

O-306-06

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2367369
BY CARSTAR AUTOMOTIVE LIMITED TO REGISTER
THE TRADE MARK CARSTAR IN CLASSES 12, 37 & 39**

AND

**IN THE MATTER OF OPPOSITION NO 92996
BY CARSTAR AUTOMOTIVE, INC**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No 2367369
by Carstar Automotive Limited to register the
trade mark CARSTAR in classes 12, 37 and 39**

and

**IN THE MATTER OF Opposition No 92996 by
Carstar Automotive, Inc**

1. On 3 July 2004 Carstar Automotive Limited applied to register the mark CARSTAR for the following specification of goods and services:

Class 12

Motor vehicles and parts and fittings therefor included in Class 12.

Class 37

Repair and maintenance of vehicles.

Class 39

Vehicle rental and recovery services.

2. On 29 November 2004 Carstar Automotive, Inc filed notice of opposition to this application. Paragraph 6 of the official form, TM7, required the opponent to identify the grounds of opposition. The opponent did so by referring to grounds under Section 3(6), 5(4)(b) and 56. Following a request from the Registry's Law Section casework examiner to clarify the basis for the ground under Section 5(4)(b), the opponent filed an amended statement of case omitting reference to Section 5(4)(b). My understanding, therefore, is that the opposition is being pursued on the basis of the Section 3(6) and 56 grounds only (the opponent's written submissions are consistent with that state of affairs). I note, however, that written submissions prepared by Counsel for the applicant deal with a ground under Section 5(4)(a). So far as I can see the applicant has no case to answer in this respect because no such ground has been raised. The misunderstanding may be attributable to the fact that a reference to Section 5(4)(a) appears on the pro-forma document which was used to raise the (withdrawn) ground under Section 5(4)(b).

3. The objection under Section 3(6) is framed in the following terms:

“The trademark CARSTAR is internationally well known as the property of the Opponents in relation to the same or similar goods and services as claimed by the application, and the Applicants cannot be said to be the *bona fide* proprietors of the trademark for the goods and services claimed.”

4. Under Section 56 the opponent claims that its trade mark CARSTAR is entitled to protection as a well known trade mark under the provisions of Article 6bis of the Paris Convention. The claim relates to “Paints for vehicles and vehicle and vehicle body repair services” and to both the plain form word CARSTAR and a logo format representation of that word.

5. The applicant filed a counterstatement denying the above grounds.

6. Both sides ask for an award of costs in their favour. Both sides have filed evidence. The parties were reminded of their right to be heard or to file written submissions. The trade mark attorneys acting for the parties indicated that their clients were content for a decision to be reached on the basis of the papers filed without a hearing. Written submissions have, however, been received from Eric Potter Clarkson acting for the opponent under cover of a letter dated 6 September 2006 and from Marshall Law acting for the applicant by letter dated 11 September 2006 covering submissions from Counsel. Acting on behalf of the Registrar and after a careful consideration of the papers I give this decision.

Opponent’s evidence

7. Two witness statements have been supplied in support of the opponent’s case. The first is by Kevin Karas, Executive Vice-President of Carstar Automotive, Inc. The opponent is said to be the leading automotive vehicle repair business in North America. It has used the trade mark CARSTAR since at least 1989. Some 350 franchise outlets exist across the USA and Canada. Mr Karas sets out sales turnover figures for the years 1995 to 2004 for (separately) the US and Canadian parts of the business. It appears to be a substantial trade amounting to sales of some \$300 million per annum for the US business and well over Can \$100 million per annum for the Canadian business in recent years.

8. Mr Karas says that, although the opponent does not have any franchisees or other business operations in the UK this is something that it has been actively looking at over the last few years (Mr Karas’ statement is dated 23 June 2005).

9. He goes on to say:

“Indeed the Opponents’ Master Franchisor in Canada, had informal discussions with a Mr George Dionisiou of a company called Solus Automotive Limited in May and June of 2004. Mr Dionisiou was interested in exploring opportunities to cooperate with Opponents to establish a franchising arrangement in the United Kingdom automotive vehicle repair market. These discussions have continued in 2005 but have not come to anything to date.”

10. Corporate records exhibited (Exhibit 3) to Mr Karas’ witness statement show that Solus Automotive Limited is the parent of the applicant company.

11. The story is picked up in the witness statement of Sam Mercanti, President and Chief Executive Officer of Carstar Automotive Canada, Inc.

“At least as early as May 2005, I commenced discussions with Mr George Dionisiou of the Solus Group in the United Kingdom regarding the possibility of a joint business venture which would extend the Carstar franchise into the United Kingdom.

Pursuant to these discussions I provided Mr George Dionisiou of Solus a letter on May 31, 2004, which included a detailed questionnaire with regard to the vehicle collision repair business in the United Kingdom. A copy of this letter and the questionnaire is attached to this Witness Statement as Exhibit 2.

There were ongoing discussions with Mr Dionisiou in the following months including an e-mail from Mr Dionisiou on which I was copied and which is dated July 1, 2004. A copy of this e-mail is attached to this Witness Statement as Exhibit 3.

Discussions and communications with Mr Dionisiou or his business associates continued through September, October and November 2004 and as recently as January of 2005.

I am informed that a Company using the name Carstar Automotive Limited applied, in August of 2004, to register the trademark CARSTAR on the trademark registry in the United Kingdom. I am also informed that Carstar Automotive Limited is affiliated with the companies Solus Property Limited, Solus Finance Limited and Solus (London) Limited as well as others. I have also been informed that Mr George Dionisiou is a Director of an affiliated company Carstar Limited which is a subsidiary of Carstar Automotive Limited.

Mr Dionisiou would have known at least as early as May of 2004 that the true proprietorship of the trademark CARSTAR is Carstar Automotive, Inc of Overland Park, Kansas USA.”

Applicant’s evidence

12. George Dionisiou, a director of the applicant company, has filed a witness statement. He, firstly, sets out the corporate background. Carstar Automotive Limited is one of a family of Carstar companies. These are as follows (with their dates of incorporation):

Carstar Limited	-	4 July 1995
Carstar (UK) Limited	-	12 July 1995
Carstar Automotive Limited	-	3 March 1997
Carstar Property Limited	-	28 May 1998
Carstar Finance Limited	-	28 July 1998
Carstar Accident Management Limited	-	18 September 2002

13. Two of the companies, Carstar Property Limited and Carstar Accident Management Limited, have changed their name since incorporation. Mr Dionisiou goes on to say:-

“7. The background to the adoption of the Carstar name is as follows. I originally had a family business called M & A Coachworks and had various business names registered in relation to that. From 1995, I incorporated various companies under the Carstar name including a property holding company. There was no question at any stage of us trying to trade off the back of anyone else’s name.

8. I started a new joint venture business with Norwich Union towards the end of 1996. The corporate vehicle for this was then called Carstar Automotive Limited, which was incorporated on 12 July 1995. Norwich Union did not particularly like the name Carstar and so that was why we started trading as Solus Norwich Union. Accordingly, the name of the company was changed to Solus (London) Limited on 18 February 1997. I refer to Exhibit GD2, which is a Companies House printout in relation to this company. A new company was then incorporated on 3 March 1997 as Carstar Automotive Limited. Basically the business model that followed was that our company “sat behind” Norwich Union but Solus Norwich Union was the name that is upfront and is known to the customers.

9. Around 1998 we then started doing business with Porsche. They also did not like the Carstar name very much and so, although we kept the name of the CARSTAR companies going, we had trading styles that were used on letter head and other business stationery. In addition, Carstar Limited was involved, as I incorporated a subsidiary of that company. The subsidiary was called Specialist Brands Limited, trading as Porsche Body Repair Centre, and later as Solus Porsche Accident Repair Centre. There are various contracts with Norwich Union and Porsche all of which would have been entered into in the name of one of the Carstar companies mentioned above.

10. As such, I totally reject the suggestion that the CARSTAR name has been appropriated by my company from the Opponent or that we were not entitled to apply for it as a trade mark. We have legitimately traded under this name for nearly 10 years prior to the date of the application for the CARSTAR trade mark in July 2004.

11. Just to complete the background in July 2004, we were about to conclude a contract with Daimler Chrysler Retail Limited after a period of some 2½ years of negotiation. Because they did not want to be associated with Norwich Union, they wanted us to come up with a new trading name. Carstar Accident Management Limited has the benefit of this contract. This company had been incorporated as Carsmac Limited in 2002, changed its name almost immediately to Carstar (London) Limited and then to the current name on 20 September 2004. It was in that context that we decided to apply for the trade mark CARSTAR. We were planning to use that name as the new front-end name. We naturally considered that we were entitled to use it, given that we had legitimately traded under it for some time. In the event, however, Daimler Chrysler has suggested that we trade as the Mercedes Benz Accident Repair Centre and that is now the front end of the business. This is not to say, however, that we will not use the CARSTAR front end at some point in the future.”

14. In relation to his dealings with Mr Mercanti he says:

“17. The second point is that Mr Mercanti is presenting a distorted view of our discussions and the purpose of the questionnaire that he exhibits. The true position is as follows. I first met Sam Mercanti in 2003. Carstar Canada were one of the principal car repair companies for Norwich Union in Canada, where they traded as CGNU. They were trying to improve standards worldwide and encouraging all their contractors to share knowledge, procedures and develop and shared [sic] best practice across the whole spectrum of suppliers to Norwich Union/CGNU.

18. Mr Mercanti came to see me specifically so that he could understand the Solus model to see if it could be applied to his business in Canada. He knew that I had a very good relationship with Norwich Union in England. He wanted to replicate the relationship I had with Norwich Union so that he could take advantage of the guaranteed throughput of work that we had at Solus. He was starting a new business and he wanted to fill his workshops with a guaranteed stream of work and was hoping to copy the Solus model. He even took a video film of our headquarters building. At the start of our meeting I made a presentation to him setting out the way in which we operated I explained that we already used the Carstar name within the group.

19. There never was any discussion about Carstar Canada coming over to the UK. In fact we were looking to create a Solus franchise by rolling out our formula across the UK rather than running all our operations ourselves. Given the Norwich Union connection between us and Mercanti's company, we decided to share information and best practice with him, although this did not directly involve the Opponent. He was going to give me his base criteria for a franchise operation so that we could compare his business model with the Solus model in the UK. We would consider whether the UK market was capable of being franchised, but using the Solus name, not the Carstar name and certainly not Carstar Canada's formula. It was in these circumstances that we filled out the questionnaire at Exhibit 2 of Mr Mercanti's statement. This was just an information exchange exercise. There was no question of Carstar Canada coming over to the UK and no question of us operating as one of Carstar Canada's franchisees.

20. I repeat that the main purpose of Mr Mercanti's visit was to see if the Solus business model would work in Canada, not whether the Carstar business model would work for Solus in England. I understand that Mr Mercanti has been very successful in building a business in Canada using the information he gained from my company. In particular, his company undertake significant volumes of work for CGNU.”

15. The final part of Mr Dionisiou's witness statement addresses the claim that the opponent's CARSTAR mark is well known in the UK. His main points are that there has, so far as he is aware, been no advertising in the UK trade press; the name is known only to the extent that principals of the opponent have attended trade fairs in

Europe; the crash repair business is a localised service; and as a consequence there is little awareness save for a few interested members of the crash repair trade.

16. Mr Dionisiou subsequently filed a second witness statement for the purposes of exhibiting an e-mail exchange he had with Mr Mercanti in January 2005 which, in his view, sheds light on the purpose behind, the latter's trip to the UK and contradicts certain parts of his (Mr Mercanti's) evidence in these proceedings. The relevant paragraph of Mr Mercanti's e-mail is:

“I also spoke to the lawyer on their side, and told him exactly what you asked me to say, he told me that he would take this up with the CARSTAR US management. I told them it was in their best interest to settle with you, and I reinforced that the trip to the UK was designed for me to gain knowledge of how you were working with NU, so that I can do the same in Canada with AVIVA. At the same time you brought up the fact that you had CARSTAR registered in the UK. At a later date you called me asking if CARSTAR franchising would work in the UK, and I asked you to send me some numbers on the UK collision market, and that we would do a quick business plan, and in fact this is exactly what happened.”

17. Mr Mercanti filed a further witness statement responding to Mr Dionisiou's comments. He says that his e-mail of 25 January 2006 (an extract from which is quoted above) does not specifically mention his trip in May 2004 to the UK and there is no reference in the e-mail that the comments are in relation to that trip. He concludes by saying:

“My trip to the UK in May 2004 was designed for me to gain knowledge of how Mr Dionisiou's business worked with an insurance company, with whom Carstar Canada also conducted business in Canada. However, it was during this trip that the discussion regarding the potential franchise of the CARSTAR trademark in the UK first came up, and that is what prompted my letter of 31 May 2004 as discussed in Paragraph 6. Mr Dionisiou did inform me of the fact that he “*had CARSTAR registered in the UK*”, but clearly this could not have been referring to the trademark position, because the above mentioned application was only filed in August 2004. I therefore assumed it referred to the registration of “Carstar” as a company name or trade name.”

18. That concludes my review of the evidence.

DECISION

19. Section 3(6) provides that a trade mark shall not be registered if or to the extent that the application is made in bad faith. The written submissions filed on the applicant's behalf set out in some detail the nature and standard of the test to be applied. I accept that this is the correct approach to the law. Briefly, in *China White* [2005] FSR 10, the Court of Appeal decided that the ‘combined test’ they understood to have been laid down by the House of Lords in *Twinsectra v Yardley* [2002] 2 AC 164, should be applied in deciding cases under Section 3(6) of the Act. In *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 Lloyd's Rep 225, the Privy Council clarified that the House of Lords' judgment in *Twinsectra* required only

that a defendant's state of knowledge was such as to render his action contrary to normally accepted standards of honest conduct. There is no additional requirement that a defendant (or applicant in trade mark proceedings) must also have reflected on what the normally accepted standards were. The applicability of these principles to trade mark cases has since been confirmed in *Ajit Weekly Trade Mark* [2006] RPC 25. The standard itself is that set down in *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] R.P.C. 367. It includes dishonesty but also includes some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. I have also been referred to *Royal Enfield Trade Marks* [2002] RPC 24 in relation to the seriousness of an allegation of bad faith and the need for such a case to be "distinctly alleged and distinctly proved"

20. The applicant's written submissions refer me to sheet 2 of the Form TM7 (Opposition) and paragraph 3 of the statement of case which focus on the rights the opponent owns in the mark CARSTAR internationally but without disclosing a basis for the bad faith claim in this country. The pleaded case, is therefore, said to be fundamentally defective and the bad faith claim should fall at the outset. I have some sympathy with that view but so far as I am aware the applicant neither asked for the ground to be struck out nor sought better particulars. As can be seen from the evidence summary the case has been conducted on the basis that both sides were aware of the issues between them notwithstanding any deficiency in the pleaded case.

21. The evidence is not conclusive as to when Mr Dionisiou and Mr Mercanti first met. Mr Dionisiou places their first meeting in 2003 but is otherwise non-specific about the circumstances and purpose of that meeting. Mr Mercanti refers to discussions commencing "at least as early as May 2004". There is no consensus as to the purpose behind discussions at this stage. Mr Dionisiou claims that Mr Mercanti wanted to "understand the Solus model to see if it could be applied to his business in Canada". More specifically, it is said that Mr Mercanti wanted to replicate the relationship that Mr Dionisiou and his companies had with Norwich Union. That state of affairs appears to be borne out by the email from Mr Mercanti to Mr Dionisiou on 25 January 2005.

22. However, that same email also refers to an enquiry from Mr Dionisiou to Mr Mercanti at a later date (not specified) asking if the (US/Canadian) CARSTAR franchise would work in the UK. The opponent contends that discussions between the parties had been with a view to extending the US/Canadian CARSTAR business to the UK and that it was in the knowledge of this that the trade mark application was filed. The suggestion is that it was an attempt to either pre-empt the opponent or at least improve the UK company's bargaining position.

23. Exhibit 2 to Mr Mercanti's witness statement includes a copy of a letter dated 31 May 2004 from Mr Mercanti to Mr Dionisiou and a Mr Luxton at Solus headed "Re : The CARSTAR Franchise opportunity for the United Kingdom". It invites the recipients to complete a questionnaire about the UK marketplace for accident repair work. Also included in the Exhibit is a completed questionnaire. I can only assume that this was returned to Mr Mercanti at a later date but when is not clear. Mr Dionisiou's evidence suggests that this was merely part of an information exchange between the companies (Solus and Carstar Canada) to see, inter alia, "whether the UK

market was capable of being franchised, but using the Solus name, not the Carstar name and certainly not Carstar Canada's formula". He adds that "there was no question of Carstar Canada coming over to the UK and no question of us operating as one of Carstar Canada's franchisees".

24. The applicant's written submissions also suggests that the heading of the letter at Exhibit 2 is ambiguous and could be a reference to the applicant and not Carstar Canada. I find this unlikely. A fair reading of the limited exchanges that took place is that both sides saw potential advantage in some sort of business arrangement. It is not disputed that the Canadian company wanted to know more about how Solus was working with Norwich Union in the UK with a view to progressing its own business in Canada. However, the completed questionnaire at Exhibit 2 strongly suggests that it was with a view to a business arrangement here and not simply a casual exchange of information. Thus, for instance, questions 10 and 25, which invited views on which market areas to focus on and development of staff resources, were answered in rather more specific terms than might have been expected if there was no intention to consider a business relationship.

25. Accordingly, I find that at the time Carstar Automotive Limited applied to register the mark CARSTAR (3 July 2004) the applicant's parent company and Carstar Canada were engaged in discussions, one strand of which involved the possibility of the US/Canadian concern operating a franchising system in the UK.

26. There is no evidence that Carstar Automotive Ltd (or other companies in the group) had considered protecting the name CARSTAR by means of a trade mark registration prior to July 2004. However, Mr Dionisiou's evidence is that various Carstar companies had been incorporated since 1995 including for use in connection with the car accident repair business. Mr Dionisiou describes successive business relationships that developed with Norwich Union, Porsche and Daimler Chrysler. In each case the insurer or vehicle manufacturers ultimately applied for trading names that reflected their own involvement in the ventures ie Solus Norwich Union, Solus Porsche Accident Repair Centre and Mercedes Benz Accident Repair Centre. As I understand matters these are the trading names that would be made known to the relevant sections of the general public.

27. However, in dealings with the above-mentioned companies, the Carstar name was still used. Carstar Automotive Ltd "sat behind" the arrangement with Norwich Union even though Solus Norwich Union was the trading name known to customers.

28. Mr Dionisiou's evidence is that the various contracts entered into with both Norwich Union and Porsche would have been in the name of one or other of the Carstar companies. The Daimler Chrysler link-up followed a similar pattern with Carstar Accident Management Limited having the benefit of the contract but with Mercedes Benz Accident Repair Centre being the name of the public face of the service.

29. Although the applicant has not filed evidence confirming the details of those contractual arrangements with Norwich Union, Porsche and Daimler Chrysler, Mr Dionisiou's evidence has not been challenged. The opponent is in any case well aware of the arrangement with Norwich Union because part of the reason for the

discussions between Mr Dionisiou and Mr Mercanti is accepted to have been to enable the latter to gain an insight into how Mr Dionisiou's business worked with the insurance company.

30. Furthermore, there is no doubt as to the substance of the applicant's trade in the UK. Exhibit 3 to Mr Karas' witness statement contains a D & B Company Report relating to Carstar Automotive Ltd, the company incorporated in 1997. It shows net sales of over £17 million in the year to 31 March 2002 rising to over £29 million in the year to 31 March 2004.

31. The Carstar name has thus been used in relation to the business of providing an accident repair service to Norwich Union and the two motor car manufacturers. The use has been as part of the name of companies whose business has included the provision of services to the above mentioned third party organisations.

32. The opponent has commented as follows in its written submissions:

It is submitted that the fact that the Applicants had earlier company names in the UK is not relevant, as these did not, and do not, grant any proprietary rights *per se* in the name CARSTAR. Furthermore, the Applicants have not filed any evidence to show any prior user rights in the relevant goods/services. It is also noted that the Applicants have filed no evidence to substantiate their claim that they have made sufficient earlier use of the trademark CARSTAR for them to claim to have prior rights. It is also not clear in what industry such use occurred. As such, from the evidence filed, the applicants have not established a sufficient "common law" position of earlier rights.

33. It seems to me that the issue here is not whether the applicant had established an antecedent right but whether, in all the circumstances, it was an act of bad faith to have applied for trade mark registration. Establishing an antecedent right might be persuasive or at least potentially helpful in countering a bad faith claim but failure to establish such a right does not necessarily have the opposite effect.

34. The evidence does not suggest that the applicant activated a previously dormant name to pre-empt the opponent. The most that can be said is that the timing of the trade mark application might give rise to suspicion. The applicant deals with this by explaining that it was intending to use CARSTAR as the front-end name in dealings with Daimler Chrysler. In the event Daimler Chrysler wanted to trade as Mercedes Benz Accident Repair Centre, Mr Dionisiou says that "... in July 2004, we were about to conclude a contract with Daimler Chrysler Retail Limited after a period of some 2½ years of negotiation". I find it a little surprising that the choice of name for the business venture had not been settled at an earlier stage. If Mr Dionisiou's claim is taken at face value it would suggest that as late as July 2004 the applicant was still expecting to use the name CARSTAR. But that does not detract from the fact that, for the reasons given above, the applicant was entitled to protect its position of *The Athletes Foot Marketing Associates Inc v Cobra Sports Ltd and Another* [1980] R.P.C. 343 where Walton J held that "...it may very well have been that the defendants advanced their own use of the name when they realised.....that someone else was about to use their chosen name first. This would be ordinary commercial prudence. All this means legally is that they got their foot in the door first".

35. The onus is on the opponent to ‘distinctly prove’ its case. In the event it has failed to do so and the opposition fails under Section 3(6).

Section 56

36. The Act, as amended by the Patents and Trade Marks (World Trade Organisation) Regulations SI 1999/1899, provides as follows:

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

- (a) is a national of a Convention country, or
- (b) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country,

whether or not that person carries on business, or has any goodwill, in the United Kingdom.

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

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

This right is subject to section 48 (effect of acquiescence by proprietor of earlier trade mark).

(3) Nothing in subsection (2) affects the continuation of any *bona fide* use of a trade mark begun before the commencement of this section.”

37. Well known marks are brought within the compass of the term “earlier trade mark” by virtue of Section 6(1)(c) of the Act.

38. A person claiming protection under Section 56 does not have to carry on business here or have any goodwill in this country. There is nonetheless a requirement that the mark in question is “well-known in the United Kingdom ...”(Section 56(1)).

39. Kerly’s Law of Trade Marks and Trade Names (Fourteenth Edition) at 14-215 indicates that:

“It is to be expected that,..... the provision will be construed as a matter of ordinary language so to require that the mark is well-established amongst, and familiar to, the interested public and so, in short, that the mark is famous. The original wording of the Paris Convention contemplates the use of the mark by

the proprietor and by the other party in relation to “goods”. TRIPS provides that Article 6bis of the Paris Convention shall apply, mutatis mutandis, to services. In any event the 1994 Act is not so limited, providing as it does its own definition of a well-known trade mark and the extent of the right in respect of goods or services where the use is likely to cause confusion.”
(Footnotes omitted)

40. The goods and services in respect of which well known mark status is claimed appear to be “Paints for vehicles” and “Vehicle and vehicle body repair services”. In North America the opponent’s business operates through franchised collision repair centres. The repair centres are referred to as CARSTAR repair centres. The relevant customer base consists, therefore, of franchisees and end users of the goods and services. I have held that the discussions that took place between the parties or their associated operations were, in part at least, with a view to a franchise operation in this country. The business model and hence the customer base amongst whom the mark would need to be well known are, therefore, essentially the same as in North America.

41. There is evidence from Mr Karas and Mr Mercanti that Carstar Automotive is a significant player in the North American market. There is little, if any, information to suggest that the North American reputation is recognised in the UK. Mr Dionisiou says that awareness is small and confined to “a few interested members of the crash repair trade”. He suggests that there is a reason for this in as much as crash repair work is in essence a localised service. Evidence could displace that view. However, there is simply no, or insufficient, material to persuade me that the North American reputation is widely known to relevant consumer groups in this country as a result of advertising, awareness campaigns or other such promotional mechanisms. Therefore, the well-known mark claim does not get off the ground.

42. The opposition as a whole has failed. The applicant is entitled to a contribution towards its costs. I order the opponent to pay the applicant the sum of **£1600**.

43. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 24th day of October 2006

M REYNOLDS
For the Registrar
the Comptroller-General