

IN THE MATTER OF Application
No. 2109061 by Corporation Habanos S.A.
to register a trade mark in Classes 14, 18,
24, 25 & 34

AND IN THE MATTER OF Opposition
thereto by Carreras Limited.

Background

1. On 3 September 1996, Corporacion Habanos S.A. applied to register the mark show below in classes 14, 18, 24, 25 and 34.



2. The specification of goods is as follows:

Class 14 Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery; precious stones; watches; horological and chronometric instruments.

Class 18 Leather and imitations of leather, and goods made of these materials not included in any other Classes; animal skins; hides; trunks; and travel bags; attache cases; business card cases; pocket wallets; satchels; passport cases; briefcases; document cases; umbrellas; harness and saddlery.

Class 24 Textiles and textile goods, not included in other Classes; towels of textile; bed and table covers.

Class 25 Clothing; footwear; headgear.

Class 34 Tobacco; smokers' articles; matches.

3. On 8 April 1997, Carreras Limited filed notice of opposition. The grounds of opposition are, in summary, that:

- i The opponent is the proprietor of 18 registered trade marks in class 34 the essential feature(s) of which is the device of an oval and/or the word CRAVEN;
- ii The marks have been used extensively in the UK;
- iii The applicant's mark is the same or similar to the opponent's mark and registration would be contrary to ss 5(1) or 5(2) of the Act;
- iv Use of the applicant's mark in relation to dissimilar goods would take unfair advantage of, or be detrimented to, the distinctive character or reputation of the opponent's trade marks, and registration would therefore be contrary to section 5(3) of the Act;
- v The opponent has made extensive use of the names/trade marks CARRERAS and CRAVEN; use of the applicant's mark would, therefore, amount to passing off and the application should be refused under s5(4).

4. The applicant admits that the opponent is the proprietor of the "earlier trade marks" listed in the notice of opposition , but denies all the other grounds of opposition. Both sides ask for a contribution towards their costs.

5. The matter came to be heard on 29 September 1999, when the applicant was represented by Mr Hornby of Clifford Chance, and the opponent was represented by Mr M Edenborough of Counsel, instructed by The GSCP Partnership.

The Evidence

6. The opponent's evidence consists primarily of a Statutory Declaration dated 12 September 1997 by Adrian Younger Spencer, who was a Trade Mark Agent with The GSCP Partnership. I say "was" because Mr Spencer has, sadly, passed away since the date of his declaration.

7. Mr Spencer introduces as Exhibit "AYS1" to his declaration, a copy of an earlier declaration dated 22 August 1996, by Christopher Attride. Mr Attride a Director of Ritmark Ltd, who are intellectual property advisors to Rothman International Group, of which the applicant is a subsidiary. Mr Attride also says he is an "authorised attorney" of Carreras Ltd.

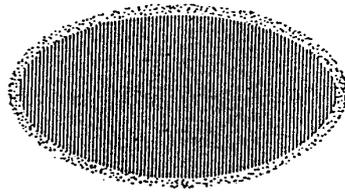
8. Paragraph 5 of Mr Attride's declaration is as follows:

"Each of the applications to which this Declaration relates is in respect of verbal descriptions of visual representations of the get-up for CRAVEN A brands of cigarettes. Exhibited hereto marked "CA1" are examples of current packaging for CRAVEN A King Size Filter, CRAVEN A King Size Special Menthol, CRAVEN A Special Mild and CRAVEN 100s. The essential element of an oval device for the get-up of these brands has not changed over many years and has remained essentially the same since the 1920's. I am convinced that the trade dress for the CRAVEN brands, essentially comprising the oval shaped device with contrasting border, is a significant element in the brand recognition of CRAVEN cigarettes. The importance of the oval feature is emphasised by the fact that the public is presented with up to five separate brands of CRAVEN or CRAVEN A cigarettes through which the consistent element identifying each brand as one of a series, is the oval feature with contrasting border."

9. Exhibit CA2 to Mr Attride's declaration consists of a selection of posters and other promotional material demonstrating how CRAVEN branded cigarettes have been marketed. In the more recent material the word CRAVEN appears within an oval of various colours with a contrasting coloured border.

10. Exhibit CA3 consists of copies of 28 earlier registered trade marks. It is common ground that the most relevant of these for the purposes of Section 5(2) of the Act is registration No

993193, which is shown below.



Advertised before acceptance. Section 18 (1) (proviso).

The Trade Mark is limited to the colours red and gold as shown in the representation on the form of application.

993,193. Cigarettes.

11. Paragraphs 8 to 10 of Mr Attrides declaration are as follows:

“8. Since their introduction in 1920, sales of CRAVEN cigarettes in the United Kingdom Domestic Market have been very substantial. Exhibited hereto marked “CA4” is a confidential exhibit providing a breakdown of sales for each brand of CRAVEN cigarettes sold in the United Kingdom, for the years 1989/1990 through 1994/1995. The following are approximate total volume and value of sales for CRAVEN brands in the UK of the same period:

<u>Year</u>	<u>Volume (number of Cigarettes)</u>	<u>Approximate Ex Factory Value (£)</u>
1989/90	1,723,300,000	In excess of 15,200,000
1990/91	1,739,260,000	In excess of 16,150,000
1991/92	1,353,465,000	In excess of 14,012,000
1992/93	1,029,230,000	In excess of 11,162,000
1993/94	796,100,000	In excess of 9,025,000
1994/95	747,080,000	In excess of 8,550,000

9. The following amounts have been spent in advertising and promoting the CRAVEN brands:

<u>Year</u>	<u>Approximate Amount Spent in Advertising and Promotion (£)</u>
1989/90	In excess of 2,800,000
1990/91	In excess of 2,700,000
1991/92	In excess of 2,600,000

1992/93	In excess of 2,200,000
1993/94	In excess of 1,600,000
1994,95	In excess of 1,600,000

10. Apart from the four CRAVEN brands sold in the United Kingdom Domestic Market, the Applicant also markets the fifth brand, CRAVEN INTERNATIONAL, in overseas markets. This brand is also available in duty free stores at UK seaports and airports. Exhibited hereto "CA5" is a colour photocopy of the CRAVEN INTERNATIONAL packaging. This brand is available in countries such as France and the People's Republic of China and may easily be recognised by UK travellers abroad. Similarly tourists and others visiting the UK from overseas will recognise the CRAVEN brands sold in the United Kingdom."

12. Despite the contents of paragraph 8, Exhibit CA4 was not included in the evidence filed in these proceedings

13. The remainder of Mr Spencer's evidence describes the results of two surveys conducted on behalf of the opponent in relation to other unrelated proceedings. These are described in the following passages of Mr Spencer's declaration as follows:-

"4. As reflected in Mr Attride's declaration, I am aware that the device of an oval is an extremely important element in the trade dress of Craven tobacco goods and I am well aware that Carreras relies on the oval element in the trade dress as an important factor for customer brand recognition.

5. In August 1996 I was instructed to conduct a survey amongst traders who deal in cigarettes and tobacco products to determine whether they recognise the oval element as indicating CRAVEN A branded products, or Carreras, without there being any reference to the brand name CRAVEN A. Questionnaires were distributed to cash and carries and wholesalers throughout the United Kingdom."

14. The marks set out as Attachments A-C to the questionnaire are shown at Annex A to this decision.

15. Mr Spencer describes the results of the survey in paragraphs 7-11 of his declaration, which are as follows:

“7. We sent out a total of 14 questionnaires and received 8 responses. Exhibited hereto marked “AYS 4” are all the completed questionnaires that were returned. A summary of the results is as follows:

8. **Responses to Attachment ‘A’ (CRAVEN A King-size)**

100% of respondents correctly identified attachment ‘A’ as CRAVEN A cigarettes.

9. **Responses to Attachment ‘B’ (CRAVEN INTERNATIONAL)**

50% of respondents correctly identified attachment ‘B’ as CRAVEN cigarettes. 12.5% of respondents associated the pack with BLACK CAT cigarettes. The BLACK CAT trade mark has a long association with Carreras and appears on the front of the CRAVEN INTERNATIONAL pack. A colour photocopy of the CRAVEN INTERNATIONAL pack is exhibited hereto marked “AYS 5”.

10. **Responses to Attachment ‘C’ (CRAVEN MENTHOL & CRAVEN 100's)**

100% of respondents recognised Attachment ‘C’ as CRAVEN brands although some were unsure whether the packs shown were CRAVEN 100's or CRAVEN MILD cigarettes. The packs depicted were, from left to right, CRAVEN MENTHOL, CRAVEN 100's in black and white and CRAVEN 100's in colour.

11. When asked what aspects of the packaging let them to believe that the representations shown were CRAVEN cigarettes the following responses were recorded:

Oval Design	3
Colour packs (overall)	3
Layout/Get-up (of pack)	2

When asked if there was anything else that made the respondent associated the representations with CRAVEN the following responses were recorded:

Oval Design	3
Layout/Get-up (of pack)	1

Colour of Top	1
Colour of Packs (overall)	1"

16. Mr Spencer's description of the second survey is set out in paragraphs 12-19 of his declaration, which are as follows:

“12. In connection with another unrelated matter, I, on behalf of Carreras, arranged for the conduct of surveys to gauge public reaction to a cigarette pack bearing an oval design element, without brand name but in a colour and style different to the CRAVEN trade dress. Three surveys were carried out; one in Newcastle and two in Middlesborough amongst members of the public to gauge how they reacted to a cigarette pack in accordance with Exhibit “AYS 6” hereto.

13. Respondents were asked if they knew the brand name of the product. If they identified it as CRAVEN they were asked what aspects of the packaging made them think it was CRAVEN.

14. The first part of the survey was conducted on 30 March 1995 between 1.30 pm and 2.30 pm outside Supercigs, Dundas Arcade in Middlesborough.

15. The second part of the survey was conducted on 31 March 1995 between 1.30 pm and 4.30 pm firstly outside Supercigs in Dundas Arcade, Middlesborough then outside Food Giant at 10 East Mall, Cleveland Centre, Middlesborough and finally outside an independent tobacconists, Forshaws Limited, at 107 Albert Road, Middlesborough.

16. The third part of the survey was conducted on 3 April 1995 outside two exits from Eldon Square on Northumberland Street in Newcastle.

17. There is now produced and shown to be an exhibit marked “AYS 7” which contains a copy of the questionnaire used in the interviews.

18. The questions were asked of respondents exactly as written and the answers are recorded exactly as given. A total of 61 people who smoked were questioned. None of the respondents overheard the answers given by any of the other interviewees.

19. There is now produced and shown to me as an exhibit marked “AYS 8” which contains copies of 61 completed questionnaires from all the surveys giving details of the questions asked and recording the responses.”

17. A copy of the mark shown to the interviewees is set out in Annex B. The form of the questionnaire indicates that interviewees were asked if they smoked. It is not clear what happened if they said “no”, but I note that all the completed questionnaires in evidence include a positive answer to this question. The interviewees were then asked:

“Do you know the brand name of the product on the picture?” and then
“What do you think the name of the product is?”

18. The next question “What aspects of the packaging made you think that it is Craven?” was presumably only put to those that had got to “CRAVEN” by this stage. The interviewees were then asked for their name and address, whether they minded the questionnaire being used in Court, and for their signatures. Despite what is said in paragraph 19 of Mr Spencer’s declaration, only 28 and a half questionnaires are included in Exhibit “AYS 8”. A number of interviewees who objected to their questionnaire being “used in Court” have had their questionnaires included in Exhibit AYS 8. There is no other explanation for the missing questionnaires.

19. Mr Spencer describes the outcome of the survey in paragraphs 20 and 21 of his declaration, which are as follows:

“20. Of the 61 people who took part in the survey, nine (14.75%) identified the packet as being CRAVEN A.

21. The reasons given by those people who identified CRAVEN A to question 5 of the questionnaire were as follows:-

1. It’s the same but blue or black.
2. Looks like a packet of CRAVEN A.
3. That’s the brand that came to mind.
4. Circle on the front. Same but different colour.

5. Round bit at top but being a different colour.
6. Its packaging - top coloured and circle.
7. The design of the packet. Circle and lid.
8. The oval logo.
9. Circle bit on it and the colour. There is blue as well.”

20. In response the applicant filed evidence of an availability search of oval devices undertaken for them by Compu-Mark, a specialist search company, which failed to reveal the existence of the opponent’s marks.

21. The opponent’s filed evidence in reply consisting of a further search conducted for them by Compu-Mark which did reveal the opponent’s marks.

22. I do not intend to attach any weight to the outcome of these searches. The likelihood of confusion is a matter for this tribunal. Before me, neither Mr Edenborough or Mr Hornby sought to reply upon these search reports except, in Mr Hornby’s case, insofar as they indicated the existence of a number of other registered marks in class 34 consisting of words on an oval device.

Decision

23. At the outset of the hearing, Mr Edenborough indicated that the opponent was dropping its grounds of opposition under ss5(1) and 5(3) of the Act and only pursuing the remaining grounds insofar as class 34 of the application was concerned.

Section 5(2)(b)

24. Section 5(2)(b) is as follows:

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

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

25. As I indicated above, it is common ground that registration No 993193 represents the opponent's best case under Section 5(2). If the opponent cannot succeed on the basis of this earlier trade mark it will not do so on the basis of any of the 17 other registrations listed in the Notice of Opposition, or any the other 27 marks listed in the evidence. In practice I therefore need only consider earlier registration No 993193.

26. Mr Edenborough suggested that I should treat the letter "C" and wavy line appearing in the applicant's mark as "added matter", which should be ignored. He referred me to the comments of Mr Justice Jacob in *TREAT* (1996 RPC 281) with regard to the correct approach to infringement under Section 10 of the Act. Mr Edenborough accepted that these comments were strictly obiter as far as Section 5 is concerned, but nevertheless suggested that a similar approach should be adopted under Section 5.

27. The correct approach to the matter is set out by the European Court of Justice (ECJ) in *Sabel v Puma* [1998 RPC 199], to which Mr Edenborough also drew my attention. It is clear from this case "that global appreciation of the marks in question, must be based on the overall impression simply by the marks, bearing in mind their distinctive and dominant components" and that "the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details."

28. I see no scope within this approach to disregard key elements of the applicant's mark. To do so would be completely artificial because it would be classifying as "added matter" features of the applicant's mark which are part of the subject matter of the proposed registration.

29. For his part, Mr Hornby submitted that I should attach weight to the fact that the

opponent's mark is registered in the colours red and gold .whereas the applicant's mark is applied for without any feature of colour. The purpose of seeking to register a mark in black and white is to indicate that colour forms no part of the subject matter of the registered trade mark, which may be used in any number of colours. This could include red and gold. I do not, therefore, consider it right to place much weight on the absence of colour from the applicant's mark as a factor that will have a significant bearing on the likelihood of confusion.

30. Nevertheless, I do not consider that the marks are similar enough to give rise to a likelihood of confusion.

31. The opponent claims that its own device mark is highly distinctive for tobacco products. In *Lloyd Schuhfabrik Meyer & Co Gmbh v Klijsen Handel BV* [1999] the ECJ found that:

“20.the more distinctive the earlier trade mark, the greater will be the likelihood of confusion (SABEL paragraph 24), and therefore marks with a highly distinctive character , either *per se* or because of the recognition they possess on the market, enjoy broader protection than marks with a less distinctive character (see Canon, paragraph 18).

21. It follows that, for the purposes of Article 5(1)(b) of the Directive, there may be a likelihood of confusion, notwithstanding a lesser degree of similarity between the trade marks, where the goods or services covered by them are very similar and the earlier mark is highly distinctive (see, to that effect, Canon, paragraph 19).

22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgement of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Hiber and Attenberger* (1999 ECR I-0000, paragraph 49).”

32. It is therefore necessary to consider how distinctive the opponent's mark is either *per se* or because of the use made of it.

33. In my view the mark has low inherent distinctiveness. Oval devices are commonly used (usually as background to words) in many trades. Red is a popular primary colour. Gold is hardly an original colour for a contrasting border. Overall, the mark has very little imaginative content.

34. The opponent relies upon its use of oval device marks on tobacco products since 1928. The evidence of Mr Attride indicates that sales of goods bearing such a device - in several colours not just red and gold - has been substantial. The figures provided for promotion are also substantial.

35. Mr Hornby sought to cast doubt upon whether the figures provided were limited to sales and promotion of goods bearing the mark at issue - as opposed to other "CRAVEN" tobacco products. The evidence could be clearer, but I am prepared to accept that it does relate to goods sold and promoted under an oval device. However, that device appears to be used merely as a background upon which the word 'CRAVEN' or 'CRAVEN 'A'' appears.

36. In these circumstances, it does not follow that substantial use of the device will inevitably lead to widespread recognition of the device as a sign that identifies the opponent's goods.

37. The opponent has sought to head off this criticism by filing evidence of two surveys conducted for other purposes; which are intended to show that the oval device is factually distinctive.

38. The first survey was directed at the trade. Mr Hornby criticised this evidence as statistically unreliable because of the small numbers involved. He also pointed out that the covering letter was not included in evidence and it was not therefore possible to be sure that it contained no clues as to the applicant's identity. These are valid criticisms, but they ought not to be given more weight than they deserve.

39. All eight respondents identified the cigarette packet get-ups in Attachments A and C (shown in Annex A) with the opponent. Four of the eight mentioned the oval device as a reason for connecting the marks with the opponent. Three of these mentioned other features

such as colour or the design of the top of the packet.

40. Mr Edenborough placed particular emphasis on the questionnaire completed by Mr David Dewar. He describes himself as a “buyer” for Tyne Tees Cash and Carry Ltd, and says he has 30 years experience. When asked what aspect of the packs made him associate them with the opponent, he responded that “the oval shaped logo on the front of the packs is only available on Craven brands”. Mr Edenborough asked me to accept this as evidence that the opponent’s oval device was unique in the tobacco industry.

41. Interestingly, Mr Dewar did not associate the pack shown in Attachment ‘B’ (see Annex A) to the questionnaire with the opponent, although it too features an oval device. This might suggest that even Mr Dewar did not consider the presence of an oval device alone as sufficient to identify the goods of the opponent. In fact only half the respondents identified the pack shown in Attachment ‘B’ as originating from the opponent.

42. However, the strongest defect of the first survey is the type of respondent. The ECJ has said that it is the perception of the “average consumer” which must be considered. The main difficulty with the first survey is that it says nothing about the views of the “average consumer” of the goods concerned. All the respondents are buyers or managers with the tobacco industry. All are very experienced. The most junior has 14 years experience in the trade. The most senior, 35 years.

43. As Mr Justice Lloyd recently observed in *Dualit Ltd v Rowlett Catering Appliances* (unreported at time of writing):

“These, however, are people whose business it is to know the Applicant’s products of other manufacturers in the market. The fact that they knew their job and could recognise the shapes as being those of the Applicant’s products does not seem to me to begin to show that “the relevant class of persons, or at least a significant proportion thereof, identify [the] goods as originating from a particular undertaking because of the trade mark”. The relevant class of persons is not trade buyers such as these witnesses but customers.”

44. The opponent's second survey is directed at the average consumer. Mr Hornby characterised this evidence as statistically unreliable. He made a number of criticisms of the methodology used and the absence of over half the completed questionnaires from Mr Spencer's evidence.

45. Mr Edenborough did not seek to rely on the second survey to any significant extent, but in these circumstances it appears to me to be crucial to the opponent's assertion that their oval device mark is highly distinctive to the relevant public.

46. Guidance on survey evidence is available from Mr Justice Whitford's comments in *Imperial Group plc v Philip Morris Ltd* (1984 RPC 293). Even a casual examination of this survey evidence is enough to reveal it comes nowhere near complying with the guidelines set out in that case. I will not go through all the defects. The most obvious are that:

- i. Over half the completed questionnaires are missing;
- ii. The size of the survey is too small to be statistically reliable;
- iii. The key questions appear to be designed to encourage the interviewees to guess the "right" answer.

47. The opponent says that nine of the sixty one interviewees linked the mark shown at Annex B to the opponent. Only one person is claimed to have mentioned the oval device as the reason they made the connection with the opponent. Three others are said to have mentioned the "circle", which may have been their approximation of the opponent's device, but all of these also mentioned other features such as "colour" or "lid". In this survey the public's reliance on "colour" for recognition of the opponent's goods has significance because the mark shown in Annex B is not in the same colours as registered trade mark 993193.

48. The opponent claims that this survey shows that 14.75% of the public identified the get-up shown in Annex B as being a packet of CRAVEN A. However, an examination of the 28.5 questionnaires filed reveals that a further six interviewees (over 20% of those filed) identified

Annex B as a packet of John Player cigarettes. Only three of these twenty eight questionnaires record the respondent as having answered “CRAVEN.” A further ten interviewees mentioned seven other brands. Eight admitted they did not know the answer.

49. What this evidence shows is that the interviewees succumbed to the invitation to guess the “right” answer. And even then, and with further clues from the overall pack design, the opponent was not even the most popular guess.

50. I find that the opponent has not shown that the mark registered under No 993193 has a significant degree of recognition on the market. I therefore have no reason to adjust my initial assessment of the opponent’s mark as having low distinctive character. This will be my starting point in assessing the degree of similarity between the marks and the likelihood of confusion.

51. The applicant’s mark, like the opponent’s mark, consists of an oval shape. But in the applicant’s case the oval is presented at a sharp angle. Both marks have a narrow contrasting outer border. In the centre of the applicant’s mark is a letter ‘C’ with a wavy line cutting through it which joins the outer border at two points. Neither of these features is present in the opponent’s mark. There is a small degree of similarity between the marks, but as Millett L.J. observed in *The Europeans Ltd v The Economist Newspaper Ltd* (1998 FSR 283 at 288):

“A degree of similarity is tolerable; the question is whether there is a confusing similarity”.

52. In my view, there is no likelihood of confusion between these marks. Overall they convey a different impression. The most memorable thing about the applicant’s mark is the letter ‘C’ presented with the wavy line going through it. The most memorable feature of the opponent’s registered mark is the absence of a word or some other distinguishing feature from the centre of the oval where would one instinctively expect to see such a feature (and which is, of course, how it is actually used).

53. The opposition under s5(2)(b) based upon earlier UK registered trade mark 993193 therefore fails. It follows from my earlier comments that the opposition based upon the

opponent's other registered marks also fail.

Section 5(4)

54. The necessary requirements to succeed under Section 5(4)(a) were set out by Mr G Hobbs QC in *Wild Child Trade Mark* [1998 RPC 455]. In summary the test is whether, at the date of application:

- i. The opponent's goods had acquired a goodwill in the market and were known by some distinguishing feature;
- ii. Use of the applicant's mark would have amounted to a misrepresentation (whether or not international) likely to cause the public to believe that the applicant's goods were those of the opponent;
- iii. Which was likely to damage the opponent.

55. On the basis of my findings so far, I do not consider that the opponent has shown that its goods were identified by the public by an oval device with a contrasting border at the relevant date.

56. There is no doubt that the opponent has made extensive use of the word CRAVEN together with a form of get-up typified by the representation in Annex B. I am prepared to accept that the opponent enjoys goodwill in such a composite sign.

57. However, even a casual comparison of that composite mark and the applicant's mark is enough to conclude there is no risk of confusion between the signs.

58. The opponent has suggested that the presence of an oval in both signs combined with the fact that the letter 'C' is the first letter of 'CRAVEN' is sufficient to amount to a misrepresentation. I reject that submission. The opponent's evidence indicates that they have used the mark craven since 1928. There is no suggestion that it has ever been shortened in use

or known as the 'C' brand. Why should the public expect that to happen now?

59. In the case of *Jones v Great Western Railway Company* (1930) 144 LT 194, Lord MacMillan said at page 202:

“The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof.”

60. There is no evidence to support the opponent's submission. In the absence of evidence I regard it as mere conjecture. The opposition under Section 5(4)(a) of the Act also fails.

Costs

61. The opposition having failed the applicant is entitled to a contribution towards its costs. Mr Hornby urged me to have regard to the “kitchen sink” nature of the opponent's pleadings, which he suggested were no longer acceptable in the post Woolf era.

62. There is some force in that submission. Such matters are relevant to the question of costs and are likely to be taken into account in future. However, as Mr Edenborough pointed out, the opponent's Notice of Opposition was filed before it was recognised that the principles set out in the Woolf report needed to be taken into account. I will therefore adopt the Registrar's usual scale of costs on this occasion.

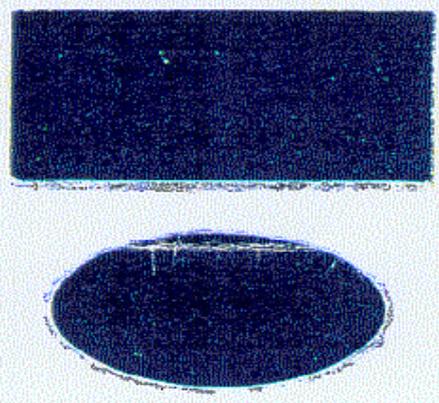
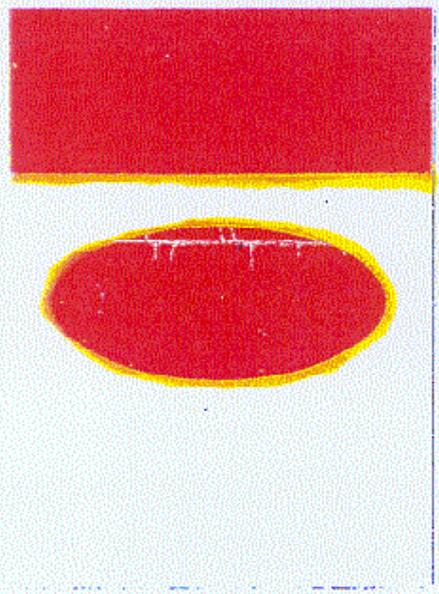
63. I order the opponent to pay the applicant the sum of £1000.

Dated this 8 Day of October 1999

Allan James

For the Registrar

The Comptroller General



Annex B

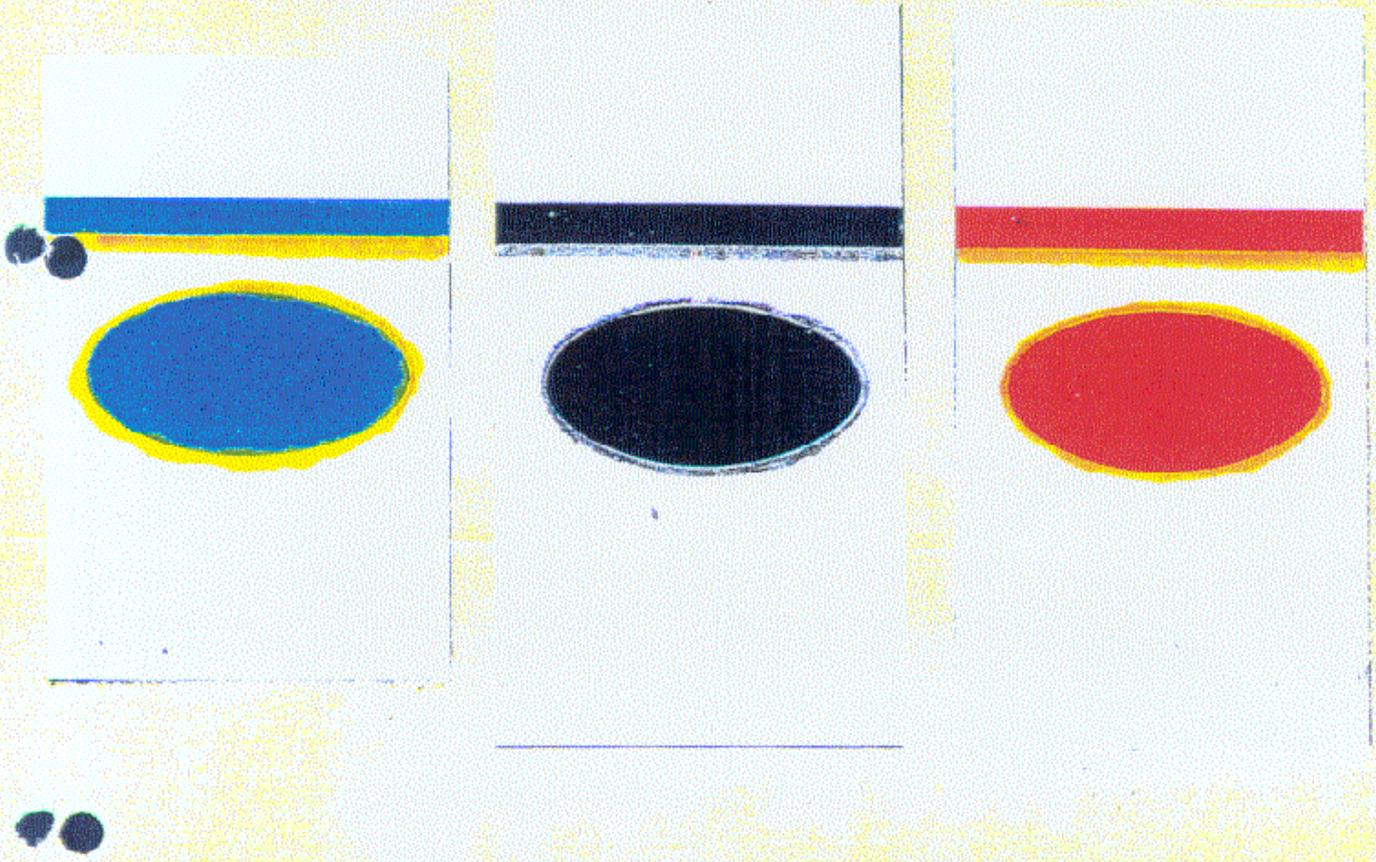


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