

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 2289546  
BY ELIA INTERNATIONAL LIMITED  
TO REGISTER THE TRADE MARK:**

**HALO**

**IN**

**CLASSES 11 AND 21**

**AND**

**THE OPPOSITION THERETO  
UNDER NO 91445  
BY ALTO-SHAAM INC  
BASED UPON THE EARLIER TRADE MARK:**

**HALO HEAT**

## Trade Marks Act 1994

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by Alto-Shaam Inc**

### BACKGROUND

1) On 9 January 2002 Elia International Limited, which I will refer to as Elia, applied to register the trade mark **HALO**. The application was published for opposition purposes in the "Trade Marks Journal" on 30 October 2002 with the following specification of goods:

*apparatus and installations for refrigerating, freezing or drying; microwave ovens (including combination ovens); toasters, kettles, coffee makers, ice machines, rice cookers, barbecues; fans; electric coffee filters; machines for making and/or dispensing hot drinks; machines for bread making; fridges, freezers, combination fridge/freezers; parts and fittings for all the aforesaid goods.*

*catering, office, household or kitchen utensils and containers; food and beverage containers; containers for dispensing liquids; thermally insulated containers; vacuum flasks including ones of metal; flasks, plates, bowls, cups, mugs, tableware services; decorative containers of glass, ceramic or metal; vases; flower bowls; table decorations; strainers; salt cellars; pepper pots; napkin holders/rings; trays; shakers; scoops; heat resistant mats; ladles; sifters, shakers, flower holders; candlesticks; candle snuffers; none being goods of precious metal or coated therewith; parts and fittings for the aforesaid goods; but not including refuse bins or siphons;*

The above goods are in classes 11 and 21 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 30 January 2003 Alto-Shaam Inc, which I will refer to as ASI, filed a notice of opposition to the application. ASI is the owner of United Kingdom trade mark registration no 1215773, which is for the trade mark **HALO HEAT**. This trade mark is registered for the following goods:

*installations and apparatus included in Class 11, all for heating, cooking, holding (maintaining temperature) and warming; parts and fittings included in Class 11 for all the aforesaid goods; but not including heated towel drying rails or any goods of the same description as heated towel drying rails.*

The above goods are in class 11 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.

3) ASI claims that the respective goods and trade marks are similar. Consequently, there is a likelihood of confusion and registration of the application would be contrary to section 5(2)(b) of the Trade Marks Act 1994 (the Act). It states that it has made significant use of the trade mark HALO HEAT in the United Kingdom, particularly in relation to cooking and holding ovens, volume holding cabinets, hot holding cabinets, catering warmers and banquet carts. ASI states that the goods are widely used in numerous catering establishments throughout the United Kingdom

4) ASI requests that the application is refused in respect of all goods and seeks an award of costs.

5) Elia filed a counterstatement. It denies that there is a likelihood of confusion. Elia requests that the application proceeds to registration and seeks an award of costs.

6) Only ASI filed evidence.

7) After the completion of the evidence rounds both sides were advised that it was believed that a decision could be made without recourse to a hearing. However, the sides were advised that they retained their rights to a hearing. Neither side requested a hearing; nor did they file written submissions.

## **EVIDENCE OF ASI**

### **Witness statement of Patrick Alvin Willis**

8) Mr Willis is vice-president of ASI. Mr Willis's statement is not focused on the position in the United Kingdom. However, certain points of relevance to this case can be gleaned from the statement. HALO HEAT equipment uses uniform heat distribution to the greatest extent possible. The system reduces the shrinkage of red meat during cooking and so increases the number of serving portions that can be made. The United Kingdom is a principal export market and ASI has a warehouse facility here.

### **Witness statement of Jacqueline Walker-Beagle**

9) Ms Walker-Beagle is chairman and managing director of Equip Line Limited, which I will refer to as Equip. Equip is the United Kingdom distributor for ASI. It has been the United Kingdom distributor for HALO HEAT products since 1995. Ms Walker-Beagle has been involved with the distribution of HALO HEAT products, with other companies, since 1977. Various pictures of Equip exhibition stands are exhibited at JW1. These show that Equip is involved in the distribution of a variety of brands. It is not evident from the photographs which specific products make use of HALO HEAT as a trade mark. The location and dates of the exhibitions, where the photographs were taken, is not given. Exhibited at JW2 is various promotional material. Parts of this material are undated or show dates after the date of application. What can be seen from the exhibits is that the main trade mark is ALTO-SHAAM; HALO HEAT is very much a sub-brand of this. The only clear use of HALO HEAT before the material date, and then used in a subsidiary position to ALTO-SHAAM, is for banquet carts and cook and hold ovens. Banquet carts are trolleys which are designed to keep meals hot; cook and hold ovens are self-explanatory. All of these goods are designed for the catering industry. Ms Walker-Beagle states that the use of HALO HEAT has expanded into other areas but there is no exhibited material to show the nature of this use and when it

commenced. She states that HALO HEAT hot deli counters have been around since the mid 1980s and have been used by Waitrose and Safeway. She states that they “still have numerous operational units”, which indicates that these goods are no longer produced. She refers to warming drawers and pizza holding units used by Pizza Hut, KFC and Nando’s but does not state when the use commenced.

10) Ms Walker-Beagle refers throughout her statement to HALO HEAT products with no mention of the ALTO-SHAAM equity. She states that she estimates that HALO HEAT products holds approximately 65% of the United Kingdom market. However, she does not state what that market is. Is it for all the goods she claims use upon or just some? She also gives no figures for this market, so it is difficult to know how she has come to this figure. Ms Walker-Beagle gives turnover figures by year but does not indicate whether the years are calendar years or financial years and also gives figures for after the date of application. There is a turnover of from £873,210 to £1,531,158. Her figures for promotion suffer from the same deficiency. The figures quoted range from £222,582 to £100,000.

### **Conclusion re the evidence**

11) The evidence tells me that ASI has made use of the trade mark in conjunction with the trade mark ALTO SHAAM for a very limited number of goods in a limited segment of the market; certainly not for the whole gamut of the specification. The trade mark HALO HEAT is used solely in relation to those goods which use a particular method of heating, the trade mark being the means by which ASI describes this method. I do not see that the evidence of use can assist ASI in relation to section 5(2)(b) of the Act; the evidence does not establish use that might enhance protection as per the jurisprudence of the European Court of Justice (ECJ).

### **DECISION**

#### **Likelihood of confusion - section 5(2)(b) of the Act**

12) 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)(a) of the Act defines an earlier trade mark as:

“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”

13) The trade mark upon which ASI relies is an earlier trade mark as per section 6(1)(a) of the Act.

14) In determining the question under section 5(2)(b), I take into account the guidance provided by the ECJ in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v*

*Metro-Goldwyn-Mayer Inc* [1999] RPC 117 and *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* [2000] FSR 77.

### **Comparison of trade marks**

15) The trade marks to be compared are:

**ASI's trade mark:**

**Elia's trade mark**

**HALO HEAT**

**HALO**

16) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Sabel BV v Puma AG* page 224). 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* page 224). 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 (*Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* page 84, paragraph 27).

17) Kicking off with the obvious, the earlier trade mark includes the word HALO and this element is phonetically and visually identical. HALO on its own will have the ordinary meaning of a disc or ring of light surrounding people or objects eg representations of saints and the light around the moon. I consider that the earlier trade mark can be perceived in two ways. Goods that heat, sold under the trade mark HALO, causing a conceptual disconnection between the two elements of the earlier trade mark, and consequently a conceptual similarity with the trade mark of the application. Alternatively, the trade mark may be seen as meaning goods that warm by surrounding foods or liquids with heat. The average consumer could view the earlier trade mark in either or both ways. In the case of the latter perception, there will be a conceptual dissonance between the two trade marks.

18) In comparing the respective trade marks I need to consider their distinctive and dominant components. For Elia's trade mark that is simple; it is the word HALO. In the case of ASI's trade mark the word HALO comes first and is not directly descriptive of the goods. HEAT clearly relates to the purpose of the goods of the registration. As the Court of First Instance (CFI) stated in *Grupo El Prado Cervera, SL v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-117/02:

“51 The Court notes in that regard that the target public will not generally consider a descriptive element forming part of a complex mark as the distinctive and dominant element of the overall impression conveyed by that mark (see, to that effect, *BUDMEN*, cited above, paragraph 53; see, also, Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-0000, paragraph 60).”

19) However, whilst taking into account the distinctive and dominant component, I must still compare the trade marks in their entirety. The consumer will perceive the trade mark as a whole. In *Succession Picasso v OHIM - DaimlerChrysler (PICARO)* Case T-185/02 the CFI stated that the perception of the average consumer in relation to the goods in question should be taken into account when conflicting signs are compared:

“In this respect, the applicants’ argument that the similarity between two signs is to be assessed without taking the composition of the relevant public into account, that being relevant only at the stage of the global assessment of the likelihood of confusion, must be rejected. 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.”

20) HEAT is clearly descriptive of goods that heat, such as those of the earlier registration. HALO appears to be an unusual word to use in relation to the goods of the earlier registration. Mr Hobbs QC, sitting as the appointed person, in *Torremar* [2003] RPC 4 stated:

“At this point it is necessary to observe that marks which converge upon a particular mode or element of expression may or may not be found upon due consideration to be distinctively similar. The position varies according to the propensity of the particular mode or element of expression to be perceived, in the context of the marks as a whole, as origin specific (see, for example, *Wagamama Ltd v City Centre Restaurants Plc* [1995] FSR 713) or origin neutral (see, for example, *The European Ltd v The Economist Newspaper Ltd* [1988] FSR 283).”

**I consider, taking into account the nature of the goods and the common presence of the word HALO, that the respective trade marks are distinctively similar.**

### **Comparison of goods**

21) 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.”

22) In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer*, the ECJ 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, it may be necessary to consider whether the goods and services are complementary.

23) In considering the specification of the registration it is necessary to consider the goods in question in notional and fair use for everything that they could encompass (see *Compass Publishing BV v Compass Logistics Ltd* [2004] EWCA 520 (Ch) re this issue). In order to consider this matter it is necessary to look at what the case law has decided about how to consider wordings in specifications. 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 Limited* [1996] RPC 281 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).

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.”

24) The goods to be compared are as follows:

**Goods of earlier registration:**

*installations and apparatus included in Class 11, all for heating, cooking, holding (maintaining temperature) and warming; parts and fittings included in Class 11 for all the aforesaid goods; but not including heated towel drying rails or any goods of the same description as heated towel drying rails.*

**Goods of application:**

*apparatus and installations for refrigerating, freezing or drying; microwave ovens (including combination ovens); toasters, kettles, coffee makers, ice machines, rice cookers, barbecues; fans; electric coffee filters; machines for making and/or dispensing hot drinks; machines for bread making; fridges, freezers, combination fridge/freezers; parts and fittings for all the aforesaid goods.*

*catering, office, household or kitchen utensils and containers; food and beverage containers; containers for dispensing liquids; thermally insulated containers; vacuum flasks including ones of metal; flasks, plates, bowls, cups, mugs, tableware services; decorative containers of glass, ceramic or metal; vases; flower bowls; table decorations; strainers; salt cellars; pepper pots; napkin holders/rings; trays; shakers; scoops; heat resistant mats; ladles; sifters, shakers, flower holders; candlesticks; candle snuffers; none being goods of precious metal or coated therewith; parts and fittings for the aforesaid goods; but not including refuse bins or siphons;*

**25) ASI has put forward no argument, detailed or otherwise, in relation to the similarity of the respective goods. It has just stated that all the goods are similar. I cannot see where and how, within the parameters of the case law, the following goods in class 21 of the application could be classed in any meaningful sense as being similar to those of the earlier registration:**

*plates, bowls, cups, mugs, tableware services; vases; flower bowls; table decorations; strainers; salt cellars; pepper pots; napkin holders/rings; trays; shakers; scoops; heat resistant mats; ladles; sifters, shakers, flower holders; candlesticks; candle snuffers.*

26) The specification of the earlier registration is worded in a broad fashion and I cannot assign to the terms an “unnaturally narrow meaning”. **The specification encompasses all heating, cooking, holding and warming equipment in the class, with the exception of the excluded goods upon which nothing turns. I cannot see, therefore, how it does not encompass microwave ovens (including combination ovens); toasters, kettles, coffee makers, rice cookers, barbecues, electric coffee filters; machines for making and/or dispensing hot drinks; machines for bread making. I consider the aforesaid goods to be identical to those of the earlier registration.**

27) ***Fans are goods for circulating air in a room. I cannot see the basis upon which ASI claims that these goods are similar to those of its registration. Apparatus and installations for refrigerating, freezing; ice machines,; fridges, freezers, combination fridge/freezers*** are all to keep cool and cold, whilst the goods of the earlier registration are too keep hot; they are at opposite ends of the temperature spectrum. The goods upon which ASI has illustrated use are for the main part keeping food in a state in which it can be served when required. Many of the refrigeration type goods of the application could serve the same purpose eg cold cabinets for keeping salads and sandwiches fresh, refrigerators for keeping drinks cool, freezers for keeping ice creams and frozen desserts frozen. These goods could also be domestic freezers and fridges, however, there is no limitation of the specification and I have to consider it in its full, reasonable potentiality. *Apparatus and installations for refrigerating, freezing; fridges, freezers, combination fridge/freezers* could serve the same purpose of the goods of the earlier registration in keeping prepared foodstuffs in a condition for self-serving. As such they could be bought by the same customers (users) eg self-service restaurants. The photographs of the exhibition stands show what appear to be refrigerated units on the same stands as units for keeping food hot, so it appears that the goods would share the same channels of trade. The goods could have the same nature, being electric appliances for foods. Being at opposite ends of the temperature spectrum the goods are not going to be in competition. Although the goods could end up in the same place and for a similar purpose, I think it would be stretching the meaning of complementary to consider them as such. **Taking into account all the above I consider that *apparatus and installations for refrigerating, freezing; fridges, freezers, combination fridge/freezers* are similar to the goods of the earlier registration.**

28) I have taken what I consider to be the natural meaning, in the context of the specification as a whole, for *installations and apparatus .....for holding (maintaining temperature)*. However, another interpretation could take this part of the specification to include not only goods that keep goods at a higher than ambient temperature but also goods that maintain a low temperature. **If one takes this view then *apparatus and installations for refrigerating, freezing; fridges, freezers, combination fridge/freezers* would be encompassed by the earlier specification and so identical to the goods of the earlier registration.**

29) *Ice machines* produce ice, a cold temperature is then, no doubt, maintained but this is secondary to the purpose and use of the machine. They are not designed to keep things, other than the ice that they produce, at a particular temperature. There is no evidence as to channels of trade. *Ice machines* have a discrete and particular function. **The onus is upon the opponent to prove its case (*React Trade Mark [2000] RPC 285*) and on the basis of the evidence before me I cannot find that *ice machines* are similar to the goods of the earlier registration.**

30) This leaves *apparatus and installations for..... drying* in class 11 to consider. I consider that the notional consumer would view this part of the specification as referring to goods such as hair dryers and clothes dryers. In the absence of both evidence and argument, I cannot see that these goods share any meaningful similarities with the goods of the earlier registration. An oven and a tumble dryer both use heat but I do not consider that this makes them similar. **On the basis of the evidence and argument, or lack thereof, before me I do not find that *apparatus and installations for..... drying* are similar to the goods of the earlier registration.**

31) This leaves the parts and fittings to consider. These are part and parcel of the principal goods and I consider that their similarity or dissimilarity will depend on the similarity or dissimilarity of those goods. Consequently, the parts and fittings will remain for the principal goods that remain. This logic will apply both to the class 11 and class 21 goods of the application.

32) The remaining goods of class 21 to be considered are:

*catering, office, household or kitchen utensils and containers; food and beverage containers; containers for dispensing liquids; thermally insulated containers; vacuum flasks including ones of metal; flasks, decorative containers of glass, ceramic or metal.*

The various containers and utensils will include such things as coffee pots and coffee makers and cooling devices containing heat exchange fluids. The specification covers goods for the maintenance of a temperature. Even where the goods like *flasks* at large and *decorative containers* are not specifically particularised as having heat or cold retentive qualities, they would still cover such goods. The respective goods could have the same purpose, the maintenance of a temperature in foodstuffs and beverages. The end user could be the same, eg a cafeteria or in-house office catering. The goods could be an alternative for those of the earlier registration, sharing the same purpose, and so in competition. In the absence of any evidence I cannot conclude that the respective goods share a common nature, channel of trade or are complementary. There is nothing in the way of evidence to show how the respective goods might be considered in the trade. The analysis of the similarities or dissimilarities would have been greatly helped by evidence. I have had to make an analysis on the purely theoretical rather than what goes on in the trade in reality. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* the ECJ stated

“It is, however, important to stress that, for the purposes of applying Article 4(1)(b), even where a mark is identical to another with a highly distinctive character, it is still necessary to adduce evidence of similarity between the goods or services covered.”

Such evidence has seldom been forthcoming and in a large number of cases its filing would add little. However, there are cases, such as this, where evidence of the exact nature of the conflicting goods and how they are used and perceived in trade is necessary for an opponent to prove its case. In this case, there has also been no argument as to how the goods, within the parameters of the case law, are similar. The similarities I have pointed out are quite possibly purely theoretical and may have no bearing in the reality of trade. From a purely theoretical point of view it is quite easy to seek out and find similarities between very different goods. From the theoretical standpoint one could put forward an argument as to the similarity of a candle and an electric desk lamp. I do not think that anyone would consider that these goods have any real similarity. In this case I have nothing in evidence to suggest that the similarities I have outlined are any more real than those between the candle and the electric desk lamp. **The onus being upon the opponent to prove its case, on the basis of the evidence before me I cannot find that:**

*catering, office, household or kitchen utensils and containers; food and beverage containers; containers for dispensing liquids; thermally insulated containers; vacuum flasks including ones of metal; flasks, decorative containers of glass, ceramic or metal*

**are similar to the goods of the earlier registration.**

## **Conclusion**

33) To succeed under section 5(2)(b) of the Act the respective goods have to be similar; that is what the Directive states, it is what the Act states. It is what is pointed out in *Sabel*:

“it is to be remembered that Article 4(1)(b) of the Directive is designed to apply only if by reason of the identity or similarity both of the marks and of the goods or services which they designate, “there exists a likelihood of confusion on the part of the public”.”

Consequently, those goods which I have not found similar can be dismissed from further consideration.

34) In considering whether there is a likelihood of confusion a variety of factors have to be taken into account. The average consumer rarely has the chance to compare trade marks directly and so is likely to rely upon imperfect recollection. I am of the view that the hook upon which that imperfect recollection will hang is, in the earlier trade mark, the word HALO. The European Court of Justice held that a lesser degree of similarity between trade marks may be offset by a greater degree of similarity between goods, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*). The class 11 goods of the application, other than those which are not similar, are either identical or similar to a good degree. The respective trade marks enjoy a good degree of similarity. It is necessary to consider the goods and the consequent nature of the purchasing decision. The goods of the application are likely to be bought with some care and consideration, a reasonably educated and careful purchasing decision is likely to be made. However, great care will not avoid confusion where there is a good degree of similarity between signs and goods. The distinctiveness or otherwise of the earlier trade mark is of importance, as there is a greater likelihood of confusion where the earlier trade mark has a particularly distinctive character, either per se or because of the use that has been made of it (*Sabel BV v Puma AG*). The distinctive character of a trade mark can be appraised only, first, by reference to the goods or services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public (European Court of First Instance Case T-79/00 *Rewe Zentral v OHIM (LITE)*). In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, *Windsurfing Chiemsee Produktions und Vertriebs GmbH (WSC) v Boots und Segelzubehör Walter Huber, Franz Attenberger* (Joined Cases C-108/97 and C-109/97) [1999] ETMR 585). The earlier trade mark as a whole gives an idea of the nature of the goods but many a successful trade mark gives a hint as to the nature of the goods. The earlier trade mark is not directly descriptive of the goods for which it is registered and there is no evidence to suggest that the word HALO or HALO HEAT as a whole are anything other than distinctive for the goods. Bearing all these factors in mind, I consider that the critical mass for a likelihood of confusion has been achieved in respect of identical and similar goods.

**35) The application is to be refused in respect of the following goods in class 11:**

*apparatus and installations for refrigerating or freezing; microwave ovens (including combination ovens); toasters, kettles, coffee makers, rice cookers, barbecues; electric coffee filters; machines for making and/or dispensing hot drinks; machines for bread making; fridges, freezers, combination fridge/freezers.*

**Elia should file, within one month of the expiry of the appeal period from this decision, a form TM21 to amend the class 11 specification to read:**

*apparatus and installations for drying; ice machines; fans; parts and fittings for all the aforesaid goods.*

**No amendment to the class 21 specification is required.**

**If no form TM21 is filed within the period set the application will be refused in its entirety. (If an appeal is filed the period for filing the form TM21 will be one month from the final determination of the case, if the appeal is unsuccessful.)**

### **COSTS**

**36) Although most of the class 11 specification has been refused the class 21 specification is untouched. I consider, therefore, that each side should bear its own costs.**

**Dated this 16th day of July 2004**

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