

O-339-08

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 2342306  
IN THE NAME OF MICHAEL SHWARTZ CONSTRUCTION LTD  
FOR REGISTRATION OF A TRADE MARK  
IN CLASSES 7, 11, 19, 37, 40, 42, AND 44**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 94073  
IN THE NAME OF ZURICH VERSICHERUNGS-GESELLSCHAFT**

**Trade Marks Act 1994**

**IN THE MATTER OF application No. 2342306  
in the name of Michael Shwartz Construction Ltd  
for registration of a trade mark  
in Classes 7, 11, 19, 37, 40, 42, and 44**

**And**

**IN THE MATTER OF opposition thereto under no. 94073  
in the name of Zurich Versicherungs-Gesellschaft**

**BACKGROUND**

1. On 3 September 2003, Michael Shwartz Construction Ltd, made an application to register a trade mark looking as follows:



The applicant claims the colours blue (Pantone 268) and white as an element of the mark.

2. Registration is sought in Classes 7, 11, 19, 37, 40, 42, and 44 in respect of the following goods and services:

Class 7            Machines adapted for use in the fields of the water, waste water, sewerage, waste, recyclable and/or recycled waste, energy, renewable energy, fuel, gas, electricity, oil, telecommunications, utilities, property, building construction and engineering industries; machines for use in the generation, transmission, distribution, supply and conservation of energy; fuel economisers; parts and fittings for all the aforesaid goods.

- Class 11 Apparatus and installations for water treatment; apparatus and installations for effluent treatment; apparatus and installations for purifying, settling, or filtering water, effluent or sewage; effluent handling apparatus and installations; apparatus for water extraction; apparatus and installations for the treatment of drainage systems, sewers and water courses; parts and fittings for all the aforementioned goods.
- Class 19 Non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal; parts and fittings for all the aforesaid goods.
- Class 37 Construction, maintenance and repair; all relating to buildings; construction and building project management and on-site project management services; plumbing services; coastal, river and estuary engineering services; mechanical, electrical and electronic engineering services; extraction of water from underground; property and real estate development; installation, laying, repair, maintenance, refurbishment and operation of pipes, pipelines, ducts and cables; provision of wiring inspections and subsequent remedial rewiring and associated electrical work; pipeline analysis, rehabilitation and repair; installation services; professional consultancy services in the field of pipeline, energy, power, fuel, oil, gas and electricity; leasing and hire services in relation to the aforesaid; advisory, consultancy and information services relating to all the aforementioned services.
- Class 40 Treatment of materials; treatment services; purification services; filtration services; disinfectant services; generation of electricity, energy, renewable energy and power; treatment and disposal of waste of all kinds; disposal and treatment of waste water from industrial processes and generating operations; recycling services; recycling of paper products; disposal and treatment of waste water from industrial processors and generating operations; demineralisation and desalination of water; disposal of waste from water treatment installations; waste, waste water, sewerage and water treatment services; ash disposal; disposal of solid residues; extraction of elements contained in waste residue; purification services; leasing and hire services in relation to the aforesaid; advisory, consultancy and information services relating to all the aforementioned services.
- Class 42 Engineering services; professional consultancy services in the field of electric, electronic, mechanical, civil and structural engineering services and in the field of public health, sustainable development, geotechnical, chemical, biochemical, geological and environmental services; geo-environmental services; architectural services; provision of planning and

feasibility services; design services; industrial design services; design of chemical, chemical handling and chemical processing systems, of river structures, of bottling systems, and of meter and meter reading systems; water, waste water, sewerage and waste design services; process design and consultancy services; tunnelling, service duct and pipeline design services; research services; geological, chemical, technical and scientific research services; inspection and evaluation services; preparation of reports; engineering drawings; laboratory analysis and testing services; materials testing and valuation services; analytical services; computer programming; computer consultancy and advisory services; information provided on-line from a computer database or from the Internet; creating and maintaining websites; hosting the websites of others; creation, development, installation and maintenance of computer software; system integration services; auditing of energy consumption and of the efficiency of operation of appliances and the safety checking of appliances and generating and/or transmitting and/or distributing energy, renewable energy, fuel, power, oil, gas, electricity, water, waste water, sewerage and waste; geotechnical engineering services; process control and monitoring services; leasing and hire services in relation to the aforesaid; advisory, consultancy and information services relating to all the aforementioned services.

Class 44 Gardening services; landscaping services; horticulture; leasing and hire services in relation to the aforesaid; advisory, consultancy and information services relating to all the aforementioned services.

3. On 20 January 2006, Zurich Versicherungs-Gesellschaft filed notice of opposition to the application, the grounds of opposition being in summary:

**1.Section 3(6)** The opponent authorises businesses involved within the construction industry to use their trade mark, consisting of a Z within a circle, to designate quality and guarantees, within a scheme operated by the opponents. Participants in this scheme are entitled to use and make reference to the opponent's trademarks, representations of which, Nos. M683458, M741382, M741387 and E489880, are appended in support of grounds outlined further in this opposition. The applicant was a registered participant in the aforementioned scheme, between the dates of 18 December 2000 and 20 January 2003. They were therefore fully familiar with and aware of the opponent's use and goodwill in the opponent's trademark and insofar as it was used in relation to the construction industry, and related services, and goods. The said application, and with prior knowledge of the opponent's trademark is a deliberate attempt to seek

registration for a closely resembling trade mark, and to trade off the opponent's reputation, and prior authorisation of use of their trademark, by seeking to register a closely resembling trademark.

- 2. Section 5(3)** because use by the applicant of an identical/ similar mark in relation to the goods and services of the subject application, will, without due cause, take unfair advantage of, or be detrimental to the opponents' earlier marks.
- 3. Section 5(4)(a)** by virtue of the law of passing off.
- 4. Section 56** because the Z in a circle logo, which has been used globally since at least 1996, is an instantly recognisable and well known trade mark, associated with the Zurich Insurance Company, namely the opponent. The opponent itself has traded internationally since 1872 and in the UK since 1992.

The opponent's rely on a number of marks, details of which are shown as an annex to this decision.

4. The applicants filed a counterstatement in which they admit that the opponents operate a scheme called "Zurich Building Guarantee" to builders and developers, which provides guarantees on newly built homes, and insures the property against construction faults in the early years of its life. They admit that the opponents make use of the device which it has registered as International Trade Mark No. M683458 and Community Trade Mark No. 489880 in relation to its "Zurich Building Guarantee" scheme, but deny that this is the case for International Trade Mark Nos. M741382 and M741387.

5. The applicant does not admit that builders and developers use any of the opponent's Z logo trade marks in connection with the Zurich Building Guarantee scheme, but admit that they use the names "Zurich Building Guarantee" and "Zurich" in respect of the opponent's financial services (insurance), and not in relation to their own construction services or any construction services offered by the opponent. The applicant's admit that they were a member of the opponent's scheme for the period alleged, and constructed a building guaranteed under the scheme. The applicant's further admit that they were aware of the opponent's established use of the device mark which is registered as International Trade Mark No. M683458 in relation to its "Zurich Building Guarantee" scheme.

6. The applicant's deny that the mark applied for closely resembles the Z device mark registered as International Trade Mark No. M741382, alleging that the marks are significantly different in styling and colouring. They go on to deny that they intend to trade off the opponent's reputation, in support providing Annex A showing how they use the mark. The remainder of the Counterstatement consists of submissions on the

grounds raised by the opponents.

7. Both sides ask that an award of costs be made in their favour.

8. Both sides filed evidence in these proceedings, which insofar as it is relevant I have summarised below. The matter came to be heard on 28 July 2008, when the applicants were represented by Mr Greg McDonagh of Harris Cartier, solicitors. The opponents were represented by Mr Bruce Marsh of Wilson Gunn, their trade mark attorneys.

## **OPPONENT'S EVIDENCE**

9. This consists of two Witness Statements. The first is dated 11 December 2006, and comes from Bettina Linder, Corporate Legal Advisor of Zurich Versicherungs-Gesellschaft. Ms Linder confirms that she has been employed by Zurich Versicherungs-Gesellschaft (aka Zurich Insurance Company) for 8 years and has access to the records and information set out in her statement. Ms Linder confirms that she is fully authorised by Zurich to make this statement on its behalf.

10. Ms Linder begins by referring to Exhibit BL-1, which consists of a copy of the excerpt from the Commercial Register of the Canton of Zurich relating to her company. Ms Linder goes on to give details of her company, stating that the Zurich Group is one of the world's leading insurance-based financial services providers with origins back to 1872 when the predecessor of Zurich was founded under the name "Versicherungs-Verein" in Zürich, Switzerland. She says that during the following 100 years the company expanded to provide services on all six continents, and by 2003 had offices in over 50 countries. Ms Linder refers to Exhibit BL-2, which consists of a copy of the book entitled "Inspired By Tomorrow" by Karl Luond, and which chronicles the corporate history, growth and development of Zurich and the Zurich Group. The book sets out 125 years of the company's history, and includes details of advertisements, including one from the 1970s that shows them to be using a different style Z logo.

11. Ms Linder states that The Zurich Group began commercial operations in the UK in 1922, offering a range of personal, commercial and international insurance services. In recent and current years, the Zurich Group has concentrated on offering commercial insurance product and services, available to sole traders through to multinational corporations. Such products include property insurance, professional indemnity insurance, risk management services, domestic and personal insurance, car insurance, life insurance, pensions, and mortgage services. Exhibit BL-3 consists of extracts from the book "Business Super Brands", from both 2003 and 2005, which include an overview of the Group's history, trading activities, and public perception. In the United Kingdom, Zurich trades as Zurich Insurance Company (U.K.) Ltd., which collectively represents over forty wholly owned registered companies. The pages show the Z Circle and ZURICH logo at the top, on pages illustrating "Zurich" publications, and also on a shirt where the company was a sponsor, albeit in 2005. It is also shown on a picture of the Zurich Premiership winners for the 2003 season.

12. Ms Linder says that since 1972 the Zurich Group has traditionally used a stylised "Z" logo as part of its corporate identity. A copy of the original logo (and a registration for the same with the OHIM) is shown as Exhibit BL-4, with a copy of

the current logo shown as Exhibit BL-5. The original logo is the one that I referred to from the book shown as Exhibit BL-2. The current logo is the italicized Z in a circle. Ms Linder says that the current logo has been in use continuously by Zurich in the UK since 1997. Ms Linder states that the logo is applied to virtually all literature and media produced by Zurich and the Zurich Group.

14. Exhibit BL-6 consists of the particulars of trade mark registrations for, or containing the "Z" logo which have effect in the United Kingdom, with Exhibit BL-7 consisting of a schedule of global trade mark registrations for or containing this logo.

15. Ms Linder goes on to refer to Exhibit BL-8, which consists of examples showing how the logo is used by Zurich. These all show the Z and Circle logo with ZURICH beneath, mostly with the Z in white in a black circle with ZURICH in black, with the Z in greyscale in a white circle with ZURICH in white, or a black Z in a white circle with ZURICH in black or white. These pages appear to be photocopies so if there is any use in colour that will not be reflected in the exhibit. The colour combination depends upon the background on which it is used.

16. Ms Linder goes on to give the gross UK turnover for Zurich in relation to their products between 1990-2003 as follows:

**Year Gross Premium Income**

1990	US \$ 1022 million
1991	US \$ 1277 million
1992	US \$ 1276 million
1993	US \$ 2514 million
1994	US \$ 2247 million
1995	US \$ 1606 million
1996	US \$ 2053 million
1997	US \$ 2415 million
1998	US \$ 8278 million
1999	US \$ 8670 million
2000	US \$ 8558 million
2001	US \$ 10047 million
2002	US \$ 11111 million
2003	US \$ 12503 million

Even without a conversion rate it is clear that these are very significant amounts

17. Ms Linder says that between 1998 and 2005 it is estimated that Zurich has spent around £60 million on advertising their services in the United Kingdom. Exhibit BL-9 consists of examples of different types of advertising conducted in the UK between 1998 and 2003. These mostly show the Z Circle and ZURICH logo, one also showing the Z being used on its own. Ms Linder goes on to refer to Exhibit BL-10, which consists of an extract from an independent report compiled by Thomson Intermediary plc confirming that in 2002, Zurich was in the top ten financial advertisers in the United Kingdom.

18. Ms Linder concludes her Statement by making submissions on the merits of the substantive issues, which I shall, of course consider in my determination of the case. Ms Linder makes particular reference to the applicant having conceded knowledge of use of the "Z" logo in the construction industry at paragraph 11 (vi) of their counterstatement. Ms Linder says at paragraph 22 of the counterstatement that the applicant admits to there being similarity between the mark applied for and the Zurich "Z" logo.

19. The next Witness Statement is dated 17 October 2006 and comes from Helena Pennycook, a Business Development Manager of Zurich Building Guarantee, a trading name of Zurich Versicherungs-Gesellschaft.

20. Ms Pennycook says that Zurich sells numerous insurance and financial products in the United Kingdom, which since 1993 has included a building guarantee insurance scheme for property developers who, for an annual membership fee, can purchase home warranty cover on new and conversion construction projects. Ms Pennycook says that for commercial reasons she cannot give detailed turnover figures, but that between 2000 and 2003, under the Building Guarantee Scheme her company had a 10 - 15% share of all new build home warranties and was one of only three companies providing this type of insurance for the period preceding the applicant's membership of the scheme. Ms Pennycook says that only two other companies offered comparable products, these being NHBC and HAPM, Ms Pennycook saying that the latter of these provides warranties within the social housing sector.

21. Ms Pennycook describes how the Building Guarantee Scheme operates, including the permissible use of the opponent's "Z" logo on warranted developments. Prospective members of the scheme receive an application pack which included an order form for marketing material. Exhibit HP1 consists of a selection of materials used as part of the scheme. The exhibit consists of what appears to be a press article dated 1 August 2003, announcing that Zurich Insurance Building Guarantee has been awarded chartered status. The header contains a blue circle containing an italicised "Z" in white, with the name ZURICH beneath. The rest of the exhibit contains details on the scheme, including some that are specifically directed to builders and developers. The rest of the exhibit consists of copies of the agreements and forms for administering the scheme, all of which have the logo previously described, the agreements showing black and white versions. These papers either cannot be dated, or can be seen to originate from after the relevant date, eg., from copyright statements.

22. Ms Pennycook goes on to detail the applicant's involvement in the scheme, beginning with them having contacted Zurich to make an application around August 2000, the application being formally made on 5 September 2000. Exhibits HP2 and HP3 consists of copies of information relating to the applicant's membership of the scheme, and a copy of the signed application form, respectively. The first exhibit consists of two Zurich internal pro-forma checklists bearing a black and white version of the Z Circle logo, a copy of a letter dated 4 September 2000 from the applicant (claiming but not exhibiting) the enclosing of a cheque for the membership fee with a CV, and a letter dated 6 September 2000 to the applicant confirming the application. The letter is a file copy and does not have a header. The second exhibit consists of a copy of the resulting application form to join the scheme. This has a black and white version of the Z Circle logo on the top.

23. Ms Pennycook goes on to say that her company database records the applicant as having been sent promotional stickers bearing the Z Circle logo on 17 July 2001, these having been requested by the applicant. Examples of the type of stickers that would have been sent out are shown as Exhibit HP4, which consists of a sheet of stickers, each bearing a blue circle containing an italicised “Z” in white, with the name ZURICH in blue underneath. Ms Pennycook states that membership of the scheme is renewed annually. Exhibit HP5 consists of correspondence between the applicant and Zurich, in which the applicant, on 14 January 2003 confirmed that he no longer wished to remain a member of the scheme.

24. Ms Pennycook says that the scheme has always ensured the visibility of the Zurich brand including the Z logo so that the homeowner is aware who is providing the warranty. This is done on their behalf by the developer. She mentions that the Council of Mortgage Lenders require that there be warranty cover when considering whether a mortgage can be granted; a builder must have warranty cover when a mortgage is required. Ms Pennycook says that the developer therefore acts on behalf of the home owner when taking out warranty cover.

25. Exhibit HP6 consists of examples of how the applicant uses the circle mark that is the subject of the application. The exhibit consists of prints from the ZEDHOMES website, and shows a white letter Z in a blue circle with ZEDHOMES beneath. The ZED stands for “Zero Energy Developments”. Ms Pennycook see this as the applicant “implying a continuing entitlement to display Zurich’s “Z” logo when this is not the case.”

#### **APPLICANT’S EVIDENCE**

26. The consists of a Witness Statement dated 28 March 2007, from Michael Schwartz, Managing Director and an employee of Michael Schwartz Construction Ltd, and Director of ZEDHomes Ltd. Mr Schwartz says that the facts set out in this statement are from his own knowledge, except where otherwise stated. Parts of Mr Schwartz’s evidence consists of submissions on the relative merits of the opponent’s case, which although I have not summarised, I will take fully into account in my determination of these proceedings.

27. Mr Schwartz gives an account of his experience in property development and the construction industry, having since 1982 managed projects of varying scales and complexity, both in the United Kingdom and mainland Europe, the USA and the Middle East. He says that he has been involved in various development projects as a Project Manager, in an advisory capacity on design, and also as the delivery arm of construction projects.

28. Mr Schwartz says that the applicant was incorporated on 21 October 1998, and ZEDHomes on 19 June 2003. Copies of the Certificates of Incorporation from the Companies House database for these companies are shown as Exhibit MS1, and confirm the dates given. Mr Schwartz confirms that he owns the applicant company and 50% of ZEDHomes. Mr Schwartz also refers to a registration certificate for Trade Mark No. 2,341,752, which consists of a series of two stylised versions of the word ZEDHomes, a copy of which is shown as Exhibit MS2.

29. Mr Shwartz gives details of the ZEDHomes financial position, which has made a year on year loss. He describes the company's principal business as the delivery of Zero Carbon Homes, so-called because they use renewable energies, conserving energy, and thereby do not require fossil fuels to be burnt to power them. Mr Shwartz says that he chose the name ZEDHomes to reflect the business, namely Zero (fossil) Energy Developments, and the acronym "ZED".

30. Mr Shwartz says that ZEDHomes currently has trading accounts, although it is yet to construct any of its planned developments. It has arranged for land to be purchased for its future developments (through Special Purpose Vehicle ('SPV') companies, and so these transactions do not form part of ZEDHomes' accounts). It has also made planning applications for its planned developments. ZEDHomes has also appeared at numerous exhibitions and shows, and conducted promotional activities and attended development meetings. Exhibit MS3 consists of various press cuttings and articles illustrating this point. The exhibit consists of a ZEDhomes brochure showing the Z logo, and various other items of printed matter showing ZEDHOMES/ZedHomes and the Z logo, albeit from well after the relevant date.

31. Mr Shwartz says that he commissioned the branding and logos used by ZEDHomes from a design agency called Wizard Studio, Exhibit MS4 consisting of the invoice relating to the commissioning of the logo together with art work invoices for marketing material. This shows the Z logo but the letter Z in white contained within a magenta or orange circle.

32. Mr Shwartz says that the application forms part of a coherent branding strategy adopted by the applicant, relating to the name ZEDHomes and in no way to the opponent's earlier marks, which, he says are clearly stylised and coloured differently. This shows that the applicant filed the application in good faith. He says that the categories of goods and services were carefully chosen to reflect the applicant's specific line of business, and in consultation with the company employed to act as our agents in making the application.

33. Mr Shwartz says that others use marks consisting of stylised versions of the letter "Z" are far from uncommon, Exhibit MS5 consists of a print of such marks on the UK Trade Mark Registry's online database. Exhibit MS6 consist of prints from web pages which Mr Shwartz says "evidence real extensive use of some of these "Z" trade marks". He refers in particular to the use by Nissan, Palm, Zimmer and Kleeneze.

That concludes my review of the evidence insofar as it is relevant to these proceedings.

## **DECISION**

34. I turn first to 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”.

35. 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.

36. To the above I add the comments of Pumfrey J in the South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership) case [2002] RPC 19, in which he said:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See Smith Hayden & Co Ltd’s Application (OVAX) (1946) 63 RPC 97 as qualified by BALI Trade Mark[1969] RPC 472).

Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed at the relevant date. Once raised the applicant must rebut the prima facie case. Obviously he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of possibilities that passing off will occur.”

37. The first question is whether the opponents have any reputation or goodwill in their “Z” marks. In my view there can be little doubt that the answer to this must be in the affirmative. I appreciate that the logo is more often than not used in combination with the “Zurich” name, but not always, and is usually at a sufficient distance to be seen separately. At worst it will be seen as a logo representing the Zurich business. Ms Linder says that the current "Z" logo has been in use continuously in the UK since 1997, and is applied to virtually all literature and media produced by Zurich and the Zurich Group. The evidence shows the opponents to use the Z logo in various guises or colour combinations, including a white Z in a blue circle, and also in black and white, most usually contained within a circle. The mark is used for a range of insurance services, those relating to guarantee warranty for construction works being of particular relevance. The opponents say that in the period preceding the applicant's membership they were one of only three players in this area, one of which is said to serve a different market sector.

38. The figures showing the extent of the use relates to all services provided under the Z Zurich brand. Whilst there are no details of the amounts derived from, or spent in relation to the building guarantee scheme, nor is there any information as to the size of the market for such a service, it seems to be that use in relation to insurance and financial services in general would wash over into any reputation gained in respect of the building guarantee insurance scheme. What is known about the use the opponents have made of the Z logo in respect of the building guarantee insurance scheme is that they have 10 - 15% of all new build home warranties. This may seem rather limited compared to their one real competitor, but in a single product, specialised market is still significant.

39. Taking all of this into account, there can be little doubt that the opponents and their Z logo, in particular, the form shown in their earlier marks M683458 and CTM489880 have a significant reputation, inter alia, in respect of building guarantee warranties. I see no reason why the position should be any different in respect of goodwill.

40. The question of misrepresentation depends on whether, in using the Z logo that they seek to register, the applicants are representing their goods and services in such a way that it would be likely to lead the consumer into believing that they are those of, or are in some way the responsibility of the opponents. The opponents refer to the applicant's acknowledgement that there are similarities in the respective marks, but having similarities does not automatically make them similar for the purposes of passing off.

41. From a visual standpoint and compared side by side, the applicant's mark and the current version of the opponent's mark look different. The opponent's version of the Z is slightly italicised and the applicant's is sharper and angular. However, marks are rarely compared in this way more often being recalled from memory. Factor in that the opponent's most commonly represent their Z in white on a blue circular background, which, whether or not it is the same blue as the applicant's version, is nonetheless similar to the eye, and probably to a later recollection. There is also the matter that the opponents have used their Z in different colour combinations, and from the early days, in a more angular form which I would say is more reminiscent of the

version that the applicant seeks to register. I would say that this all combines to create a similarity to the eye of the consumer who is likely to see the applicant's mark as a version of the opponent's mark.

42. That both marks are the letter Z leaves no room for doubt as to how they will be spoken. Likewise, unless the mode of representation changes it in some way (which in my view is not the case) the respective marks will send the same conceptual message to the consumer. All in all I consider the marks to be similar, and all other factors considered, the applicant's mark is capable of being a misrepresentation, but whether this will result in damage will be influenced by the nature of the use, in particular, the goods and services that the applicant's use will encompass. Will this create the link that will, or is likely to lead the public to believe that services offered by the applicant are services of the opponents?

43. As I have said, the opponents have a strong reputation in respect of financial and insurance related services, including one that offers warranties for newly constructed buildings. The applicants were themselves, members of the scheme for a while and cannot fail to have known of the opponent's use of the Z logo, but they are not seeking to register their Z logo in relation to such a service. However, it is not necessary that a common field of activity exists for there to be a finding of passing off, as is illustrated by the following passage from *Harrods v Harrodian School* [1996] RPC 697:

“What the plaintiff in an action for passing off must prove is not the existence of a common field of activity but likely confusion among the common customers of the parties. The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration ‘... whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant: *Annabel's (Berkeley Square) Ltd v G Schock per Russell LJ.*”

44. Mr Marsh submitted that the applicants having been a member of the opponent's building guarantee warranty scheme shows that there is a common field of activity and that before the relevant date they were entitled to use the opponent's earlier trade marks by virtue of being a member of the insurance scheme. The applicants have not denied that they used it, and then went on to adopt a virtually identical mark which they would be able to use in a similar way to the way in which they used the opponent's mark. That the applicant's used the opponent's mark in the course of conducting its business in relation to some of the services covered by the application strongly suggests that if there is not commonality in the fields of activity, they are at the very least seeping into each other.

45. Mr Marsh argued that there was a potential for misrepresentation because the marks are so close, and the parties had previously crossed paths. I have to agree. Even if there was not the "seepage", by adopting a logo that is similar to one that they have previously used, albeit in a different context, and then using it in relation to the same and similar services, the applicants have created a real likelihood of confusion. For example, as to whether the applicant's services are still under the warranty of the opponent's, or that the opponent's and the applicants are in a joint venture. I therefore find the third element, the likelihood of damage to also be present and the ground

under Section 5(4)(a) succeeds. It does not however succeed in respect of all of the goods and services.

46. The connection that will lead to damage is the service of construction, development and the like, and it is in respect of such services where I take the potential for damage to exist. I see no reason why any connection should be made, at least none that would cause damage, in relation to the use in respect of the goods and other services of the application. In essence I find the opposition to succeed under Section 5(4)(a) in respect of Class 37 and Class 42, both of which contain connected services. The remainder of the application is free from objection.

47. I will go on to look at the remaining grounds, starting first with Section 5(3). As a result of regulation 7 of The Trade Marks (Proof of Use etc) Regulation 2004 Section 5(3) now reads:

“5.- (3) A trade mark which –  
(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of 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.”

48. The standard test for the sort of reputation that is needed to underpin a Section 5(3) action is set out in *General Motors Corp v Yplon SA* [2000] R.P.C. 572. In this case the Court concluded that the requirement implies a certain degree of knowledge amongst the public, and that the required level would be considered to have been reached when the earlier mark is known by a significant part of the relevant sectors of the public. In deciding whether this requirement is fulfilled all relevant factors should be considered, including, the market share held by the trade mark, the intensity, geographical extent and duration of its use and the size of the investment made by the undertaking promoting it; the stronger the reputation and distinctive character, the easier it will be to accept that detriment has been caused to it.

49. The recent case law relating to objections under Article 8(5) of Regulation 40/94, equivalent to Section 5(3) of the Trade Marks Act was considered by the CFI in some detail in Case T-215/03 *Sigla SA v. Office for Harmonisation in the Internal Market*, namely, Case C-292/00 *Davidoff & Cie SA v Gofkid Ltd* [2003] E.C.R. I-389 at [24]-[26], and Case C-408/01 *Adidas-Salomon AG v Fitnessworld Trading Ltd* [2003] E.C.R. I-12537 at [19]-[22], Case T-67/04 *Monopole SpA v OHIM--Spa-Finders Travel Arrangements* [2005] E.C.R. II-1825 at [30], Case T-104/01 *Oberhauser v OHIM-- Petit Liberto* [2002] E.C.R. II-4359 at [25], Case C-39/97 *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1998] E.C.R. I-5507 at [29], Case C-342/97 *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* [1999] E.C.R. I-3819 at [17], Case C-251/95 *Sabel BV v Puma AG* [1997] E.C.R. I-6191 at [20] and Case C-375/97 *General Motors Corp v Yplon SA* [1999] E.C.R. I-5421 at [30]. Some of these cases I will refer to in more detail.

50. The CFI concluded that the mark at issue must be either identical or similar to an earlier mark relied upon. In its judgment in *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd*, the ECJ were not so conclusive about the need for the respective marks to be “similar”, only that they should have a “certain degree of similarity”. They said:

“29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them: see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23”

51. In *Inlima S.L.’s* application [2000] RPC 661 Mr Simon Thorley QC, sitting as the Appointed Person posed the question of what “similar” meant in the context of Section 5(3):

“13..The word ‘similar’ is a relative term. One has to ask the question ‘similar for what purpose’. The question of similarity accordingly can only be answered within the context of a particular set of facts, once one has identified both the facts and the purpose for which similarity is required. In the case of section 5(3), the purpose of requiring similarity is so that the possibility of detriment or unfair advantage might arise. In any particular case, a conclusion as to whether it does arise must depend not only upon the degree of similarity but on all the other factors of the case, not least, the extent of the reputation.

14. I therefore conclude that the same global appreciation as is required for confusion under section 5(2) is likewise to be applied to the changed circumstances of section 5(3).”

52. In *Esure Insurance Limited v. Direct Line Insurance plc*, a decision of the High Court of Justice, Chancery Division, [2007] EWHC 1557 (CH), Mr Justice Lindsay stated that whether marks were found to be similar involved the passing of a “threshold”:

“94 At his para 114 the Hearing Officer concluded:

"In my view, a distinctive feature of both marks is the unusual juxtaposition of wheels attached to (albeit recognisably different) electronic communication devices. I find that this gives rise to a recognisable similarity between the marks".

But if the threshold question is as I have indicated -- see para 46. above -- the threshold question is more a matter of law and first impression rather than one requiring detailed analysis or evidence and, if the threshold is as I have taken it to be, it is in my judgment here satisfied; I would not be able to say that duly-arrived-at overall impressions made by the rival marks are such that one could reasonably say that a likelihood of confusion could not thereby have been created. Despite the differences -- and there are several -- between the phone on wheels and the mouse on wheels, the relevant services are identical

and both the sign and the mark are indicators of a means of making contact and doing business with the provider of those identical services and in both cases (against all experience) black road wheels have been added to that means of communication and give it the appearance of a vehicle.

As a matter of first impression I would take the low threshold to have been cleared.

95 Mr Silverleaf draws attention to the passage in the Hearing Officer's paragraph 110 where he said:

"The requirement for similarity is therefore passed when there is any visual, aural or conceptual similarity between marks which is likely to be recognised as such by an average consumer."

He had said much the same in his paragraph 108; once there was that degree of similarity then the Tribunal was obliged to go on to consider the other factors identified in section 5(2)(b) or section 5(3) of the 1994 Act. As will have been seen from my observations on thresholds, I take a different view but it is not, as it seems to me, a difference that can here be magnified into a material and clear error of principle. The difference in approach would only have been a material error of principle if, upon adopting my view as to the threshold, I had taken the view that the threshold had not been equalled or exceeded. But, as I have indicated, in my view the threshold is low, as I have described it, and was exceeded. The Hearing Officer, in my view, was thus obliged to go on to consider whether there was a likelihood of confusion in the manner that he did and, equally, to consider questions as to unfair advantage and detriment, as I shall come on to, as he did.

96 I would add this (as I apprehend Mr Silverleaf asserted error in principle as to the Hearing Officer's response to conceptual similarity): it is difficult to elevate matters essentially of weight and degree into ones of principle but, even if one were to take out of the Hearing Officer's evaluation his concept of desk top electric communication devices as a feature common to both, I would, having regard to other similarities between the mark and the sign (especially if the mouse could be used in red with black wheels) nonetheless take the low threshold to have been exceeded.

97 If that is right then I next need to look into whether such similarity as there was, as globally appreciated in the way described in the authorities which I have touched upon in paragraphs 24 et seq. above, caused a likelihood of relevant confusion."

53. Paragraph 46 referred to (and paragraph 45 which puts it into context) read as follows:

“45 Lewison J's judgment does not itself specify what kind of minimum threshold Mr Wyand QC had contended for but I have been given a copy of the very full Skeleton argument which Mr Wyand and his junior, Mr Moody-Stuart, deployed before Lewison J.. At para 29 the Skeleton Argument makes the point that "absent at least similarity there can be no infringement". The argument continues:--

"This is a threshold test and is to be considered in each case by a visual, aural and conceptual comparison of the mark and sign".

Although that is not a complete specification of the test for the relevant 4(1)(b) similarity -- it leaves out, inter alia, the concept of interdependence -- it is hard to fault it as far as it goes. If all that Mr Wyand was arguing for was that there had to be at least some similarity, I would not think that Lewison J. was intending to reject that argument. Nor does the fact that the question is one of degree of itself exclude there being a threshold. I notice, too, that, so far as one can tell from the report, Vedral supra was not referred to the Judge. But Lewison J's observation that whether "something is relevantly similar to another thing must depend on why you are asking the question" is, as it seems to me, irresistible. "Are they similar", asked of marks, would be almost bound to meet the response "For what purpose?"

46 That is not to say that in every case where some one or more items or aspects, howsoever insignificant, of the rival marks can be said to be similar, the fact-finding body necessarily has to go on to examine into the existence or not of a likelihood of confusion because that would obviate the necessity for an overall impression being formed of the rival marks in the relevant surrounding circumstances and for those overall impressions then to be compared. There can be cases -- see e.g. Vedral and Soffass supra -- where the fact-finding body, deploying the proper approach to the overall assessment which the authorities require and having due regard for interdependence and the other relevant surrounding circumstances, is able to conclude that notwithstanding some aspects of similarity, no likelihood of confusion could have been created. But, although I am far from sure I am here differing in any material way from Lewison J, I would hold there to be some form of threshold, albeit a low one. In a case such as the one before me, the threshold, in my judgment, is arrived at as follows. First, overall impressions of the rival marks are formed, paying full regard to all the requirements of the autonomous concept of 4(1)(b) similarity. Next one has to have in mind the types of confusion which are then relevant, namely (as I shall come on to below) those identified in Sabel supra at its para 16. Then the threshold question arises: are those overall impressions such that one can reasonably say that a likelihood of confusion could not thereby be created?"

54. In my consideration of the ground under Section 5(4)(a) I found the opponents to possess a strong reputation in respect of their "Z" mark in respect of insurance services, of most relevance being the building warranty scheme. I also found the mark

applied for to be similar, in particular, to the form shown in their earlier marks M683458 and CTM489880, and to my mind that is the case whether determined by reference to the law and first impression, or by detailed analysis; there is no evidence for me to consider on this point. In *Intel Corporation Inc v CPM United Kingdom Ltd* [2006] EWHC 1878, Patten J said at para 28:

“But the first step to the exploitation of the distinctive character of the earlier mark is necessarily the making of the association or link between the two marks and all that Neuberger J is, I think, saying in this passage [Premier Brands at p. 789] is that the existence of a later mark which calls to mind the earlier established mark is not sufficient to ground an objection under s.5(3) or s.10(3) unless it has one or other of the consequences specified by those provisions. It must be right that the making of the association is not necessarily to be treated as a detriment or the taking of an unfair advantage in itself and in cases of unfair advantage it is likely to be necessary to show that the making of the link between the marks had economic consequences beneficial to the user of the later mark. But in relation to detriment the position is more complicated. The association between two marks and therefore potentially between the products or services to which they relate may be detrimental to the strength and reputation of the earlier mark if it tarnishes it by association or makes it less distinctive. This is likely to take place as a consequence of the same mental process which links the two marks in the minds of consumers and is essentially a negative reaction and effect.”

55. In *Electrocoin Automatics Limited v Coinworld Limited and Others* [2005] FSR 7, Mr Geoffrey Hobbs Q.C. (sitting as a Deputy Judge) stated:

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

56. In *Daimler Chrysler AG v Alavi* (the *Merc* case) [2001] RPC 42 at para 88, Pumfrey J stated:

“In my view, the best approach is just to follow the section, remembering Jacobs A.G.’s warning that it is concerned with actual effects, not risks or likelihoods...”

57. In this case the applicants are seeking to register a mark that is similar to the mark in which the opponent's have built a significant reputation, in part in a "connected" field of activity. For a company engaged in construction, the potential for advantage in being mistakenly connected with a company that grants warranties for workmanship and quality is self evident. Likewise, unfair advantage can take the form of feeding on the fame of the earlier mark in order to substantially increase the marketability of the goods or services offered under the later trade mark (per G Hobbs QC in *Visa* [2000] RPC at page 505. lines 10-17). The opponent's warranty attaches a sense of security and peace of mind for the would-be purchaser that would be a clear attraction in deciding on whether to buy, but lacking the control of membership, the

potential for detriment to the repute of the earlier mark is also clear. The ground under Section 5(3) also succeeds.

58. Whilst the ground has succeeded, I do not consider that it does so in respect of all goods and services. The connection that the applicants will feed on or harm can be found where the consumer will make a connection with the opponent's, namely, in the services of Classes 37 and 42 brought about by the opponent's connection with the construction industry, and it is in respect of these that the opposition succeeds. I do not see that there will be any benefit or harm in respect of goods, or in any other services.

59. Turning next to the ground under Section 3(6). That section reads as follows:

“3(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

60. In terms of the date at which the matter falls to be considered, it is well established that the relevant date for consideration of a bad faith claim is the application filing date or at least a date no later than that (*Hotpicks Trade Mark*, [2004] RPC 42 and *Nonogram Trade Mark*, [2001] RPC 21).

59. In *Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd* [1999] RPC 367, Lindsay J. considered the meaning of “bad faith” in Section 3(6) of the Act and stated (at page 379):

“I shall not attempt to define bad faith in this context. Plainly it includes dishonesty and, as I would hold, includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context; how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances.”

61. In *Harrison v. Teton Valley Trading Co* [2005] FSR 10, the Court of Appeal confirmed that bad faith is to be judged according to the combined test set out by the House of Lords in *Twinsectra v Yardley* [2002] 2 AC 164. Paragraphs 25 and 26 of the Court of Appeal decision are of particular assistance and read as follows:

“25. Lord Hutton went on to conclude that the true test for dishonesty was the combined test. He said:

“36. .... Therefore I consider .... that your Lordships should state that dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.”

26. For my part, I would accept the reasoning of Lord Hutton as applying to considerations of bad faith. The words “bad faith” suggest a mental state. Clearly, when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.”

62. The Privy Council considered earlier authorities in *Barlow Clowes International Ltd (in liquidation) & Others v Eurotrust International Limited & Others*, [2005] UKPC 37. In particular, their Lordships considered a submission from Counsel that an inquiry into the defendant’s views about standards of honesty is required. The following passage from Lord Hoffman’s judgment sets out the position as follows:-

“14...[Counsel for the defendant] relied upon a statement by Lord Hutton in *Twinsectra Ltd v Yardley* [2002] 2 AC 164, 174, with which the majority of their Lordships agreed:

“35. There is, in my opinion, a further consideration which supports the view that for liability as an accessory to arise the defendant must himself appreciate that what he was doing was dishonest by the standards of honest and reasonable men. A finding by a judge that a defendant has been dishonest is a grave finding, and it is particularly grave against a professional man, such as a solicitor. Notwithstanding that the issue arises in equity law and not in a criminal context, I think that it would be less than just for the law to permit a finding that a defendant had been ‘dishonest’ in assisting in a breach of trust where he knew of the facts which created the trust and its breach but had not been aware that what he was doing would be regarded by honest men as being dishonest.

36. .... I consider that the courts should continue to apply that test and that your Lordships should state that dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he set his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.”

15. Their Lordships accept that there is an element of ambiguity in these remarks which may have encouraged a belief, expressed in some academic writing, that *Twinsectra* had departed from the law as previously understood and invited inquiry not merely into the defendant’s mental state about the nature of the transaction in which he was participating but also into his views about generally acceptable standards of honesty. But they do not consider that this is what Lord Hutton meant.

The reference to “what he knows would offend normally accepted standards of honest conduct” meant only that his knowledge of the transaction had to be

such as to render his participation contrary to normally acceptable standards of honest conduct. It did not require that he should have had reflections about what those normally acceptable standards were.

16. Similarly in the speech of Lord Hoffmann, the statement (in paragraph 20) that a dishonest state of mind meant “consciousness that one is transgressing ordinary standards of honest behaviour” was in their Lordships’ view, intended to require consciousness of those elements of the transaction which make participation transgress ordinary standards of honest behaviour. It did not also require him to have thought about those standards were.”

63. On the basis of these authorities it is clear that a finding of bad faith may be made in circumstances which do not involve actual dishonesty. Furthermore, it is not necessary for me to reach a view on the applicant’s state of mind regarding the transaction if I am satisfied that their action in applying for the mark in the light of all the surrounding circumstances would have been considered contrary to normally accepted standards of honest conduct.

64. In the *Daawat* trade mark case [2003] RPC 11, the appointed person held as follows:

“93 As noted in para.14 of the principal hearing officer's decision in the present case, the First Cancellation Division in its Decision in the BE NATURAL case (October 25, 2000) adopted the view of UK Trade Marks Registry that a finding of bad faith could properly be made:

"Where the applicant was aware that someone else intends to use and/or register the mark, particularly where the applicant has a relationship, for example as employee or agent, with that other person, or where the applicant has copied a mark being used abroad with the intention of pre-empting the proprietor who intends to trade in the United Kingdom."”

65. The applicants cannot deny that they were aware of the opponent's use of the letter Z in a circle, and in particular, such a letter shown in white on a blue circular background, nor can they deny that they had a commercial relationship as provider and customer. However, being aware of another's use whether independently or through contact in business, does not, of itself, mean that the application was made in bad faith. It is necessary to consider what the applicants intended to do with the mark. In this respect it would be reasonable to infer that their intent is to use the mark in relation to the goods and services listed in the application.

66. A single letter of the alphabet is not particularly distinctive as a trade mark; it is what is done with it, either in embellishment or in the use made of it that makes it distinctive. In the opponent's case they have made substantial use in relation to their insurance and warranty services, including their building warranty; they have not, however, traded in goods. The applicants say that their logo is derived from the business "Zero Energy Developments", also referred to as the acronym ZED, their Z logo being the next step from this. The problem is that whilst this is plausible, they were aware of the opponent's use and elected to use not just the same letter, albeit in a

different mode of representation, but also the same get up of a white letter on a blue circular background. It would be easy to arrive at the conclusion that this was no accident. However, their marketing and other literature supports their statement regarding the origins of their Z logo; I do not see any reason to infer that this has been fabricated to support their case. Whilst they could have made a better choice, I do not think that their poor judgement is, of itself, quite enough for me to be able to infer that in adopting the Z logo they were acting dishonestly. I therefore find that making the application is not an act of bad faith and the ground under Section 3(6) is dismissed.

67. This leaves the ground under Section 56 of the Act. In *General Motors Corporation v Yplon SA* (1999 ETMR page 122), Advocate General Jacobs considered what is necessary to show a “reputation” for the purposes of Article 5(2) of EC Directive 104/89 (Section 5(3) of the 1994 Act). In so doing he also considered the difference between marks with a “reputation” and marks which are “well known”. The relevant part of his opinion is reproduced below:

“Marks with a reputation and well-known marks.

30. Both in the proceedings before the Court, and in general debate on the issue, attention has focussed on the relationship between “marks with a reputation” in Article 4(4)(a) and Article 5(2) of the Directive and well-known marks in the sense used in Article 6 *bis* of the Paris Convention for the Protection of Industrial Property. Well known marks in that sense are referred to in Article 4(2)(d) of the Directive.

31. General Motors, the Belgian and Netherlands Governments and the Commission submit that the condition in the Directive that a mark should have a “reputation” is a less stringent requirement than the requirement of being well known. That also appears to be the view taken in the 1995 WIPO Memorandum on well-known marks.

32. In order to understand the relationship between the two terms, it is useful to consider the terms and purpose of the protection afforded to well-known marks under the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Article 6 *bis* of the Paris Convention provides that well-known marks are to be protected against the registration or use of a “reproduction, an imitation, or a translation, liable to create confusion” in respect of identical or similar goods. That protection is extended by Article 16(3) of TRIPs to goods or services which are not similar to those in respect of which the mark is registered, provided that use of the mark would “indicate a connection between those goods or services and the owner of the registered trade mark and provided that the interests of the owner of the registered trade mark are likely to be damaged by such use”. The purpose of the protection afforded to well-known marks under those provisions appears to have been to provide special protection for well-known marks against exploitation in countries where they are not yet registered.

33. The protection of well-known marks under the Paris Convention and TRIPs is accordingly an exceptional type of protection afforded even to unregistered marks. It would not be surprising therefore if the requirement of

being well-known imposed a relatively high standard for a mark to benefit from such exceptional protection. There is no such consideration in the case of marks with a reputation. Indeed as I shall suggest later, there is no need to impose such a high standard to satisfy the requirement of marks with a reputation in Article 5(2) of the Directive.”

68. It can be seen from the *General Motors* case that the requirements for a mark to be well known is a high hurdle to clear, but in saying that, the scale and extent of the opponent’s use is such that I am reasonably content in saying that it probably qualifies as well known in the field in which it operates, including that of building and construction warranties. That said, I do not see that this takes the opponent’s case any further forward that it stands already. So whilst I do not reject it, I do not see the need to make a formal decision.

69. The opposition has been successful although only in part. The applicants sought to defend the whole of the application and have been successful in part. In these circumstances I determine that each party should bear its own costs and make no award.

**Dated this 23<sup>rd</sup> day of December 2008**

**Mike Foley  
for the Registrar  
the Comptroller-General**