

O-354-11

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO 2475149

IN THE NAME OF

SILENT ARENA LIMITED

OF THE TRADE MARK:



IN CLASSES 9 AND 41

AND

THE APPLICATION FOR A DECLARATION

OF INVALIDITY THERETO UNDER NO 83807

BY

433fm.com V.O.F

Trade Marks Act 1994

**In the matter of registration no 2475149
in the name of Silent Arena Limited
of the trade mark:**



**in classes 9 and 41
and the application for a declaration of invalidity
thereto under no 83807
by 433fm.com VOF**

1) An application to register the above trade mark was filed on 17 December 2007. The registration process was completed on 29 August 2008. The trade mark is registered for:

aerials for radio, aerials for radio receivers, aerials for the reception of radio signals, aerials for the transmission of radio signals, apparatus for amplifying sound, apparatus for the recording of sound, apparatus for the reproduction of sound, apparatus for the transmission of sound, apparatus for displaying images, apparatus for recording video, compact discs bearing sound recordings, compact discs containing recorded sound, compact discs having sound recorded thereon, computer controlled sound apparatus, computer controllers for operating sound instruments, compact discs having images recorded thereon, computer programmes relating to the manipulation of graphic images on a computer, control boxes for headphones, headphone amplifiers, headphone consoles, headphone-microphone combinations, headphones, headphones for audio apparatus, headphones for microphones, instruments for the recording of sound, instruments for the reproduction of sound, instruments for the transmission of sound, media for recording sound, media for the reproduction of sound, mixing desks [sound], mobile radio transmitting apparatus, mobile radio receiving apparatus, picture sound recording equipment, picture sound reproducing equipment, portable sound recording apparatus, portable sound reproducing apparatus, power amplifiers for use in sound reproduction, portable radios, radio receivers, stereo headphones, stereo headphones for personal entertainment use, video recording materials;

club [discotheque] services, discotheque services, entertainment services provided at discotheques, rental of disco equipment.

The above goods and services are in classes 9 and 41 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. The registration is in the name of Silent Arena Limited (SAL).

2) On 30 June 2010 433fm.com VOF (433) filed an application for the registration to be declared invalid. The application was made under section 47(2)(a) of the Trade Marks Act 1994 (the Act)¹. Wella claims that the registration of the trade mark was contrary to section 5(2)(b) of the Act. Section 5(2)(b) of the Act states:

“(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.”

3) 433 relies upon Community trade mark registration no 4215463 of the trade mark:



The application for registration of this trade mark was filed on 23 December 2004 and the registration process was completed on 13 April 2006. The trade mark is registered for:

apparatus, instruments and equipment for recording, transmission or reproduction of sound and/or images; electronic, magnetic and/or digital tapes, discs and/or records, cassettes, compact discs, video tapes, video compact discs (image discs), interactive CDs (CD-Is), read-only-memory discs (CD-ROMs), recording diskettes, cassettes, cards and other sound and image carriers; cartridges; magnetic data-carriers, sound recording discs, audio and/or video apparatus and instruments; data processing equipment, encoded club and membership cards;

list of goods and services Entertainment; arranging of musical, sporting, educational and cultural events and entertainment events and shows; discotheques; organisation of parties, raves, dance performances and concerts;

film and music production; performing music and entertainment programmes, including on the radio, television and Internet; services of performing artists; publishing and distribution of books, newspapers, magazines and other periodicals, as well as of electronic publications; releasing (including via the Internet) sound recording media;

services for providing food and drink, hotels and catering, services of discotheques.

The above goods and services are in classes 9, 41 and 43 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

4) SAL filed a counterstatement in which it denies that there is a likelihood of confusion.

5) Only SAL filed evidence. 433 filed written submissions.

6) A hearing was held on 28 September 2011. SAL was represented by Mr Andrew Norris of counsel, instructed by Wynne-Jones, Lainé & James LLP. 433 was represented by Mr Alastair Rawlence of William A Shepherd & Son Limited.

Evidence of SAL

7) This consists of two witness statements made by Mr Gareth Peter Jenkins. Mr Jenkins is a trade mark attorney who is acting for SAL in these proceedings.

8) Mr Jenkins states that exhibit 1 to his witness statement consists of extracts from a selection of websites that show that the term “Silent Disco is a generic term for an event that broadcasts music to participants wearing headphones”.

9) Exhibit 1 contains the following material:

- Pages downloaded from Wikipedia on 20 December 2010 in relation to the term ‘silent disco’. A silent disco is described as being “a disco where people dance to music listened to on headphones”. A reference in the Wikipedia entry includes “Silent disco craze spreads”, from the *Daily Telegraph* of 6 September 2009.
- A copy of an article from the *South Wales Echo* of 4 April 2008, which is headed: “Silent disco to silence Point critics”. In the article the following appears:

“The silent disco idea was started by eco-activists, who wanted to hold outdoor music events without disturbing wildlife, and has since

become popular throughout the world at events including Glastonbury Music Festival.”

- A copy of an article from *The Telegraph*, referred to in the Wikipedia entry. The article is dated 6 September 2009. It includes the following:

“Silent discos, in which people dance to music played through personal headphones rather than speakers, was once the preserve of music festivals and special night clubs.....

....At least half a dozen companies offering silent disco have set up in the UK in the last three years and all reported business was booming....

Silent Arena, which also set up two years ago, claims to be the biggest silent disco company in the world and can cater for 10,000 people.”

- A copy of an article, dated 26 May 2000, from the BBC website has no reference to silent disco; although it makes reference to a silent gig.
- A page from silentgig.com has no reference to silent disco.
- Pages from *Mail Online* make no reference to silent disco.
- Pages from viewlondon.co.uk give details of “The Silent Disco at Southbank Centre” to take place between 13 June 2008 and 21 June 2008. The listing refers to silent disco in lower case and also with the beginning of each word capitalised.
- Pages from silentdisco.org.uk, downloaded on 20 December 2010, advertise the ability to fulfil the requirements for “your Silent disco” in 2011. The pages also include a picture of a YouTube page which bears the title “Club Monaco TV [27/03/2009] SILENT DISCO”.
- A further page from silentdisco.org.uk, downloaded on 20 December 2010, gives details of the “SSS Silent Disco from Silent Sound Systems”. The page advises that the undertaking “can hire Silent disco headphones and equipment”.
- Further pages from silentdisco.org.uk, downloaded on 20 December 2010, advise what a silent disco is and also give details in relation to hiring equipment for a silent disco.
- Pages downloaded from silentdiscolondon.co.uk on 20 December 2010 give details of the activities of the undertaking. Silent disco is presented with the first letters of the two words capitalised.
- A page from silentdiscokit.co.uk, downloaded on 20 December 2010, silent disco is presented with the first letters of the two words capitalised.
- A page from efestivals.co.uk contains an article dated 26 October 2010. The heading of the article is “so what’s the Silent Disco...?” Throughout the article silent disco is presented with the first letters of the two words capitalised. The articles include the following:

“However it’s taken a pair of Dutch DJ’s to realise that fun could be had in abundance as soon as you provide everyone with their own set of wireless headphones and encourage freestyle dancing to the music only you and half the other dancers can hear.”

- A page from the BBC News website published on 29 March 2005 refers to a party at the Glastonbury Festival. The article states, inter alia:

“The festival will hold a “silent disco” in an effort by organisers to adhere to imposed noise restrictions.....

....The system has been developed by a Dutch firm, which pioneered the “silent disco” at illegal parties as part of a travelling festival in the Netherlands.”

- An article from the *London Evening Standard*, dated 11 November 2008, begins with the words:

“Carnaby Street will buzz to the new phenomena of the Silent Disco – the sound of silence.”

- Pages from the Internet showing pictures of a “Gorilla Silent Disco”, the pictures were posted on 7 September 2010. One response to the pictures, dated 25 November 2010, plugs the services of an undertaking with the domain name SilentDiscoUK.com.
- An article from the *Liverpool Daily Post* of 13 November 2009 is headlined:

“Wayne Hemingway’s silent disco to stay at Tate Liverpool”.

- A page from music-news.com bearing an article dated 12 September 2008 which relates to Silent Disco events organised by Smirnoff. Throughout the article silent disco is presented with the first letters of the two words capitalised. The article includes the following: “[d]ue to the use of Silent Disco’s high-performance wireless headphones”.
- Pages from digitalspy.co.uk bearing an article dated 15 July 2009. The article is headed: “Karly beats Nikki to win silent disco task”.

10) Mr Jenkins states that exhibit 2 to his witness statement contains extracts from a selection of websites that show that headphone devices are commonly used in the advertising of silent discos.

11) Exhibit 2 contains the following material, all downloaded on 20 December 2010:

- Pages from the website of Silent Noize. The pages advise that Silent Noize specialises in silent disco equipment. Pictures of headphones appear on the pages. In a stylised version of the name of the undertaking, a set of headphones has replaced the letter o in Noize.
- Pages from the website of Silent Disco King, an undertaking that hires, sells and installs wireless headphone systems. The logo of the undertaking includes a stylised set of headphones.
- A page from the Relentless website, promoting a silent disco. A set of headphones appear next to the words 'silent social'.
- A web page relating to "Silent Disco at The Little Johnny Russells this Saturday". The page emanates from 17 November 2009. A glitter ball with a set of headphones upon it can be seen.
- Pages from clubplanet.com. The pages emanate from 19 November 2010 and relate to a silent disco party in Miami. A set of headphones can be seen around a ball upon which faces appear.
- A page from the website of Silent Disco Manchester, which shows several devices of headphones.
- A flyer for a silent disco on 6 February 2010 at Upper Stannary, upon which a device of stylised headphones appears.
- An advertisement for a silent disco on 27 February 2010 in St Just. A picture of Charlie Chaplin wearing headphones appears on the advertisement.
- An advertisement for a silent disco on 24 October (year unknown). An image of a person wearing headphones can be seen on the advertisement.
- A web page that shows the logo of silent storm sound system, which includes an image of stylised headphones.
- An advertisement for a silent disco on 5 and 6 December (year unknown) which shows use of a set of stylised headphones. From the domain name upon the advertisement, it appears to relate to the Philippines.
- Pages from the website of Avon Scouts. A set of stylised headphones can be seen in relation to an advertisement for a silent disco at Woodhouse Park on 12 February 2011.
- Web pages in relation to a silent disco on 7 May 2010. These pages show use of a device of headphones as part of a device.
- Web pages bearing an advertisement for Outside silent disco on 16 December (year unknown). The advertisement shows the rear view photograph of the head of a man wearing headphones.

12) Mr Jenkins states that exhibit 3 contains extracts from SAL's website, which he states shows that it offers its goods and services to entertainment professionals and not the general public. A page from the website of SAL refers to booking a silent disco by SAL. It advises that it will supply the following goods and services: headphones, DJs, DJ equipment, transmitters with UPS, display system, technicians and venue decoration.

13) Mr Jenkins exhibits at exhibit 4 a copy of a decision from the cancellation division of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM). SAL had applied for the invalidation of 433's Community trade mark, the application was refused. Mr Jenkins states that "OHIM concludes that the term 'silent disco' would be understood by the relevant public and that the distinctive parts of the applicant's mark are the particular stylised representation of headphones, the script of the words, and the imaginative symbol for a head". At paragraph 20 the cancellation division stated:

"Even if no submission was made by the applicant regarding the meaning in English of the two words contained in the contested CTM, the Cancellation Division holds it to be common knowledge that the words "Silent" and "Disco" have clear and precise meanings in the English language. The word "silent" will be understood by the relevant public as "quiet" and the word "disco" will be understood as a "modern dancing facility, a discothèque". The combination of the words constitutes a natural juxtaposition which will be equally understood as referring to a "noise-free discothèque". With regard to the figurative elements, the words are stylized in a modest script inside an oval shape; an imaginative symbol for a head. The head is surrounded by a set of headphones, also sketched in a fanciful manner. Even for goods containing headphones, such as apparatus, instruments and equipment for recording, transmission or reproduction of sound and/or images in class 9, as well as for services where headphones are used, such as services of discotheques in class 43, the imaginative graphic representation is sufficiently distanced to render the mark distinctive overall. For the remaining goods and services, the mark is even more distinctive. The sign can serve as a source indicator. Article 7(1) (b) CTMR is not applicable."

The cancellation division also rejected the grounds of the application under articles 7(1)(a), (c) and (d).

14) Mr Jenkins exhibits a printout from *Oxford Dictionaries Online*, downloaded on 4 May 2011. The printout gives a definition of silent disco:

"an event at which people dance to music that is transmitted through wireless headphones rather than played over a speaker system."

Material dates

15) Professor Annand, sitting as the appointed person, in BL O/227/05 stated:

"36. My own view is that the starting point for assessing relative invalidity under section 47(2) is the date of the application for registration of the attacked mark. This is because Article 4 of the Directive: (i) defines "earlier trade marks" for the purposes of relative invalidity as trade marks with a

date of application for registration which is earlier than the date of application for registration of the attacked mark; and (ii) requires other earlier rights to have been acquired before the date of the application for registration of the attacked mark. However, I believe the wording of Article 4 (section 47(2)) may allow the tribunal to take into account at the date when invalidation is sought, matters subsequently affecting the earlier trade mark or other earlier right, such as, revocation for some or all of the goods or services, or loss of distinctiveness or reputation. I do not find the fact that the Directive specifically provides for defences to invalidation of non-use, consent and acquiescence indicative either way. A further question concerns the cut-off date for taking into account subsequent events. Is this the date of the application for a declaration of invalidity or the date when the invalidity action or any appeal is heard? The Opinion of Advocate General Colomer in Joined Cases C-456/01 P and C-457/01P Procter & Gamble v. OHIM, 6 November 2003, paragraphs 43 – 44, and the Court of First Instance decision in Case T-308/01 Henkel KGaA v. OHIM (KLEENCARE), 23 September 2003, paragraph 26, although concerned with registrability and opposition respectively, indicate the latter. There are indications that timing issues under the harmonised European trade marks law are beginning to be brought to the attention of the ECJ (see, for example, the questions referred in Case C-145/05 Levi Strauss & Co. v. Casucci SPA).”

In *Levi Strauss & Co v Casucci SpA* Case C-145/05 the Court of Justice of the European Union (CJEU) stated:

“17 The proprietor’s right to protection of his mark from infringement is neither genuine nor effective if account may not be taken of the perception of the public concerned at the time when the sign, the use of which infringes the mark in question, began to be used.

18 If the likelihood of confusion were assessed at a time after the sign in question began to be used, the user of that sign might take undue advantage of his own unlawful behaviour by alleging that the product had become less renowned, a matter for which he himself was responsible or to which he himself contributed.

19 Article 12(2)(a) of Directive 89/104 provides that a trade mark is liable to revocation if, after the date on which it was registered, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered. Thus, by balancing the interests of the proprietor against those of his competitors in the availability of signs, the legislator considered, in adopting this provision, that the loss of that mark’s distinctive character can be relied on against the proprietor thereof only where that loss is due to his action or inaction. Therefore, as long as this is not the case, and particularly when

the loss of the distinctive character is linked to the activity of a third party using a sign which infringes the mark, the proprietor must continue to enjoy protection.

20 In the light of all the foregoing, the answer to the first and second questions must be that Article 5(1) of Directive 89/104 must be interpreted as meaning that, in order to determine the scope of protection of a trade mark which has been lawfully acquired on the basis of its distinctive character, the national court must take into account the perception of the public concerned at the time when the sign, the use of which infringes that trade mark, began to be used.....

36 Accordingly, after revocation in the particular case has been established, the competent national court cannot order cessation of the use of the sign in question, even if, at the time when that sign began to be used, there was a likelihood of confusion between the sign and the mark concerned.

37 Consequently, the answer to the fourth question must be that it is not appropriate to order cessation of the use of the sign in question if it has been established that the trade mark has lost its distinctive character, in consequence of acts or inactivity of the proprietor, so that it has become a common name within the meaning of Article 12(2) of Directive 89/104 and the trade mark has therefore been revoked.”

The House of Lords considered at what date the question to be decided was to be considered in relation to section 46(1)(d) of the Act in *Scandecor Development AB v Scandecor Marketing AB* [2002] FSR 7. In that judgment Lord Nicholls stated:

“49 The claim in these proceedings is that, in consequence of the use made of the marks by Scandecor Marketing and Scandecor Ltd with the consent of Scandecor International, the marks are "liable to mislead the public". That is essentially a question of fact. That question of fact must be answered having regard to matters as they now are, not as they were at some time in the past. In deciding this issue of fact the court must have due regard, as I have been at pains to emphasise, to the message which a trade mark conveys. But since the question is whether the marks are currently liable to mislead, the message which is relevant is the message which use of the marks conveys today, not the message it would have conveyed to the public in the past.”

Taking these findings into account it is considered that there are two material dates. The first material date is the date of the application for registration of the trade mark. The second material date is the date of the application for

invalidation. 433 must establish its case at both material dates. If it fails in relation to the position on one date, its case falls.

16) Two of the planks of the defence of SAL is the claim that the words silent disco are descriptive and that the device of headphones lacks distinctiveness. On the basis of the evidence of SAL, the stronger case for this defence arises at the later material date. 433 has furnished no evidence. As this later date represents the better position for SAL, only the position at this date will be considered.

Average consumer, nature of purchasing decision and standard for likelihood of confusion

17) The average consumer “is deemed to be reasonably well informed and reasonably circumspect and observant”ⁱⁱ. Mr Norris submitted that the nature of the purchasing decision for the goods and services varies. The spectrum of goods in class 9 is wide and the nature of the purchasing decisions is likely to vary.

18) The position is less diffuse in relation to the services. *Club [discotheque] services, discotheque services, entertainment services provided at discotheques* are all services which may be provided to the public at large. The main average consumer for these services will be the person looking to dance and/or socialise with a background of music. Most towns offer a variety of establishments that supply such services. The average consumer is unlikely to make a careful and educated decision in establishing which establishment he or she enters; it is quite likely that the reason for entering will be propinquity. Consequently, the effects of imperfect recollection will be increased. The main use of a trade mark in relation to such services will be on signs outside the premises, posters and flyers and so visual use will be of more importance than oral use in considering likelihood of confusionⁱⁱⁱ. There is no clear evidence as to the average consumer for *rental of disco equipment*. However, it can be presumed that the equipment will be hired by a disc jockey, whether professional or amateur, or by an undertaking that puts on discos. It is normal, when hiring equipment, to do research in relation to the equipment being hired and its cost and compare the services of several undertakings. Consequently, there will be a reasonably careful and educated purchasing decision and so the effects of imperfect recollection will be reduced. A trade mark for these services is likely to be first encountered in business directories and websites. Follow up information, about cost, the nature of the equipment and availability, is likely to be by oral communication and well as by written communication (ie e-mail). However, as the instigation of further enquiry is primarily visual, visual similarity is more important than aural similarity.

19) *Aerials for radio, aerials for radio receivers, aerials for the reception of radio signals* are products that can cost very little and will not normally give rise to

considerations of compatibility with equipment. Consequently, there will not be a particularly careful and educated purchasing decision.

20) *Apparatus for amplifying sound, apparatus for the recording of sound, apparatus for the reproduction of sound, apparatus for the transmission of sound, apparatus for displaying images, apparatus for recording video, instruments for the recording of sound, instruments for the reproduction of sound, instruments for the transmission of sound, media for recording sound, media for the reproduction of sound, picture sound recording equipment, picture sound reproducing equipment, portable sound recording apparatus, portable sound reproducing apparatus, power amplifiers for use in sound reproduction, portable radios, radio receivers* cover a vast spectrum of products in relation to cost and quality. The general descriptions cover goods that could cost thousands of pounds and be bought from a specialist retailer or a few pounds and be bought from a supermarket shelf on impulse. It is necessary to take into account the position at the lower end of the market. In those circumstances it is not necessary that there will be particular and careful purchasing decision. Consequently, the effects of imperfect recollection are likely to be increased.

21) *Headphones, headphones for audio apparatus, stereo headphones, stereo headphones for personal entertainment use* cover a vast spectrum of products in relation to cost and quality. The goods could be given away, as they are on aeroplanes and trains. They could cost a matter of pence rather than pounds. Consequently, the goods could be bought on impulse and without a careful and educated purchasing decision. Therefore, the effects of imperfection recollection are increased.

22) *Compact discs bearing sound recordings, compact discs containing recorded sound, compact discs having sound recorded thereon, compact discs having images recorded thereon* are all goods that could be purchased for little money and on impulse. The purchaser is more likely to take into account the content of the compact disc and the persons performing on the compact disc than the producer of the disc. Consequently, the effects of imperfect recollection will be at a high level.

23) *Video recording materials* can be in the form of such media as tapes and memory cards. The former can be cheap and bought on impulse from the supermarket shelf. Consequently, the effects of imperfect recollection will be at a high level. The latter are more expensive and require consideration of compatibility with operating systems; consequently, the purchasing decision is likely to be quite careful and educated, lessening the effects of imperfect recollection.

24) *Aerials for the transmission of radio signals, computer controlled sound apparatus, computer controllers for operating sound instruments, computer programmes relating to the manipulation of graphic images on a computer,*

control boxes for headphones, headphone amplifiers, headphone consoles, headphone-microphone combinations, headphones for microphones, mobile radio transmitting apparatus, mobile radio receiving apparatus, mixing desks [sound] are all goods of a technical nature which are likely to be bought with care and as the result of a careful and educated purchasing decision. Consequently, the effects of imperfect recollection are likely to be at a low level.

25) All of the goods of the application are likely to be primarily bought as the result of a visual perusal, whether that be in a physical or an on-line shop. Consequently, visual similarity will be of greater importance than aural similarity in relation to the likelihood of confusion.

Comparison of goods and services

26) In “construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade^{iv}”. Words should be given their natural meaning within the context in which they are used, they cannot be given an unnaturally narrow meaning^v. Consideration should be given as to how the average consumer would view the goods and/or services^{vi}. The class of the goods and/or services in which they are placed may be relevant in determining the nature of the goods and/or services^{vii}. In assessing the similarity of goods and/or services it is necessary to take into account, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary^{viii}. In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, Jacob J also gave guidance as to how similarity should be assessed^{ix}. Jacob J in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16 stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

27) Mr Norris accepted that the respective goods and services were either identical or similar. However, in relation to similarity, he submitted that was a spectrum as to the degree of similarity.

28) *Club [discotheque] services, discotheque services, entertainment services provided at discotheques* are encompassed by the terms *entertainment* and *discotheques* of the earlier registration. Consequently, the respective services are identical. Discotheque equipment will be rented by persons organising discotheques and who supply discotheques services. Consequently, the respective services will have the same end users. The purpose of renting discotheque equipment is to allow for discotheques to function, consequently the respective services have the same end purpose. Discotheque equipment may be hired as an alternative to hiring a discotheque services, consequently, the

respective services are in competition. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-325/06* the General Court (GC) considered the concept of complementarity:

“82 It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 *P Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48).”

The purpose of hiring discotheque equipment is to put on a discotheque. Consequently, the services of the earlier registration are indispensable for the *rental of disco equipment*, although there is no mutual dependency, as the suppliers of discotheque services do not have to hire the equipment that they use. The dependency is one sided. The strong, if one way, dependency is such that customers of the respective services would believe that the responsibility for the services lies with the same undertaking. The respective services are complementary. There is a high degree of similarity between *rental of disco equipment* and *entertainment* and *discotheques*.

29) All of the goods of SAL’s registration fall within the broad parameters of the specification of the earlier registration. The class 9 goods are identical.

30) There is identity of all goods and services with the exception of *rental of disco equipment*, which is highly similar to both *entertainment* and *discotheques*.

Comparison of trade marks

31) The average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details^x. The visual, aural and conceptual similarities of the trade marks must, therefore, be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components^{xi}. Consequently, there cannot be an artificial dissection of the trade marks, although it is necessary to take into account any distinctive and dominant components. The average consumer rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he/she has kept in his/her mind and he/she is deemed to be reasonably well informed and reasonably circumspect and observant^{xii}. The assessment of the similarity of the trade marks must be made by reference to the perception of the relevant public^{xiii}.

32) In *NEC Display Solutions Europe GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-501/08 the GC decided:

“35 That conclusion cannot be called into question by the applicant’s assertion that the word ‘more’ has no distinctive character. It should be borne in mind, that weak distinctive character of an element of a compound mark does not necessarily imply that that element cannot constitute a dominant element where – owing, in particular, to its position in the sign or its size – it may make an impression on consumers and be remembered by them (Case T-153/03 *Inex v OHIM – Wiseman (representation of a cowhide)* [2006] ECR II-1677, paragraph 32, and Case T-7/04 *Shaker v OHIM – Limiñana y Botella (Limoncello della Costiera Amalfitana shaker)* [2008] ECR II-3085, paragraph 44).”

Consequently, an element with weak distinctive character can still be the dominant element of a trade mark.

33) Mr Norris described the circle in 433’s trade mark as representing a head. He submitted that the average consumer would see a set of headphones around the circle and perceive a head. He prayed in aid the decision of the cancellation division of OHIM referred to above, where it stated:

“With regard to the figurative elements, the words are stylized in a modest script inside an oval shape; an imaginative symbol for a head. The head is surrounded by a set of headphones, also sketched in a fanciful manner.”

There is no explanation why the average consumer of the goods and services seeing a set of stylised headphones around a circle upon which words appear, would not see a circular background rather than a head. There are none of the protuberances of a head eg ears. It is not considered that the average consumer for the goods and services will see anything other than a circular background upon which the words silent disco appear.

34) SAL has filed evidence to try to show that silent disco is a term describing a type of disco where the music is played through headphones. In the article from the *South Wales Echo* of 4 April 2008 reference is made to the “silent disco idea”. The article from *The Telegraph* of 6 September 2009 describes what silent discos are and advises that “[a]t least half a dozen companies offering silent disco have set up in the UK in the last three years and all reported business was booming”. Various other articles make it clear that silent disco is a term for a type of disco. In certain of the articles silent disco is capitalised but this is not of itself indicative of use as other than a generic term; the capitalisation of words, outwith the normal rules of “good” usage, is common. It is noted, for instance, that in the counterstatement, SAL capitalises applicant and in the statement of Mr Jenkins

proprietor is capitalised. The evidence establishes that at the date of the application for invalidation silent disco was a term used to describe a particular type of disco. The average consumer of disco services, from the evidence, would be aware of this meaning and in relation to disco services silent disco would lack any distinctive character. All of the services of SAL's registration are discotheque services, so in the conflict with these services, the words silent disco lacks any distinctive character.

35) In *Ford Motor Co v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T-67/07 the GC held:

“43 As regards the other goods covered by the application for registration, namely parts and fittings for land motor vehicles, it must be pointed out that the descriptive character of a sign must be assessed separately for each category of goods and/or services covered by the application for registration. Nevertheless, all the goods specified in the trade mark application may be inseparably linked since some of those goods may only be used in connection with the others, and a solution which is common to all the goods should therefore be adopted (see, to that effect, Case T-216/02 *Fieldturf v OHIM (LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS)* [2004] ECR II-1023, paragraph 33, and Case T-315/03 *Wilfer v OHIM (ROCKBASS)* [2005] ECR II-1981, paragraph 67).”

In *Hans-Peter Wilfer v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T-315/03 the GC held:

“67 Nevertheless, the services and goods specified in the trade mark application may be inseparably linked since the purpose of those services can only be the installation of those goods and a solution which is common to the goods and services should therefore be adopted (see, to that effect, Case T-216/02 *Fieldturf v OHIM (LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS)* [2004] ECR II-0000, paragraph 33).

68 In the present case, both the goods designated in the application for registration as guitar accessories and containers, cases and bags for guitars are intended to be used exclusively in connection with guitars. An identical position should therefore be adopted with respect to those Class 15 goods as was previously outlined in relation to bass guitars.

69 That finding cannot, moreover, be called into question by an individual analysis of the abovementioned goods, which do not have any intended purpose other than in connection with handling guitars. Thus, if registration of the sign ROCKBASS were claimed solely for containers, cases and

bags for guitars, and not for the guitars themselves, it would have to be held that ROCKBASS evokes the sole intended purpose of those goods.

70 In relation also to containers, cases and bags in Class 18, since the applicant has not drawn any distinctions within this generic category the Board of Appeal's findings must be confirmed in so far as they relate to all goods in that category.

71 With respect to the equipment in Class 9, it is clear from the arguments of the parties that the same equipment may be used for different instruments. Their use in connection with the bass guitar is therefore just one of their possible uses.

72 It should be pointed out in this connection that, according to the case-law, there is a sufficiently direct and specific relationship between the sign and the goods in question where the technique evoked by the sign involves, or indeed requires, the use of those goods. That technique does not merely constitute in this case a field in which those goods are applied but rather is one of their specific functions (see, to that effect, *STREAMSERVE*, paragraph 44). Accordingly, the fact that the goods in question may also be used in another way, to which the sign in question does not refer, cannot undermine that finding (*ROBOTUNITS*, paragraph 47).

73 In the present case, even though the equipment in question is not intended to be used exclusively in connection with bass guitars, it is nevertheless not used autonomously in relation to the handling of electric instruments. In addition, that equipment must be used in order to play the electric guitar, which is not capable of producing musical sounds on its own. Thus, the possibility of playing an electric bass guitar is a function of the equipment referred to in the application and not simply one of the many fields in which the equipment is applied. In particular, the combined use of these two categories of goods is required or, at the very least, implied by their inherent characteristics.

74 For the reasons set out in paragraphs 69 and 70, the same solution must be adopted with regard to the containers, cases and bags for the abovementioned goods as for the goods for which they are designed.

75 In the light of the above considerations, the link between the sign ROCKBASS and the characteristics of all the goods referred to in the application for registration is sufficiently close to fall within the scope of the prohibition under Article 7(1)(c) of Regulation No 40/94."

The above judgment was subject to an appeal to the CJEU. The appeal was withdrawn, but not before AG Sharpston had written an opinion (Case C-301/05P):

“47. The Court of First Instance ruled that, in relation to containers, cases and bags in Class 18, since Mr Wilfer had not drawn any distinctions within this generic category the Board of Appeal’s findings were to be confirmed in so far as they related to all goods in that category. With respect to the equipment in Class 9, it is clear from the arguments of the parties that the same equipment may be used for different instruments. Their use in connection with the bass guitar is therefore just one of their possible uses. There is a sufficiently direct and specific relationship between the sign and the goods in question where the technique evoked by the sign involves, or indeed requires, the use of those goods. That technique does not merely constitute in this case a field in which those goods are applied but rather is one of their specific functions. Accordingly, the fact that the goods in question may also be used in another way, to which the sign in question does not refer, cannot undermine that finding. In the present case, even though the equipment in question is not intended to be used exclusively in connection with bass guitars, it is nevertheless not used autonomously in relation to the handling of electric instruments. In addition, that equipment must be used in order to play the electric guitar, which is not capable of producing musical sounds on its own. Thus, the possibility of playing an electric bass guitar is a function of the equipment referred to in the application and not simply one of the many fields in which the equipment is applied. In particular, the combined use of these two categories of goods is required or, at the very least, implied by their inherent characteristics.”

Consequent upon the above findings, the use of silent disco in relation to goods for use in discos would have a direct and specific relationship with the goods and so lack any distinctive character. All of the goods of SAL’s registration could be used for discotheques. However, the goods are not limited and so could be used for other purposes; where silent disco would not be directly descriptive and non-distinctive.

36) SAL has adduced evidence to try to show that devices of headphones are commonly used in relation to silent discos. The evidence shows use of devices of headphones in the promotion of silent discos. This is not surprising, as headphones are essential equipment for silent discos. In relation to discotheque services and goods for discotheques, the device of headphones has limited, if any, distinctive character. In relation to headphones and headphone related equipment, the device of headphones also has limited, if any, distinctive character.

37) An arena that is silent may be the result of the goods and services of SAL's registration but it is not a characteristic of the goods and services. It would be unusual to describe the place where a discotheque takes place as an arena. The words silent arena are distantly allusive to the goods and services of SAL's registration.

38) In relation to discotheque services and goods for use in relation to discotheques, the distinctiveness of 433's trade mark lies in its entirety. The background of a circle, the device of the headphones and the words, not having individual distinctive character in relation to these goods and services.

39) The distinctive and dominant component of SAL's trade mark is the words silent arena.

40) Visually, both trade marks contain devices of headphones which surround the word elements. The actual nature of the devices of headphones is different. Both contain the word silent. In the trade mark of SAL the lettering is in the style of fonts that were used in the 1960s and 1970s in relation to technology. On a very general level there is a low degree of visual similarity in the construction of the respective trade marks.

41) Conceptually both trade marks contain devices of headphones^{xiv}. Both trade marks contain the word silent which qualifies the following noun. Silent disco is a descriptive term that describes a particular type of discotheque. Silent arena describes a place where events take place in silence, it is not a term of art. Mr Rawlence submitted that a silent disco could take place in a silent arena and so the terms are conceptually similar. This submission is syllogistic. The words of the two trade marks have different meanings, even if both relate to something that is silent. The word elements of the respective trade marks, in their entireties, are conceptually dissonant.

42) Both trade marks are phonetically identical in relation to the word silent and phonetically dissonant in relation to the other words.

Conclusion

43) In considering whether there is a likelihood of confusion various factors have to be taken into account. There is the interdependency principle – a lesser degree of similarity between trade marks may be offset by a greater degree of similarity between goods, and vice versa^{xv}. In this case the respective goods and services are identical or, in the case of *rental of disco equipment*, highly similar.

44) It is necessary to consider the distinctive character of the earlier trade mark; the more distinctive the earlier trade mark the greater the likelihood of confusion^{xvi}. The corollary of this is that the less distinctive the earlier trade

mark, the lesser the likelihood of confusion as per the judgment of Millett LJ in *The European Ltd v The Economist Newspaper Ltd* [1998] ETMR 307:

“In my judgment the judge's conclusion based on a comparison of the two mastheads cannot be faulted. Although he did not have the benefit of the decision, he did in my opinion faithfully carry out the instructions of the European Court of Justice in *Sabel BV v. Puma AG* [1998] E.T.M.R. 1 to the effect that:

“The likelihood of confusion must be appreciated globally, taking into account all factors relevant to the circumstances of the case. That global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind in particular their distinctive and dominant components . . . the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details.

In that perspective, the more distinctive the earlier mark, the greater will be the likelihood of confusion. It is therefore not impossible that the conceptual similarity resulting from the fact that two marks use images with analogous semantic content may give rise to a likelihood of confusion where the earlier mark has a particularly distinctive character, either *per se* or because of the reputation it enjoys with the public.

The more distinctive the earlier mark, the greater will be the likelihood of confusion.”

The converse, of course, follows. The more descriptive and the less distinctive the major feature of the mark, the less the likelihood of confusion.”

The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public^{xvii}. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the mark to identify the goods for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods from those of other undertakings^{xviii}. In relation to discotheque services and goods for use in relation to discotheques, the trade mark of 433 has a very limited distinctive character. In relation to the goods which are not for use in relation to discotheques, the trade mark of 433 will have greater distinctive character.

45) There is the verbal conceptual dissonance of the respective trade marks to be considered, as well as the conceptual similarity in relation to the device elements. In *Phillips-Van Heusen Corp v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-292/01* the GC stated:

“54. Next, it must be held that the conceptual differences which distinguish the marks at issue are such as to counteract to a large extent the visual and aural similarities pointed out in paragraphs 49 and 51 above. For there to be such a counteraction, at least one of the marks at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately. In this case that is the position in relation to the word mark BASS, as has just been pointed out in the previous paragraph. Contrary to the findings of the Board of Appeal in paragraph 25 of the contested decision, that view is not invalidated by the fact that that word mark does not refer to any characteristic of the goods in respect of which the registration of the marks in question has been made. That fact does not prevent the relevant public from immediately grasping the meaning of that word mark. It is also irrelevant that, since the dice game ‘Pasch’ is not generally known, it is not certain that the word mark PASH has, from the point of view of the relevant public, a clear and specific meaning in the sense referred to above. The fact that one of the marks at issue has such a meaning is sufficient - where the other mark does not have such a meaning or only a totally different meaning - to counteract to a large extent the visual and aural similarities between the two marks.”

It is to be noted that conceptual difference does not always trump visual and aural similarities, as per the judgment of the GC in *Nokia Oyj v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-460/07*:

“66 Furthermore, it must be recalled that, in this case, although there is a real conceptual difference between the signs, it cannot be regarded as making it possible to neutralise the visual and aural similarities previously established (see, to that effect, Case C-16/06 P *Éditions Albert René* [2008] ECR I-0000, paragraph 98).”

In this case there is a clear verbal conceptual dissonance which will mean that the average consumer will have different conceptual hooks with which to recall the trade marks. Clear conceptual hooks that will militate against imperfect recollection.

46) That the trade marks both include the word silent, taking into account the trade marks in their entireties, does not mean that this shared element will cause confusion. As the GC commented on a common element in *Mitro Corporación*

Empresarial, SL c Oficina de Armonización del Mercado Interior (marcas, dibujos y modelos) (OAMI), Case T-427/07:

“64 En primer lugar, en lo que respecta a la alegación basada en la existencia de la misma raíz en los signos en conflicto –la raíz «mirt»– y al carácter accesorio del sufijo «illino» en relación con esta raíz común, ha de indicarse que la mencionada alegación se basa en la descomposición del signo Mirtillino. Como ya se ha señalado (véase el apartado 55 anterior), el consumidor español medio percibe dicho signo como un todo. Por consiguiente, dado que este signo no puede descomponerse, no hay ninguna razón para considerar que el elemento «mirt» sea el elemento dominante en su seno y que el consumidor español medio fijará su atención en ese único elemento, pasando por alto el elemento «illino».”

47) In considering the effects of the distinctiveness of an earlier trade mark it is necessary to bear in mind the judgment of the CJEU in *L’Oréal SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case C-235/05 P*:

“43 It must therefore be held that the applicant has misconstrued the concepts which govern the determination of whether a likelihood of confusion between two marks exists, by failing to distinguish between the notion of the distinctive character of the earlier mark, which determines the protection afforded to that mark, and the notion of the distinctive character which an element of a complex mark possesses, which is concerned with its ability to dominate the overall impression created by the mark.

45 The applicant’s approach would have the effect of disregarding the notion of the similarity of the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance. The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders.”

48) Taking into account the differences in the respective trade marks and the verbal conceptual dissonance, it is not considered that there is a likelihood of direct confusion between the trade marks, whatever the effects of imperfect

recollection, in respect of both discotheque related goods and services and all other goods of SAL's registration.

49) In its written submissions 433 submits that if there is not direct confusion there would be indirect confusion ie the average consumer would believe that the goods and services emanate from the same undertaking or economically linked undertakings. Owing to the differences in the respective trade marks, the conceptual verbal dissonance and the meaning of 433's trade mark, it is not considered that the average consumer would be indirectly confused.

50) The ground of opposition is dismissed.

Costs

51) SAL having been successful is entitled to a contribution towards its costs. Costs are awarded on the following basis:

Preparing statement and considering the statement of 433:	£300
Preparing evidence:	£500
Preparing for and attending the hearing:	£500
Total:	£1,300

433fm.com VOF is ordered to pay Silent Arena Limited the sum of £1,300. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 17 day of October 2011

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

ⁱ "47. - (1).....

.....(2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A)* But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration, (b) the registration procedure for the earlier trade mark was not completed before that date, or (c) the use conditions are met.

(2B) The use conditions are met if –

(a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or (b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) In relation to a Community trade mark or international trade mark (EC), any reference in subsection (2B) or (2C) to the United Kingdom shall be construed as a reference to the European Community. (2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

(3) An application for a declaration of invalidity may be made by any person, and may be made either to the registrar or to the court, except that-

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(4) In the case of bad faith in the registration of a trade mark, the registrar himself may apply to the court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.”

ⁱⁱ *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* Case C-342/97.

iii In *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)* Joined cases T-117/03 to T-119/03 and T-171/03 the GC stated:

“49 However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”

iv *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281.

v *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267.

vi *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32 dealt with a non-use issue but are still pertinent to the consideration of the meaning and effect of specifications:

“In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use”

vii *Altecnic Ltd's Trade Mark Application* [2002] RPC 34.

viii *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* Case C-39/97.

ix He considered that the following should be taken into account when assessing the similarity of goods and/or services:

“(a) The respective uses of the respective goods or services;
(b) The respective users of the respective goods or services;
(c) The physical nature of the goods or acts of service;
(d) The respective trade channels through which the goods or services reach the market;
(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

^x *Sabel BV v Puma AG* Case C-251/95.

^{xi} *Sabel BV v Puma AG* Case C-251/95.

^{xii} *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* Case C-342/97.

^{xiii} *Succession Picasso v OHIM - DaimlerChrysler (PICARO)* Case T-185/02.

^{xiv} In *Agatha Ruiz de la Prada de Sentmenat c Oficina de Armonización del Mercado Interior (Marcas, Dibujos y Modelos) (OAMI)* T-523/08 the GC commented upon conceptual similarity arising from devices:

“48 En cuanto a la similitud conceptual, debe recordarse que las marcas en conflicto reproducen el mismo tipo de flor, representado de modo similar (véase el apartado 35 *supra*). Por consiguiente, no debe considerarse que la Sala de Recurso haya cometido un error al estimar que las marcas en conflicto son similares desde el punto de vista conceptual.”

^{xv} *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* Case C-39/97.

^{xvi} *Sabel BV v Puma AG* Case C-251/95.

^{xvii} *Rewe Zentral AG v OHIM (LITE)* Case T-79/00.

^{xviii} *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97.