Brender observes, the programmes were watched by about five million people,

equivalent to a market share of twenty five percent. This rose steadily during the series to peak on the final episode at over 13.3 million viewers, equating to a market share of fifty eight percent. The format of the programme included an opportunity for viewers to register their votes for the performer they wanted to see remaining on the programme. Ms Brender points out that a total of 32.2 million votes were cast during the series. The programme won a number of awards including a BAFTA for best entertainment series. The winner and second placed performer achieved notable public success following their performances on the programme. Ms Brender also refers to the winner of the second series held in 2003, however, no further information regarding this series is provided.

6) Ms Brender explains that a book entitled POP IDOL was published to accompany the series and over a hundred thousand units were sold. Further, over a hundred and twenty thousand video tapes of the programme have also been sold in the UK.

7) At Exhibit IB3, Ms Brender provides copies of three advertisements, one relating to the Singapore market, and records that "...Idols has taken the world by storm...", "American Idol: "The search for a superstar smashed all records..." and "...Pop Idol was the UK's highest rated live entertainment show..." The second bears a French address for Fremantle, suggesting that it too was not targeted at the UK market, but nevertheless promotes the success of POP IDOL in the UK by providing a list of awards the UK version of the programme has won. The third is an undated advertisement bearing a London telephone number and promotes the POP IDOL programme as "[t]he new series from Fremantle Media" and also records the following:

- 13.9 million viewers in the UK watched the final;
- 59.4% audience share;
- A record-breaking 9 million phone votes in under 2 hours;
- 21 top rating episodes.

8) Ms Brender states that the programmes generated a huge amount of press coverage in the UK, a small sample of which is provided at Exhibit IB4. This exhibit consists of about a hundred and thirty pages of extracts, mainly from national newspapers such as The Sun, Daily Star, The Daily Express and The Mirror covering both competition updates and gossip about competitors on the show. These are all dated in January and February 2002. A few exhibits are from periodicals such as "Heat" magazine, dated 23 February – 1 March 2002, "Cosmo" magazine dated March 2002, "Now" magazine dated 13 February 2002.

9) At Exhibit IB5, Ms Brender provides a copy of printouts of two pages of a PowerPoint presentation. The first page is entitled "Global roll-out: the *Idols* phenomenon" and shows a world map indicating that Fremantle's "Idol" programmes have been produced in 39 countries and with tape sales in 130

countries. The second page gives a number of facts advertising that “Idols” has been successful in numerous countries. None of these facts relate to the UK.

10) At Exhibit IB6 is a document of unknown provenance and is entitled “*Idols* around the world” lists the regions of the world where the “Idols format” has been aired. In respect of the UK, it records that Season 1, 2001-02 was won by Will Young and Season 2, 2003 was won by Michelle McManus.

11) Ms Brender provides information to show that the mark POP IDOL and its equivalents has been widely registered around the world and that there have been ninety seven series worldwide, with a number taking place at the current time (being August 2007).

12) At Exhibit IB9, Ms Brender also provides a copy of an earlier Registry decision relating to Invalidity No. 81534, issued on 16 December 2004 where the Opponents successfully applied to invalidate the mark PUB IDOLS. A copy of a second Registry decision is also provided at Exhibit IB10. This decision relates to the Opponents’ opposition (No. 93253) to the application to register POP IDOL.

13) Finally, at Exhibits IB11, IB12 and IB13, Ms Brender provides printouts “of the source” of the applicant’s website, bearing a handwritten date of 29 September 2006. These illustrate a trail from www.modelidol.co.uk (that appears not to be accessible for technical reasons) eventually leading to the website <http://67.15.189.26/~icecmod/index.htm>. This later printout shows a page of text that appears to describe the content of the website, but is not the webpage itself. References to “glamour modelling”, “adult” and “porn” are included in this text.

Applicant’s Evidence

14) This is in the form of a witness statement by Mr Fleming, dated 17 December 2007. At Exhibit MI 158, Mr Fleming provides fifty eight extracts from various online publications found when conducting various internet searches limited to the UK only between 1 and 9 October 2007. The first of these is obtained from the online Compact Oxford English Dictionary and is the entry for the word “idol” that reads:

- **Noun 1** an image or representation of a god used as an object of worship.
2 a person who is greatly admired: *a soccer idol*.

15) The remaining extracts are obtained from various online publications such as regional newspapers, magazines, competition websites and national newspapers. These illustrate use of numerous terms containing the word “idol”, such as “Yorkshire fashion idol” that appears to relate to a competition to find a fashion designer, “Notts rowing idol” relating to a call for tall people to be tested for suitability to become an Olympic rower, “game idol” relating to a team gaming event and “Panto Idol” relating to a competition to find a pantomime performer.

Many other similar examples are also provided and I will refer to others later in the decision. In addition, Mr Fleming draws particular attention to “Babe Idol”, a nationwide and well publicised singing and modelling talent competition and “Page 3 Idol” run by “The Sun” national newspaper. None of these obviously relate to a period before the filing date of the contested application.

16) Mr Fleming also draws attention to a favourable finding expressed by the Registry in the Preliminary Indication issued in respect of the current proceedings.

Opponents’ Evidence in reply

17) This is in the form of a further witness statement, dated 4 November 2009, by Ms Brender. This essentially comprises submissions criticising Mr Fleming’s evidence. I will refer to these submissions, as necessary, in my decision.

DECISION

Section 5(2)(b)

18) Section 5(2)(b) reads:

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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

19) An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

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

20) Of potential relevance to a ground of opposition under Section 5(2) (and Section 5(3) also) 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 of a kind falling within section 6(1)(a), (b) or (ba) 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.”

21) The Opponents rely upon two earlier marks, both are registered and therefore qualify as earlier marks as defined by Section 6 of the Act. They completed their registration procedures on the 13 September 2002 and 9 July 2004. Both these dates are less than five years before the publication of Mr Fleming’s application on the 14 July 2006 and therefore are not caught by the proof of use provisions. The specifications, as relied upon by the Opponents, can therefore be regarded in full.

22) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law 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 B.V.* [2000] FSR. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] ETMR 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P (LIMONCELLO). It is clear from these cases that:

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

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has

kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it; *Sabel BV v Puma AG*,

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

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

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

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

(k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM (LIMONCELLO)*

Comparison of services

23) In assessing the similarity of services, it is necessary to apply the approach advocated by case law and all relevant factors relating to the respective goods and services 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.’

24) Other factors may also be taken into account such as, for example, the trade channels of the goods concerned (see, for example, *British Sugar Plc v James Robertson & Sons Limited (TREAT)* [1996] RPC 281). I am also mindful of the guidance provided by Jacob J (as he then was) in *Avnet Incorporated v Isoact Ltd (“Avnet”)* [1998] FSR 16 where he stated:

“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.”

25) Firstly, I note that both of the earlier marks relied upon by the Opponents include the term *advertising services*. It is well established that goods and services can be considered identical when those covered by an earlier mark are included in a wider term by a later mark (and vice versa); see *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-133/05*. With this guidance in mind, it is clear that [a]dvertising, *advertising services provided on the Internet* and *producing television and radio adverts* listed in Mr Fleming’s specification are identical to the Opponents’ *advertising services* in its Class 35 specification.

26) I now turn to consider the remaining services in Mr Fleming’s application. In their written submissions, the Opponents make an assertion that all of the services listed in his application “are closely allied services to the following Class 41 services listed in the Opponents’ registration 2277463:

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”

27) This assertion is not supported by any evidence. However, I am able to draw upon commonly known facts. Mr Geoffrey Hobbs QC sitting as the Appointed Person said in *Raleigh International trade mark* [2001] R.P.C. 11 at paragraph 20, that such evidence will be required if the goods or services specified in the opposed application for registration are not identical or self-evidently similar to those for which the earlier trade mark is registered. But where there is self-evident similarity, and especially in relation to everyday items, evidence may not be necessary and the tribunal may, in an appropriate case, consider the question of similarity from the viewpoint of the notional member of the relevant purchasing public. I will proceed on this basis.

28) Firstly, the term *organising, operating and supervising loyalty and incentive schemes* describes a specialist business service related to the running of incentive schemes and is therefore different in nature to the various education and entertainment services listed in the Opponents' Class 41 specification where such services relate to the specialist field of broadcast media. As such, they have a different purpose and different users, providers and distribution channels from those of the applicant. I must also consider if the respective services are complementary. The General Court (GC) has said that goods and services 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 and services lies with the same undertaking: *Sergio Rossi SpA v OHIM (SISSI ROSSI)*, Case T-169/03. Applying this guidance to the current comparison, Mr Fleming's *organising, operating and supervising loyalty and incentive schemes* are not important or indispensable to the Opponents' services and therefore they are not complementary to the Opponents' services. Taking all of this into account, I find that the respective services are not similar.

29) Similarly, Mr Fleming's *trade fairs, opinion polling, data processing*, whilst being quite distinct from each other, are all specialist business services that have no direct link to entertainment or education services. They are different in nature and intended purpose and do not share trade channels. Further, such services

are not complementary to the Opponents' services, in the sense explained in SISSI ROSSI. In conclusion, the respective services are not similar.

30) As I have found that the services discussed in paragraphs 28 and 29 are not similar, in line with the guidance provided in *Waterford Wedgwood plc v OHIM (Wedgewood)* Case C-398/07, paras 30-35, where no such similarity exists, there can be no likelihood of confusion. Therefore, it is not necessary for me to continue my analysis insofar as it relates to these services and I will not discuss them further.

31) The Opponents' case does not appear to be any better by relying upon any other goods and services to those discussed above and neither do I understand that they are arguing this to be the case. As such and in the absence of any specific claim to such, I do not intend to consider this in any further detail.

The average consumer and the purchasing act

32) As matters must be judged through the eyes of the average consumer (*Sabel BV v.Puma AG*, paragraph 23) it is important that I assess who the average consumer is for the services at issue. It follows that, as I have found Mr Fleming's *advertising, advertising services provided on the Internet and producing television and radio adverts* are identical to the Opponents' *advertising services*, they will also share the same average consumer, namely those individuals and businesses wishing to promote their goods and services. The purchasing act in respect of such services will be reasonably well considered. The services are not everyday services that are purchased with little thought, but neither are they at the highest level where services are very expensive to procure.

Comparison of marks

33) For ease of reference, the respective marks are:

The Opponents' marks	Mr Fleming's mark
<p data-bbox="323 1406 794 1473">POP IDOL</p> 	<p data-bbox="794 1406 1270 1796">MODEL IDOL</p>

34) When assessing the extent of similarity between the respective marks, I must do so with reference to their visual, aural and conceptual similarities bearing in

mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23).

35) From a visual perspective, the respective marks have some similarity by virtue of them all sharing the word IDOL. However, that is the extent of the similarity. In all other respects they are visually different. The Opponents' marks precede the word IDOL with the word POP whereas, in Mr Fleming's mark, the word IDOL is preceded by the word MODEL. The words POP and MODEL are visually different, sharing only one letter with one containing three letters, the other, five letters. Further, the Opponents' second registration in respect of two word and device marks, one featuring colour the other not, differs to a greater extent as the marks have a handwritten-type style of letters superimposed over a star-like device and the whole contained within a dark, oval shaped background. In light of these observations, it is my view that the Opponents' best case regarding visual similarity rests with the Opponents' word mark, but here the level of similarity with Mr Fleming's mark is only moderate.

36) From an aural perspective, the stylisation present in the Opponents' second registration is not an issue. All of its marks consist of a two word, three syllable term pronounced POP I-DOL. On the other hand, Mr Fleming's mark consists of a two word, four syllable term pronounced MOD-ELL I-DOL. Clearly, they are aurally similar insofar as they share the same second word IDOL, but once again, in all other respects they are dissimilar. Considering the marks as a whole, these similarities and differences combine to give a moderate level of aural similarity.

37) Mr Fleming has provided a dictionary reference to illustrate that the word IDOL means a person who is greatly admired. In order to fully understand the level of similarity (or otherwise) between the respective marks, it is also helpful to understand the relevant meanings of both POP and MODEL. These are:

pop²

- **noun** (also **pop music**) popular modern commercial music, typically with a strong melody and beat.
- **adjective 1** relating to pop music.

model

- **noun 1** a three-dimensional representation of a person or thing, typically on a smaller scale. **2** (in sculpture) a figure made in clay or wax which is then reproduced in a more durable material. **3** something used as an example. **4** a simplified mathematical description of a system or process, used to assist calculations and predictions. **5** an excellent example of a quality. **6** a person employed to display clothes by wearing them. **7** a

person employed to pose for an artist. **8** a particular design or version of a product.¹

38) Such a meaning leads the relevant consumer to understand the term POP IDOL to mean an admired person in the field of popular music. MODEL IDOL will be understood as an admired person in the field of models. The context in which the mark is used will determine which meaning of the word MODEL will dominate in the minds of the consumer. The Opponents do not specify the meaning that they believe attaches to the word MODEL in Mr Fleming's mark, but in Ms Brender's second witness statement she refers to her belief that the website associated with the mark MODEL IDOL is linked to glamour modelling, adult material and pornography. Whether this is correct or not does not change the conclusion here, but it does shed light on the Opponents' view of the message it believes Mr Fleming's mark communicates. Such a meaning is confirmed by the dictionary reference reproduced above. As such, Mr Fleming's mark may refer to an admired person in the field of glamour modelling. However, the word MODEL may equally refer to fashion modelling or, somewhat less likely, to a maker of three-dimensional representations of persons or to an artist's model. Irrespective as to which of these meanings is attributed to the word MODEL, it is clear that there is some conceptual dissimilarity between the respective marks as a result of the different meanings of the words POP and MODEL but that there is some similarity resulting from the shared word IDOL. In all the marks being considered, no one word is the dominant and distinctive component. In Fremantle's marks the words POP and IDOL are equally dominant and the distinctive character resides in the combination of these words. Similar conclusions are reached when considering Mr Fleming's mark.

39) Taking all of this into account and considering the Opponents' word mark and Mr Fleming's marks as a whole, I conclude that they share a reasonably moderate level of conceptual similarity. In respect of the Opponents' word and device marks, the level of similarity is slightly reduced by the presence of the stylisation, star device and oval background.

40) Bringing these findings together, I conclude that, when viewed as a whole, the Opponents' word mark and the mark MODEL IDOL share a moderate level of similarity. The Opponents' word and device mark is slightly further down the scale of similarity and does not provide the Opponents' with any better case than does their word only mark.

Distinctive character of the earlier trade mark

41) I have to consider whether the Opponents' marks have a particularly distinctive character either arising from the inherent characteristics of the marks or because of the use made of them. All three consist of, or contain, the words POP IDOL. This term can be attributed a clear meaning in English, as already

¹ *Compact Oxford English Dictionary of Current English*, http://www.askoxford.com/concise_oed/

identified above, and this meaning has a relevance in respect of many of the Opponents' goods and services covered by its registrations. As such, the word mark enjoys only a low level of inherent distinctive character. The marks that consist of the words together with a device element have a higher distinctive character endowed by the device element. Nevertheless, when the mark is considered as a whole, the "star device" will be seen to reinforce the meaning of the words POP IDOL and the level of inherent distinctive character in respect to these marks is still on the low side.

42) I must also consider the effect of reputation on the global consideration of a likelihood of confusion under Section 5(2) (b) of the Act. This was considered by David Kitchen Q.C. sitting as the Appointed Person in *Steelco Trade Mark* (BL O/268/04). Mr Kitchen concluded at paragraph 17 of his decision:

"The global assessment of the likelihood of confusion must therefore be based on all the circumstances. These include an assessment of the distinctive character of the earlier mark. When the mark has been used on a significant scale that distinctiveness will depend upon a combination of its inherent nature and its factual distinctiveness. I do not detect in the principles established by the European Court of Justice any intention to limit the assessment of distinctiveness acquired through use to those marks which have become household names. Accordingly, I believe the observations of Mr. Thorley Q.C in *DUONEBS* should not be seen as of general application irrespective of the circumstances of the case. The recognition of the earlier trade mark in the market is one of the factors which must be taken into account in making the overall global assessment of the likelihood of confusion. As observed recently by Jacob L.J. in *Reed Executive & Ors v Reed Business Information Ltd & Ors*, EWCA Civ 159, this may be particularly important in the case of marks which contain an element descriptive of the goods or services for which they have been registered. In the case of marks which are descriptive, the average consumer will expect others to use similar descriptive marks and thus be alert for details which would differentiate one mark from another. Where a mark has become distinctive through use then this may cease to be such an important consideration. But all must depend upon the circumstances of each individual case."

43) The Opponents' have illustrated that POP IDOL was an extremely popular television programme in the UK between October 2001 and February 2002, consisting of twenty one episodes and that the programme generated a significant amount of press coverage in the UK. Further, there was a second season for the programme in 2003. Whilst there is also evidence of the format being used across the world since then and also evidence that the winner and runners up in the first series have enjoyed commercial success, there is no direct evidence of the reputation in the UK at the relevant date, being the filing date of the contested application namely 17 May 2006. That said, in light of the

popularity of the programme, I accept that, as of the relevant date, the distinctive character of the word only mark remained enhanced by the use made of the mark in 2001/2 and 2003. However, such enhanced distinctive character is only in respect of *television entertainment services being in the nature of competitions in the field of popular music*. Having already found that such services are not similar to Mr Flemings services, this distinctive character acquired through use does not improve the Opponents' case. Further, there is no evidence regarding the scale of use of the marks consisting of POP IDOL and device in the UK and I am unable to conclude that, in respect to these marks, that their distinctive character is enhanced through use.

Likelihood of confusion

44) Before considering likelihood of confusion, I note that Mr Fleming, in his evidence, has pointed out that the Registry issued a preliminary indication in his favour. However, I am obliged to take no account of the preliminary indication in reaching my decision as the view expressed in the indication "was arrived at before there was any evidence on either side, before there was any argument on either side and in a context in which it could not be regarded as a decision against the interests of either side without the prospective loser being given an opportunity to be heard" (Lindsay J in *esure Insurance Limited v Direct Line Insurance plc* [2007] EWHC 1557 (Ch), paragraph 17).

45) I must adopt the global approach advocated by case law and take into account that marks are rarely recalled perfectly with the consumer relying instead on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). I have found that the respective marks share a moderate level of visual and aural similarity and a reasonably moderate level of conceptual similarity and that that level is slightly reduced when considering the Opponents' word and device marks. Taking all of this into account, I concluded that the respective marks share a moderate level of similarity. I have also found that the various respective *advertising services* are identical. I have also found that in respect of the remaining services of Mr Fleming's application, there is no similarity with the Opponents' services and therefore, there is no need for me to consider likelihood of confusion in respect of these services (*Waterford*).

46) I take all of the above into account, together with the facts that the consumer relies upon imperfect recollection. In light of all of this, I find that the differences between the respective marks are not sufficient for the consumer to consider that the respective marks originate from different undertakings. On the contrary, the consumer would not confuse the marks in the sense that one mark will be mistaken for the other ("direct confusion"), but they would believe that services provided under the respective marks originate from the same trade source ("indirect confusion") where similar or identical services are involved. This is especially true where such services may be targeted at different industries such

as the pop music industry or modelling industry where the first word in each mark would be seen as indicating the target industry for such services.

47) Mr Fleming provides examples of numerous other third parties using a sign incorporating IDOL as an identifier for a competition and this, arguably, could indicate that the average consumer has been educated to recognise IDOL signs originating from numerous different parties and therefore not being associated with the Opponents. On the balance of probabilities, I do not believe this to be the case. Firstly, the examples provided originate from dates after the relevant date and do not necessarily reflect the position at that date. Secondly, many of the examples provided relate to various competitions that are services not similar to Mr Fleming's services.

48) Therefore, the opposition succeeds insofar as it relates to the following services listed in Mr Flemings application:

Advertising, advertising services provided on the Internet and producing television and radio adverts

49) The opposition based on Section 5(2)(b) grounds fails insofar as it relates to the following services:

[O]rganising, operating and supervising loyalty and incentive schemes, [...] trade fairs, opinion polling, data processing

Section 5(4)(a)

50) Next, I will consider the ground under Section 5(4) (a). That section reads as follows:

“5.-(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, 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”.

51) The requirements for this ground of opposition have been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] R.P.C. 455. Adapted to

opposition proceedings, the three elements that must be present can be summarised as follows:

- (1) that the Opponents' goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the applicant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the applicant are goods or services of the Opponents; and
- (3) that the Opponents have suffered or are likely to suffer damage as a result of the erroneous belief engendered by the applicant's misrepresentation.

52) In light of my findings in respect of the grounds based upon Section 5(2) and recognising the fact that the Opponents rely upon signs that are the same as those registered and relied upon in respect of the Section 5(2) grounds and recognising that any goodwill it enjoys will be in respect to a television programme providing musical entertainment, I cannot see how they can be any better off in respect to this ground of opposition. As such, there can be no misrepresentation by Mr Fleming that goes beyond the scope of the Opponent's success in respect of Section 5(2). Therefore, I do not intend to consider further the grounds based upon Section 5(4)(a) of the Act.

Section 5(3)

53) I turn to consider the ground for opposition under Section 5(3) of the Act insofar as it relates to Mr Fleming's services that survive my analysis of the Section 5(2) grounds (as set out in paragraph 48, above)

54) Section 5(3) reads as follows:

“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 a Community trade mark or 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.”

55) 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] RPC 572, *Adidas Salomon AG v Fitnessworld Trading Ltd.* [2004] ETMR 10, *Premier Brands UK Limited v Typhoon Europe Limited (TYPHOON)* [2000] FSR 767, *Daimler Chrysler v Alavi (MERC)* [2001] RPC 42, *C.A. Sheimer (M) Sdn Bhd's TM Application (VISA)* [2000] RPC 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, *Davidoff & Cie SA v Gofkid Ltd (DAVIDOFF)* [2003] ETMR 42, *Intel Corporation Inc. v CPM United Kingdom Ltd (INTEL)* [2009] RPC 15, *L'Oreal v Bellure* [2010] RPC 1 and *Whirlpool Corp v Kenwood Limited* [2010] RPC 2.

56) The applicable legal principles arising from these cases are as follows:

- a) 'Reputation' for the purposes of Section 5(3) means that the earlier mark is known by a significant part of the public concerned with the products or services covered by that mark (paragraph 26 of the ECJ's judgment in *CHEVY*).
- b) Under this provision the similarity between the marks does not have to be such as to give rise to a likelihood of confusion between them; the provision may be invoked where there is sufficient similarity to cause the relevant public to establish a link between the earlier mark and the later mark or sign (*Adidas Salomon v Fitnessworld*, paragraphs 29-30).
- c) Whether there is a link, within the meaning of *Adidas-Salomon and Adidas Benelux*, between the earlier mark with a reputation and the later mark must be assessed globally, taking into account all factors relevant to the circumstances of the case (*INTEL*).
- d) The fact that, for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark calls the earlier mark with a reputation to mind is tantamount to the existence of such a link between the conflicting marks, within the meaning of *Adidas-Salomon and Adidas Benelux*. (*INTEL*)
- 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 (per Neuberger J. in *Premier Brands*, and the ECJ in *CHEVY*, paragraph 30).
- f) Whether use of the later mark takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the earlier mark, must be assessed globally, taking into account all factors relevant to the circumstances of the case (*INTEL*).

g) Unfair advantage is taken of the distinctive character or the repute of the earlier trade mark where there is clear exploitation and free-riding on the coat-tails of a famous mark or an attempt to trade upon its reputation (*Spa Monopole v OHIM*).

h) The use of the later mark may be detrimental to the distinctive character of the earlier mark with a reputation even if that mark is not unique; a first use of the later mark may suffice to be detrimental to the distinctive character of the earlier mark; proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future (*INTEL*).

i) Taking unfair advantage of the distinctive character or repute of a mark relates not to detriment caused to the earlier mark but to the advantage taken by the third party. Such an advantage may be unfair even where the use is not detrimental to the distinctive character or to the repute of the mark (*L'Oreal v Bellure*). It is not sufficient to show that an advantage has been obtained. There must be an added factor of some kind for that advantage to be categorised as unfair (*Whirlpool Corp v Kenwood Limited*).

Reputation

57) Mr Fleming argues that much of the Opponents' evidence is irrelevant as it relates to the use of the mark POP IDOL and not to his mark MODEL IDOL. As Ms Brender points out in her evidence in reply, her evidence goes to illustrate the size and scope of the reputation enjoyed by the Opponents in the mark POP IDOL. As the case law referred to above makes clear, such a reputation must be established before the Opponents can rely upon Section 5(3) of the Act as a ground of opposition.

58) From the ECJ's comments in *CHEVY* it is known that for a reputation to exist, the relevant marks must be known by a significant part of the public concerned and that particularly important considerations are the market share held by the marks, the intensity, geographical extent and duration of use and the level of promotion undertaken. The Opponents claim a reputation in respect to its Class 41 services listed in registrations 2340202 and 2277463 and, for convenience, these are reproduced below:

Entertainment by television; organisation of television competitions; television entertainment; television entertainment services involving telephone audience participation; production and presentation of

television programmes; all of the aforesaid being in the nature of competitions in the field of popular music.

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.

59) The Opponents have provided some evidence regarding the intensity of use in the form of a spreadsheet showing specific dates each programme was broadcast, viewing numbers and market share. This records twenty one programmes broadcast between 6 October 2001 and 9 February 2002 with audiences beginning at about five million and rising to 13.3 million for the final episode. These viewing figures equated to between twenty five percent and fifty eight percent of the market share. There is also reference to a second series in 2003 but no further details are provided. The awareness of POP IDOL, in the minds of the UK public is confirmed by the evidence of intense media coverage. It is clear to me that this relatively short period of use was such as to develop a significant reputation at that time. However, there is no use in the UK for a period of some three years prior to the relevant date. During this time, it is inevitable that the reputation will have waned to a certain degree. However, I am satisfied that, as a result of the significant original reputation, the repute of the programme would have remained in the minds of the relevant consumer at the time of filing of the application in suit and that this repute was in respect of *television entertainment services in the nature of competitions in the field of popular music.*

The Link

60) Having established the existence and scope of a reputation, I need to go on to consider the existence of the necessary link. I am mindful of the comments of the ECJ in *INTEL* that it is sufficient for the later mark to bring the earlier mark with a reputation to mind for the link, within the meaning of *Adidas-Salomon and Adidas Benelux*, to be established and there is no requirement for the existence of confusion in the minds of the consumer. The ECJ also set out the factors to take into account when considering if the necessary link exists:

“41. The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case (see, in respect of Article 5(2) of the Directive, *Adidas-Salomon and Adidas Benelux*, paragraph 30, and *adidas and adidas Benelux*, paragraph 42).

42. Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark’s reputation;
- the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;
- the existence of the likelihood of confusion on the part of the public.”

61) I have already found that the respective marks share a moderate level of similarity and I have recognised that they share the same word IDOL, but that they are different in that one begins with the word POP, the other with the word MODEL. Regarding the nature of the respective services, I note that the Opponents’ reputation is in respect of specific television entertainment services, as identified in paragraph 56 above and Mr Fleming’s services are various business services in Class 35. These services are dissimilar as they involve distinctly different sets of consumers. Mr Fleming’s services are intended to provide specific services to businesses and individuals seeking to promote their businesses, to offer loyalty schemes to their customers and have a requirement to process data. The Opponents, on the other hand, have a reputation in respect of providing a television entertainment service to the general public. They are therefore different in both nature and intended purpose. Earlier in this decision I also found that there was no likelihood of confusion between the respective marks in respect of the services set out in paragraph 48.

62) Set against the issues identified above is the fact that the Opponents’ mark enjoys an enhanced distinctive character as a result of the significant size of its reputation. This is so, despite there being no evidence of the mark being used in the UK beyond 2003. Taking this into account, I find that the reputation is such as to overcome the negative indicators identified above so that the relevant consumer will make a link between Mr Fleming’s mark and the Opponents’ earlier mark.

Heads of damage

63) In its judgment in *Sigla SA v OHIM* (Case T-215/03) the GC set out and described the heads of damage applicable under article 8(5) of Regulation No 40/94 (Section 5(3) as incorporated into the Act). I do not intend to rehearse the findings here, it is sufficient to say that the heads of damage were threefold, namely: 1) detriment to distinctive character, 2) detriment to repute, 3) unfair advantage of the distinctive character or repute. The Opponents have made it clear in their submissions that they believe that it is the second and third heads of damage that occur here. They claim that Mr Fleming's mark will free ride upon the reputation enjoyed by their mark in the sense identified in *L'Oreal v Bellure* or it will be detrimental to the Opponents' reputation.

64) Firstly, turning to the claim that use of Mr Fleming's mark will be detrimental to the reputation of POP IDOL, it must be remembered that this reputation is in respect of a specific television programme that was aired three years prior to the filing of the contested application. Considering all factors and in particular, the dissimilarity between Mr Fleming's services and those in which the Opponent enjoys a reputation and also that the marks only share a moderate level of similarity, I find that use of MODEL IDOL by Mr Fleming, in respect of the services claimed, would not cause any detriment to the reputation of POP IDOL. It could be argued that there is some similarity between Mr Fleming's advertising services and the Opponents' services, but even if this were the case and this would lead to detriment, it would place the Opponents in no better position than in respect of the Section 5(2) grounds.

65) Secondly, I need to consider the Opponents' claim that Mr Fleming's mark is free riding upon the reputation of the POP IDOL mark. It is established (See *INTEL*, paragraphs 71 and 80) that the fact that an earlier mark has a reputation for certain specific services, and those services are dissimilar to those of the later mark and the later mark called the earlier mark to mind, is not sufficient to establish that the use of the later mark takes or would take unfair advantage of the repute of the earlier mark. Further, it is also established that taking unfair advantage of the repute of a mark relates not to detriment caused to the earlier mark but to the advantage taken by the third party. Such an advantage may be unfair even where the use is not detrimental to the repute of the mark (*L'Oreal v Bellure*).

66) In the current case, the Opponents' claim in their submissions that POP IDOL enjoys a substantial reputation and is extensively used in relation to a number of television programmes, entertainment services and merchandising products. However, as I have already found, the evidence fails to demonstrate that this reputation is as extensive as the Opponents claim. The programme bearing the name POP IDOL has not been aired in the UK since 2003, some three years before the filing of the application and this needs to be borne in mind when considering the size of its reputation. It can also be argued that because of the

dissimilarity of the services, it is less likely that there is any unfair advantage being taken by Mr Fleming. Such an argument finds support in the OHIM's Board of Appeal decision in *Mango Sport System Srl Socio Unico Mangone Antonio Vincenzo v Dikhan SL* [2005] E.T.M.R. 5 and referred to with approval by Lloyd LJ in *Whirlpool Corp v Kenwood Limited*. Neither has it been demonstrated that Mr Fleming's services, provided under the MODEL IDOL mark, take advantage of the Opponents' promotional activities. I also take account of the dissimilarity between the respective services and the moderate level of similarity between the marks. Taking all of this into account, I find that there is no evidence of any advantage, let alone any unfair advantage.

67) Finally, I will also comment on the Opponents' submissions that use of a mark similar to the POP IDOL family of marks is an attempt to ride on their coat tails. There is no evidence of use of a family of marks in the UK and as such, any family of marks that may exist will not be recognised as such by the relevant UK consumer.

68) In conclusion, taking all of the above factors into account, the opposition fails in respect of the grounds based upon Section 5(3) of the Act or insofar as it may be successful, this is no more so that in respect of the grounds under Section 5(2) of the Act.

COSTS

69) The opposition has only been partially successful and each party should bear its own costs. I therefore decline to make an award of costs.

Dated this 24 day of June 2010

**Mark Bryant
For the Registrar,
the Comptroller-General**

ANNEX

Mark details	Relevant dates	Specifications of goods and services
No. 2277479 POP IDOL	Filing date: 9 August 2001 Registration: 9 July 2004	<p>Class 09: 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, 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</p>

		<p>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>No. 2277463</p> 	<p>Filing date: 9 August 2001</p> <p>Registration: 13 September 2002</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; 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</p>

		<p>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, 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>
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