

O-380-10

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS IN THE MATTER OF:

APPLICATIONS 2380658 & 2469111

BY COBRA ELECTRONICS CORPORATION

TO REGISTER IN CLASS 9 THE TRADE MARKS:



&



AND

IN THE MATTER OF OPPOSITIONS 93630 & 97325 BY

COBRA AUTOMOTIVE TECHNOLOGIES SPA

TRADE MARKS ACT 1994

**Consolidated proceedings in the matter of: applications 2380658 & 2469111
by Cobra Electronics Corporation**

and

Oppositions (nos 93630 & 97325) by Cobra Automotive Technologies Spa

The background and the pleadings

1) Application 2380658 was filed by Cobra Electronics Corporation (“Electronics”) on 15 February 2003. The trade mark and the goods (but only those the subject of the opposition) are:



Class 9: Radar/laser detectors, global positioning systems, satellite navigation systems of all kinds.

2) Application 2469111 was filed by Electronics on 11 October 2007 in relation to the same (opposed) goods as set out above. The trade mark the subject of the application is:



3) Cobra Automotive Technologies Spa (“Automotive”) opposes the registration of the above applications. Originally there were other grounds and other earlier marks relied upon (I will come back to this point later) but, by the time of writing this decision, the opposition was left to be determined under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) on the basis of the following two trade marks which are in Automotive’s proprietorship:

Trade mark details	Relevant dates	Specification
<p>Community trade mark ("CTM") registration 1031475 for the mark:</p> <p>COBRA</p>	<p>Filing date: 30/12/1998</p> <p>Registration: 14 June 2006</p>	<p>Class 06: Locks, keys, chains, padlocks and mechanical anti-theft devices.</p> <p>Class 12: Anti-theft devices for vehicles, anti-theft warning devices for vehicles, electric and electronic installations to prevent vehicle theft, devices for remote location of vehicles, reversing alarms for vehicles</p> <p>Class 37: Installation, repair and maintenance of anti-theft devices for vehicles.</p>
<p>CTM registration 2724698 for the mark:</p> <p>COBRA CONNEX</p>	<p>Filing date: 5 June 2002</p> <p>Registration: 18 November 2004</p>	<p>Class 09: Devices and apparatus for locating and remote control of movable property, satellite location systems of movable property, apparatus for sending and receiving information from movable property, being said apparatus intended as part of systems for locating and remote control of movable property, excluding products intended mainly to consent a vocal communication between persons.</p> <p>Class 12: Vehicle anti-theft devices and apparatus, vehicle safety devices.</p> <p>Class 37: Installation, maintenance and repair of devices and apparatus for locating and remote control of movable property.</p> <p>Class 38: Sending and receiving information and communications between movable property and fixed installations; sending and receiving of messages, being intended all such services as functions of devices for remote location of movable property, excluding services intended mainly to consent a vocal communication between persons.</p> <p>Class 39: Inspection of fleets of moveable property, being intended such services as functions of devices for remote location of movable property.</p> <p>Class 45: Remote monitoring, rescue, diagnosis and inspection of vehicles, being intended such services as functions of devices for remote location of movable property.</p>

4) As can be seen from the above table, both of Automotive's trade marks were filed before those of Electronics. They both, therefore, qualify as earlier trade marks in accordance with section 6 of the Act. Neither earlier mark is subject to the proof of use provisions contained in section 6A of the Act¹ as they completed their registration procedures within the five year period prior to the publication of Electronics' applications². The earlier marks can be relied upon for their specifications as registered.

5) Electronics filed a counterstatement denying the grounds of the oppositions. The cases were consolidated in view of the similar issues that needed to be determined. Both sides filed evidence. The matter then came to be heard before me on 9 September 2010. At the hearing, Mr Geoffrey Pritchard, of Counsel, instructed by Potts, Kerr & Co, represented Automotive. Mr Stephen Jones of Baker & McKenzie represented Electronics.

The evidence rounds

6) There was little by way of factual evidence from either party. On behalf of Automotive, Mr David Gilmour (a consultant patent and trade mark attorney at Potts Kerr & Co) filed evidence consisting of copies of the certificates of registration of the earlier marks relied upon. Also on Automotive's behalf, Mr Francis Wombwell (a partner in Potts Kerr & Co) filed evidence consisting primarily of submission (which I bear in mind but will not summarise here) but also evidence highlighting the "cobra devices" that Automotive use. Other evidence includes:

Exhibit FW1 – A letter said to be from Automotive's correspondent in Slovakia concerning an opposition there by Electronics against Automotive's word mark COBRA on the basis of a registration of a cobra device mark. The claim is, apparently, that the device mark is (by their own admission) similar to the word COBRA.

Exhibit FW2 – A decision of OHIM's Second Board of Appeal in case R191/2002-1 which concluded that the word pelican and the device of a pelican were conceptually and phonetically identical and the marks therefore similar.

Evidence relating to the specification term "radar/laser detectors" which is sought by Electronics. The evidence explains what such a term covers and there are also accompanying submissions on the similarity of these goods with those of Automotive. Other submissions on goods similarity are also made. I will come back to all this when comparing the goods.

¹ Section 6A of the Act was added to the Act by virtue of the Trade Marks (Proof of Use, etc.) Regulations) 2004 (SI 2004/946) which came into force on 5th May 2004.

² 2380658 was published on 29 April 2005 and 2469111 on 7 March 2008.

7) On behalf of Electronics, evidence was filed by Mr Stephen Jones of Baker & McKenzie. It contains no evidence of fact only submission. I will bear the submissions in mind but will not summarise them here.

Preliminary issue

8) As stated in paragraph 3, the oppositions were initially more wide-ranging both in terms of the grounds of opposition and in terms of the earlier marks relied upon. The additional pleadings can be summarised as:

Section 5(2)(b) – additional earlier marks 1179568 and CTM 67200 are relied upon, both of which consist of the following word and device mark:



Section 5(3) – this ground is pleaded on the basis of the above two earlier marks and, also, earlier marks CTM 1031475 & CTM 2724698 (as detailed in paragraph 3).

Section 5(4) – this ground is pleaded on the basis of the use of signs corresponding to the four earlier trade marks referred to above.

9) It is clear from Electronics' skeleton argument that it considered that the above pleadings could not be pursued. This is because the additional earlier marks are subject to the proof of use provisions (this is not denied by Automotive), that all the marks under section 5(3) are subject to the requirement to prove that they have a reputation, and that under section 5(4)(a) evidence of goodwill is required, but no evidence going to any of this had been provided. On the other hand, Automotive's skeleton argument made no waiver of its claims under sections 5(3)/5(4)³ and still relied on its other two earlier marks despite them being the subject of the proof of use provisions. In view of this quite different view as to the scope of the hearing, I dealt with these other pleadings as a preliminary point.

10) In relation to the above grounds/marks, it is clear that evidence is required to support them. In relation to the proof of use requirement for 1179568 and CTM 67200, evidence demonstrating genuine use⁴ of the marks would have been

³ Although, it did concede that it was no better off under section 5(4) than under section 5(2).

⁴ As per the judgments of the European Court of Justice ("ECJ") in *Ansul BV v Ajax Brandbeveiliging BV* [2003] R.P.C. 40 ("*Ansul*") and *Laboratoire de la Mer Trade Marks* [2006] F.S.R. 5 ("*La Mer*").

required during the relevant five year periods prior to the publication of the applications. In relation to the grounds under section 5(3), evidence would have been required to demonstrate that the earlier marks had a reputation so that they were known at the relevant date by a significant part of the public concerned with the goods⁵. In relation to the grounds under section 5(4)(a), evidence would have been required demonstrating that Electronics' business had, at the material date, a protectable goodwill of more than a trivial nature⁶ associated with the signs relied upon. I note that in its counterstatement Electronics put Automotive to proof of its claims relating to reputation/goodwill and specifically answered the question contained on the Form TM8 (its counterstatement) that it required Automotive to provide proof of use of its earlier marks.

11) Automotive submitted at the hearing that its evidence in relation to the above was provided in its witness statements (particularly that of Mr Wombwell), evidence which is consistent with the statements of use and other statements in its Form TM7 (its statement of case). It was also argued that the statements of use and other statements in its TM7 constituted evidence because this document contained a signed statement of truth (a reference to part 32.6 of the Civil Procedure Rules ("CPR") was made). It was also highlighted that none of the factual statements made in any of this "evidence" had been challenged either by cross-examination, contrary documentation or evidence in rebuttal, so it must be accepted given that there is nothing incredible or inherently unbelievable. For the record, the statements contained in the TM7s and Mr Wombwell's witness statement consist of:

i) A statement of use in Form TM7 reading:

"The client is presently selling widely in Europe and also in the UK all their three ranges of products that are:
-antitheft systems for vehicles (which include remote controls, electronic keys, sirens, volumetric sensors, level sensors, glass breaks sensors, shock sensors, central door locking systems, engine immobilizers)
-parking aids (the COBRA "PARKMASTER" - works by ultra-sounds and emits acoustic signals whenever any visible or invisible obstacle is lying within its range of action)

⁵ A "reputation" for the purposes of section 5(3) means that the earlier trade mark is known by a significant part of the public concerned with the products or services covered by that trade mark (see paragraph 26 of the ECJ's judgment in *General Motors Corp. v Yplon SA (CHEVY)* [1999] ETMR 122).

⁶ See, inter alia, *Reckitt & Colman Products Ltd v Borden Inc* [1990] R.P.C.341; *Hart v Relentless Records* [2002] EWHC 1984; *South Cone Inc v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19; *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat); *Loaded* (BL O/191/02). These cases set out the basis for a passing-off claim, the level of goodwill required, and the requirement for proof of goodwill.

-remote security systems (the "COBRACONNEX" or "COBRATRAK"), which is a complex system based on GSM, GPS and Internet technologies that allows remote and real time connection with the vehicle).

With regard to the technology used by the COBRACONNEX please refer to the internet site <http://www.cobraconnex.com/uk/index.php?page=780>"

ii) The above statement of use is made in relation to earlier marks 1179568, 672006 & 1031475.

iii) It is also stated that:

"The mark has a reputation for the listed Class 12 goods" (1179568 and 672006)

and

"The mark has a reputation for the listed Class 12 and 37 goods at least" (1031475)

and

"The mark has a reputation for the goods and services in Classes 9, 12, 37 and 38 as listed above"

iv) The first statement I listed in paragraph 11 is repeated in relation to the claims under section 5(4)(a). Further detail from the opposition against application 24691111 reads:

"Parking aids: first use in UK in 2002."

"Telelocalization systems: first use in UK in 2003"

"Anti-theft devices for vehicles: first use in UK in 1982"

v) In Mr Wombwell's witness statement, under a heading "**Similarity of trade marks**", and in between various submissions, Mr Wombwell states:

"The Opponent, Cobra Automotive Technologies, have been using trade marks with similar "cobra" devices for many years, such as:" [some images of its Cobra marks are then provided]

12) I gave a decision at the hearing rejecting the opposition in relation to these other earlier marks/grounds. Evidence before this tribunal must take the form of a witness statement, affidavit or statutory declaration. Evidence may also be given

in a form that would be admissible as evidence in proceedings before the court⁷; this is what Automotive was relying on in relation to the statements it made in its Forms TM7. Automotive relied on Part 32.6 of the CPR which reads:

“(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the trial is to be by witness statement unless the court, a practice direction or any other enactment requires otherwise.

(2) At hearings other than the trial, a party may, rely on the matters set out in –

(a) his statement of case; or

(b) his application notice, if the statement of case or application notice is verified by a statement of truth.”

13) I note, however, that the above rule relates to precise circumstances in court proceedings and does not set out a general rule as to the form of admissible evidence in the Court. This rule does not therefore apply by virtue of the application of rule 64(1) of the 2008 Rules. The matter is, though, compounded by the fact that the 2008 Rules set out the following procedures in relation to evidence:

“(2) Where—

(a) the opposition is based on an earlier trade mark of a kind falling within section 6(1)(c); or

(b) the opposition or part of it is based on grounds other than those set out in section 5(1) or (2); or

(c) the truth of a matter set out in the statement of use is either denied or not admitted by the applicant, the person opposing the registration (“the opposer”) shall file evidence supporting the opposition.

(3) Where the opposer files no evidence under paragraph (2), the opposer shall be deemed to have withdrawn the opposition to the registration to the extent that it is based on—

(a) the matters in paragraph (2)(a) or (b); or

(b) an earlier trade mark which has been registered and which is the subject of the statement of use referred to in paragraph (2)(c).”

⁷ See rule 64(1) of the Trade Marks Rules 2008 (“the 2008 Rules”).

14) For the evidence based grounds of opposition that are under consideration here, it is clear that evidence shall be filed to support them. It would be perverse to be able to rely on statements made in the TM7 when such a requirement is in place⁸. In view of this, the statements made in the TM7 cannot count as evidence and so, all that can possibly consist of evidence is what Mr Wombwell stated. However, all that Mr Wombwell stated was “The Opponent, Cobra Automotive Technologies, have been using trade marks with similar “cobra” devices for many years, such as....”. This is no more than a general statement. The context in which he is making this statement is in respect of mark similarity, he is not even attempting to give evidence on genuine use, reputation or goodwill. Such a bare statement, in my view, does not constitute evidence that can be relied upon in support of these grounds and Electronics has, therefore, failed to meet the onus on it to file evidence in support of its claims.

15) Even if I am wrong on the above, and even if the statements made in the TM7s and in Mr Wombwell’s witness statement should be regarded as evidence in support of these additional grounds/marks, such evidence is overwhelmingly deficient. It does not even come close to satisfying me that genuine use has taken place, or that a reputation and/or goodwill exists. The evidence has such paucity that no proper objective analysis can be undertaken. The evidence is merely a series of claims with nothing in support. I do not criticise Mr Wombwell for this because, as I said earlier, he does not seem to be attempting to give evidence as to genuine use, reputation or goodwill. It is simply that the evidence, in terms of what it is submitted to prove, does not even get off the ground. To say that the “evidence” must be accepted because it has not been challenged and that it is neither incredible nor inherently unbelievable, takes the relevant case-law⁹ completely out of context. The fact that someone says that the mark has a reputation or that it has been put to use is not relevant – unless a claim is accepted by the other side, the witness must still place evidence before the tribunal so that the decision maker (the tribunal) can decide if a reputation/goodwill exists or that the use made of the mark meets the tests for genuine use.

⁸ Even though application 2380658 would have been dealt with under the previous set of rules had it not been consolidated, the consolidation had the effect of the proceedings being governed by the 2008 rules - see the transitional rule at 83(5) of the 2008 Rules to that effect. The previous rules, in any event, had similar provisions.

⁹ See, for example, *EXTREME Trade Mark* (BL O/161/07).

Section 5(2)(b) of the Act

16) This section reads:

“5.-(2) A trade mark shall not be registered if because –

(a)

(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.”

17) In reaching my decision I have taken into account the guidance provided by the European Court of Justice (“ECJ”) in a number of judgments: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77, *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05).

18) The existence of a likelihood of confusion must be appreciated globally, taking into account all relevant factors (*Sabel BV v Puma AG*). As well as assessing whether the respective marks and the respective goods are similar, other factors are relevant including:

The nature of the average consumer of the goods in question and the nature of his or her purchasing act. This is relevant because it is through such a person’s eyes that matters must be judged (*Sabel BV v Puma AG*);

That 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 or she has kept in mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*) This is often referred to as the concept of “imperfect recollection”;

That the degree of distinctiveness of the earlier trade mark (due either to its inherent qualities or through the use made of it) is an important factor because confusion is more likely the more distinctive the earlier trade mark is (*Sabel BV v Puma AG*);

That there is interdependency between the various factors, for example, a lesser degree of similarity between the marks may be offset by a greater

degree of similarity between the respective goods, and vice versa (*Canon Kabushiki Kaisha v Metro- Goldwyn-Mayer Inc*).

Comparison of goods

19) When comparing the respective goods, I note the judgment In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* where the ECJ stated:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

20) Guidance on this issue also comes from Jacob J In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 (“*British Sugar*”) where he highlighted the respective users and trade channels as being relevant.

21) 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 the trade¹⁰. I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning¹¹.

22) I will consider the matter term by term on the basis of the goods sought to be registered. I will compare such terms to the types of goods covered by the earlier marks’ class 12 specifications as Automotive conceded in its skeleton argument that it was no better off under any of its other goods or services. The first term is:

Radar/laser detectors

23) This is the term to which Automotive’s evidence (that of Mr Wombwell) relates. He refers to Electronics’ website and provides a screen print at Exhibit FW3 showing some of these products. He explains that the products are installed onboard a vehicle to detect police radar/laser speed monitoring devices, so as to alert the driver to reduce speed. He goes on to state that they also have other functions such as “strobe alert” and “safety alert” which are described on the website as:

¹⁰ See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281.

¹¹ See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267 (“*Beautimatic*”).

“Safety Alert: Warns drivers of the presence and/or approaching emergency vehicles, railroad crossing, and road hazard locations equipped with Cobra’s exclusive Safety Alert transmitters.

Strobe Alert: A Cobra exclusive, works with tens of thousands of emergency vehicles currently equipped with traffic light controlling strobe emitters. Provides advance warning of the presence and/or approach of emergency vehicles.”

24) The submission based on the above evidence is that a radar/laser detector, within its main features or with the above additional features, could be considered broadly similar to apparatus for sending and receiving information from movable property, to vehicle safety devices, and also to reversing alarms for vehicles (which is said to be a device for transmitting/receiving signals from outside the vehicle).

25) Another exhibit (FW4) from Electronics’ website is highlighted showing that these devices can also have a function which provides accurate latitude/longitude information using a Global Positioning System (“GPS”). The submission is that such devices are similar to devices for the remote location of vehicles and also similar to devices and apparatus for locating and remote control of moveable property and satellite location systems for movable property.

26) In terms of Automotive’s submissions at the hearing, there was a general claim that these goods and the goods covered by the earlier marks constitute electronic devices to be used in vehicles such as cars and that this brings the goods together in terms of nature, users and channels of trade. More specifically, it was also argued that radar/laser detectors will be utilized in the goods covered by the earlier marks. For example, a vehicle alarm may use some form of laser detector as will a reversing alarm for a vehicle (the claim was that such goods are the sorts of things used to help in the parking of vehicles and that a laser may be beamed backwards to assist in this process). The submission was, also, that in view of all this, such goods are, effectively, laser/radar detectors themselves.

27) Although the evidence comes from a US website, I am prepared to accept that the purpose of radar/laser detectors is for the detection of radar/laser used in police speed cameras etc. Whilst without evidence/explanation I would not have got this from the term itself, I am aware of such a product and its function. The evidence shows other functions, however, I am less prepared to accept the function of detection of radars/laser in emergency vehicles/level crossings as for such things to operate they need to be equipped with “Cobra’s exclusive Safety Alert transmitters”. The position must be judged from the perspective of the UK average consumer and the UK market and the extension of this product to such a purpose may be a US-centric initiative. My understanding of the position as a driver in the UK is that drivers rely on sign posts (often of the flashing variety) to alert drivers to level crossings and sirens/lights to alert drivers to emergency

vehicles. There is no evidence that the goods are sold in the UK with this function. I place no weight on this additional function in the assessments that I come to make. I say the same in relation to the use in such devices of GPS technology for the location of speed cameras via a database as such functions are clearly add-ons to the function of laser/radar detection. It is the radar/laser detection devices per se not GPS combined laser/radar detectors that is sought to be protected by way of the application.

28) In terms of the COBRA earlier mark, its goods can be broken down into three categories and my views on whether there is any similarity with radar/laser detectors are:

- i) Anti-theft devices for vehicles, anti-theft warning devices for vehicles and electric and electronic installations to prevent vehicle theft.

Any claim that there is similarity between radar/laser detectors and anti-theft devices is, in my view, a weak one. Devices which prevent theft will be items such as car alarms, steering wheel locks, engine immobilizers etc. They physically prevent the car from being stolen. Laser/radar detectors (in accordance with my view of them as per paragraph 27) serve a completely different purpose and their methods of use will differ. There was a suggestion at the hearing that car alarms may incorporate radars or lasers in their operation which, when triggered, will set off the alarm. There is, though, no evidence to this effect and, in any event, having a radar/laser built into an alarm creates no real similarity with a laser/radar detector as described above. Whilst they may (in so far as antitheft devices such as car alarms are concerned) both be electronic and sold in an automotive shop, this alone is a very superficial aspect. There is no reason, for example, why the goods should be located close to each other. There is no competitive or complementary relationship. My finding is that these goods are not similar.

- ii) Devices for the remote location of vehicles.

Such an item's purpose is for the ability to discover the location of a vehicle, for example, perhaps given that it has been stolen or to discover the location of vehicles in a fleet. There is no similarity in purpose between this and a radar/laser detector and nor would I imagine is there any similarity in the methods of use. Again, both goods may be electronic and both may be sold in automotive shops, but the observations I gave in the preceding paragraph apply here. I note that some of the radar/laser detectors shown in the evidence include GPS locators, but I have already said that this is not relevant because the comparison must be made with the radar/laser detector per se. In any event, even if I am wrong on that, there is no evidence to demonstrate the type of technology that devices for remote location of vehicles use. Whilst it may be GPS, this fact alone,

given that many different devices for many different purposes use GPS these days is not particularly significant. There is no competitive or complementary relationship. My finding is that these goods are not similar.

iii) Reversing alarms for vehicles.

There was some discussion at the hearing as to the nature of such an item. Mr Pritchard argued that such an item was to assist with parking in that sensors (which could be radar or laser technology) would beam backwards to walls or other objects and so emit messages to the driver to assist with parking. Mr Jones argued that the goods were simply alarms that sound when a vehicle is reversing so that pedestrians could get out of the way when they hear it. There is no evidence from either party on this. However, bearing in mind the case-law I identified earlier, it seems to me that Mr Jones' interpretation is to be preferred. The words used are clear – it is a reversing alarm, an alarm that sounds when the vehicle is going backwards. There is no reason to give a broader or wider interpretation so as to include devices which assist in parking. Having come to this conclusion, such a product is a specialist product with a different purpose and method of use. There is no competitive or complementary relationship. My observations relating to being electronic and automotive apply here also. My finding is that these goods are not similar.

29) In terms of the COBRA CONNEX earlier mark, this covers anti-theft devices so, my findings given above apply here. The only additional term covered by the earlier mark is “vehicle safety devices”. Any claim that a laser/radar detector is a device primarily with safety in mind is, in my view, misplaced. The device, in accordance with my observed understanding of the term, is merely to assist the driver in avoiding speed cameras and, so, avoid fines and penalty points etc. There is also a claim based on laser/radar detectors which can be used to detect transmitted radar/laser from emergency vehicles and level crossings. I have already dealt with this in paragraph 27 and do not consider it appropriate to take this function of the device into account. Even if I am wrong on that then vehicle safety devices (in class 12) would be taken, on the basis of the normal understandable meaning of such a term, to be things built in to, or to be used in, a car or other vehicle to make it safer for its occupants. Such devices would include air bags, seat belts, child seats etc. There is a significant distance from a laser/radar detector which may provide information about oncoming emergency vehicles or an impending level crossing. All such information does is to assist the driver to move out of the way or slow down and would not really be seen as a safety device. For all these reasons, I do not consider there to be any similarity between these goods.

Satellite navigation systems of all kinds

30) The argument is made on the basis of these goods being similar to “devices for remote location of vehicles”. The argument (from Automotive) is that a remote location device is something that tracks, for example, a stolen vehicle and that such a tracking device will utilise GPS technology as will satellite navigational systems. It is also argued that once the location of the vehicle is discovered then some form of mapping product will come into play so that the vehicle may be recovered.

31) Whilst I note the above argument, the purpose of a satellite navigation system is purely to assist a driver (or walker or cyclist for that matter) to get from A to B. It guides the person via the use of satellite technology and a map based electronic system with visual and audible commands in order to get to a particular destination. I need no evidence on this as such products are extremely well known and the way they operate can be considered as notorious facts. Such a purpose is quite different from remote location devices which simply enables a user to locate a vehicle if, for example, it has been stolen. Neither side provided any evidence as to the nature of such products or how they are used. Whilst they are likely to be electronic and whilst it is possible that they could utilise satellites, other technology may be used instead. I simply do not know. Even if they do use satellite technology, this alone does not present a highly significant point of similarity given, as I stated earlier, many devices use such technology nowadays. There was a secondary argument that a satellite navigation type system is likely to be utilised to find the vehicle when its location has been discovered. There is though no evidence on this. Whilst I do not say that this is not the case, there are many other plausible alternatives such as the tracking device linking to a computer program where the remote location is shown on a map. I cannot therefore say that the goods have a complementary relationship, they are certainly not competitive. Satellite navigation systems are sold in a variety of establishments not just automotive shops. A remote location device strikes me as a quite specialised product sold either in automotive shops or, more likely, through specialists providers of these types of products. All things considered, my finding is that these goods are not similar. Even if I am wrong on that, any similarity must be right at the lower end of the spectrum.

Global positioning systems

32) The argument is, again, made on the basis of such goods being similar to “devices for remote location of vehicles”. There is certainly greater potential for a finding of similarity given that the nature of the term applied for is simply to provide a system to discover the position of something. This could relate to the position of a wide variety of things and there is no reason why such an item could not be placed in a vehicle to identify its global position. The devices for remote location of vehicles are clearly vehicle specific and no doubt adapted for vehicles, but the purpose is still highly similar. Although there is no evidence on this, it is

likely that the nature and the method of use will, at the least, have some similarities and it is possible that the goods may compete with each other. I consider there to be a reasonably high degree of similarity.

The average consumer

33) The case-law informs me that the average consumer is deemed to be reasonably observant and circumspect. The nature of the purchasing act can vary, though, with a greater or lesser degree of care and attention being deployed depending on the particular goods at issue (see, for example, the decision of the General Court (“GC”) in *Inter-Ikea Systems BV v OHIM* (Case T-112/06)). The only area where I have found goods similarity is in relation to “global positioning systems” and “devices for remote location of vehicles”. Such goods are not everyday items purchased by all (or the majority) of the general public. They are not, though, specialist goods only likely to be used by specialist groups of people. The average consumer could therefore still be a member of the general public (buying such goods to protect and track expensive property such as luxury cars) or by businesses who wish to use such devices to monitor their fleet and/or property. A global positioning system could also be used by persons such as walkers so that they know their exact position in case of emergency. Regardless of exact nature and purpose, the goods are infrequent purchases and will be selected with a good deal of care as reliability and exact functional requirements will be paramount. The degree of care and attention used when selecting such goods is likely to be higher than the norm, but perhaps not of the highest possible degree.

Distinctiveness of the earlier marks

34) The distinctiveness of the earlier mark(s) is another factor to consider because the more distinctive they are (based either on inherent qualities or because of the use made of them) the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). I have already made some observations in relation to the evidence filed by Automotive so, based on that, I can only consider the inherent qualities of the marks. I consider the word COBRA to be a fanciful word in relation to the goods covered by the earlier mark. I can see no reason other than to accord it a high degree of distinctiveness. The COBRA CONNEX mark is equally high in distinctiveness, the word CONNEX neither adds to nor detracts from this.

Comparison of the marks

35) When assessing this factor I must do so with reference to the visual, aural and conceptual similarities between the respective marks bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, paragraph 23). The applied for marks are different and, thus, require separate analysis. The first analysis I will make will be of the following marks:

Electronics' mark	Automotive's marks
	COBRA and COBRA CONNEX

36) Electronics' mark has three elements: the word Cobra, a picture of what would undoubtedly be seen as a cobra snake, and the word microTALK. I refer to the picture as being a cobra because even though there is a dispute as to whether the picture alone will be seen as a cobra (I will come back to this) the word appearing alongside it renders any dispute futile because the word reinforces the picture. Neither element really dominates the other in terms of visual impact, although, the COBRA (the word and the picture) will be seen as the first element(s), a fact which follows through to the aural impact of the mark. The concept of a COBRA for the types of goods in issue is fanciful, it provides no allusive or suggestive nod to the goods. The word MICROTALK is not descriptive but there is a degree of suggestiveness given that the goods themselves can "talk" (e.g. speech like satellite navigation commands) so COBRA is certainly the more distinctive element. The word COBRA, reinforced by the picture, is the dominant and distinctive element of the mark. The MICROTALK element is not, though, to be ignored as it still plays an independent and distinctive role in the mark. It is subordinate to COBRA but not to a significant extent.

37) Automotive's COBRA mark has only one element and it is, therefore, its sole dominant and distinctive element. In terms of the COBRA CONNEX mark, the type of analysis applied to Electronics' mark applies here and, for similar reasons, COBRA is the dominant and distinctive element with CONNEX playing an independent and distinctive role (CONNEX being suggestive of connectivity); it is subordinate to COBRA but not to a significant extent. I should add one thing here in relation to Mr Pritchard's submission at the hearing that CONNEX and MICROTALK have similar concepts which increases the level of similarity. This is simply unsubstantiated. I see no conceptual similarity between these elements which can give rise to an increased degree of conceptual similarity.

38) In terms of visual similarities, Electronics' mark has an obvious degree of similarity with COBRA given that COBRA is the dominant and distinctive element.

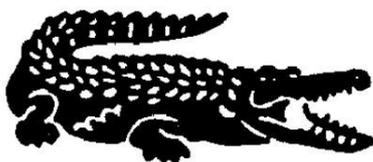
There are differences though that reduce the degree of similarity. I consider there to be a reasonable degree of similarity, a finding which follows through to the aural assessment. Conceptually, both marks have the concept of a COBRA underpinning them, a word which the average consumer will know (as a type of snake). The MICROTALK element has no real clear and obvious meaning so in terms of memorable concept, this element does little to reduce conceptual similarity. Balancing the respective factors, I consider there to be a reasonably high degree of overall similarity between the marks.

39) In terms of Electronics' mark compared to Automotive's COBRA CONNEX mark, many of the same observations apply (as to concept for example, and the visual and aural similarities due to the sharing of the same dominant and distinctive element) but there is a difference in the comparison on account of both marks having additional elements (MICROTALK/CONNEX). This inevitably reduces the degree of visual and aural similarity, but it does not outweigh it. Whilst overall similarity is not as high, there is still a good deal of similarity.

40) The other analysis that needs to be undertaken is in respect of the following marks:

Electronics' mark	Automotive's marks
	<p>COBRA</p> <p>and</p> <p>COBRA CONNEX</p>

41) This is a quite different comparison to the one already conducted given that Electronics' mark is simply a device mark. At the hearing, I highlighted to the parties that the Appointed Person, Mr Geoffrey Hobbs QC, was considering such a circumstance in a case involving the word ALLIGATOR and device marks consisting of, for example:



42) I gave the parties an option as to whether they wished these proceedings to be suspended pending Mr Hobbs decision being issued. The parties made a subsequent request for suspension. Mr Hobbs decision was issued on 16

September 2010 after which the parties were given time to provide additional written submissions, which they both duly did.

43) Mr Hobbs's decision was to uphold the appeal and in doing so determined that there was no likelihood of confusion between the word ALLIGATOR and the above device. After thoroughly reviewing the relevant jurisprudence, Mr Hobbs stated:

46. I do not doubt that word marks and non-verbal marks can be relevantly and objectionably similar to one another for the purposes of the harmonised law of trade marks in the European Union. The correct approach is to assess the effect of the difference between the two modes of expression as part of the process of global appreciation required by the case law of the Court of Justice. Which is not to say that the difference should be treated as a matter of little significance or low importance in that connection.

47. It is well-established that the decision taker must give as much or as little significance to the visual, aural and conceptual differences and similarities between the marks in issue as an average consumer of the relevant goods or services would have attached to them at the date of the request for protection. It is equally well-established that conceptual similarity may diminish the significance of visual and aural differences and that visual and aural similarities may pale into insignificance as a result of conceptual dissimilarity. However, these considerations do not entitle the proprietor of a trade mark to object to the use of any and all thematically similar marks. A concept is not a sign capable of being protected by registration as a trade mark. The rights conferred by registration are centred on the registered representation of the protected mark. They do not enable the concept(s) of a mark to be protected without regard to the distinctive character of the mark as registered. I regard that as a point of particular importance in the present case.

48. The Applicant's and the Respondent's marks are linkable on the basis that the Respondent's marks emblematically represent a reptile of (or practically indistinguishable from) the type to which the Applicant's word mark refers. If that is the way they were likely to be perceived and remembered by the relevant average consumer, it would be correct to say that the visual dissimilarity between the marks was moderated by a degree of conceptual similarity. Otherwise not.

49. It is a matter for careful consideration whether a particular word has the power to trigger perceptions and recollections of a particular image. I do not think that a finding of conceptual similarity can realistically be based on a thought process that would not naturally occur to the relevant average consumer. The suggested similarity would then be of negligible significance for the purposes of the required assessment. In that connection I would emphasise that people do not normally construe trade marks or engage in extended thought processes for the purposes of pairing and matching them. It should not be supposed that consumers are actively considering how images might be developed or appropriated for use as siblings of word marks or vice versa. The Hearing Officer confirmed his own perceptions to the effect that: *'If I see the picture of a crocodilian I do not convert it into its symbolic representation; all this tells me is how my brain deals with images....If I saw the word ALLIGATOR on clothing I would make no association with Lacoste's crocodilian devices; the word and the image are distinct in my mind'* (paragraph 14). I do not think his perceptions were atypical or that the evidence on file was sufficient to establish any significant likelihood of consumers reacting differently either in relation to the picture or the word.

50. The Hearing Officer found (and I agree) that the images of the Respondent's marks and the name **LACOSTE** were inextricably linked. I think so much so, that for the purpose of individualising the images by name the designation most likely to be mentally and vocally applied to them was **LACOSTE**. To the extent that the designation **ALLIGATOR/CROCODILE** was mentally or vocally applied to them, it would be for the purpose of alluding generally to the type of reptile they represented. Moreover, freestanding use of the Applicant's word mark **ALLIGATOR** would naturally be perceived and remembered as an allusion to alligators in general. Pairing and matching it with the particular images of the Respondent's marks, in circumstances where they had come to be firmly associated and identified with the name **LACOSTE**, looks to me like a process of analysis and approximation that the relevant average consumer would not naturally be concerned to engage in. The fact, as found by the Hearing Officer, that the Respondent's marks would not normally be referred to orally can be regarded as a symptom of that.

51. For these reasons I would think that the Applicant's and the Respondent's marks were not linkable by any conceptual similarity of which the relevant average consumer was likely to take cognisance. In case I am wrong in that view, I will go on to consider the position on the basis that the visual dissimilarity between the marks was moderated in the mind of the relevant average consumer by perceptions and recollections of conceptual similarity relating to alligators/crocodiles.

52. A somewhat similar situation was considered by the General Court in the **SHARK** case. An application to register the word mark **HAI** as a Community trade mark for use inter alia in relation to goods in Class 32 was opposed on the basis that it would give rise to the existence of a likelihood of confusion if it was used concurrently with the following earlier trade mark registered at the Community level for use in relation to identical goods in Class 32:



The word for 'shark' is **HAI** in German and Finnish, **HAAL** in Dutch and **HAI** in Danish and Swedish. It was accepted that people who speak those languages would probably understand both **SHARK** and **HAI** as meaning shark.

53. The Court considered that the marks were clearly distinguished by their graphic representation because only the earlier trade mark appeared in figurative form. Aurally there was no similarity, presumably because it was considered unlikely that the earlier trade mark would be vocalised by means of the words **HAI**, **HAAL** or **HAI**. However, there was some conceptual similarity dependent on prior translation of the accessible and clear verbal connotation of the earlier trade mark into the word **HAI**.

54. The earlier trade mark was found to be striking and attention grabbing, easily committed to memory and possessed of a relatively high degree of distinctive character. In answer to the question whether conceptual similarity alone, which depended on prior translation, was sufficient to give rise to the existence of a likelihood of confusion, the Court decided:

...the significant visual and aural differences between the marks in question are such as to cancel out, to a large extent, their conceptual similarity which depends on prior translation. The degree of conceptual similarity between two marks is of less importance

where the relevant public, at the time of purchase, is called on to see and pronounce the name of the mark.

55. I fully appreciate that every case must, in the ultimate analysis, depend on its own facts. However, I do not find in the Judgment of the General Court in the **SHARK** case any substantial support for the view that a device mark and a word which describes it should be given the same significance in determining the existence of a likelihood of confusion. On the contrary, it was not sufficient to establish a likelihood of confusion that the concept of the earlier trade mark was easily and obviously translatable into the word mark of the later application for registration. The rejection of the opposition appears to me to have been a consequence of the gap in perception between the word mark as an allusion to sharks in general and the distinctiveness of the striking and attention grabbing device mark. The individuality of the earlier trade mark largely resided in the artistry of the graphic representation, which the word mark **HAI** was substantially inadequate to convey to the mind of the relevant average consumer. The outcome of the case might well have been different if it had been established to the satisfaction of the Court that the word mark **HAI** had the power to trigger perceptions and recollections of the imagery of the earlier trade mark with the same degree of spontaneity and specificity as (say) the words **MONA LISA** in relation to the imagery of the specified portrait; or **EIFFEL TOWER** in relation to imagery of the specified structure; or **STARS-AND-STRIPES** in relation to a basic image of the American national flag; and so on.

56. The evidence on file in the present case does not establish that the Applicant's word mark **ALLIGATOR** had the power to trigger perceptions and recollections of the distinctively depicted imagery of any of the Respondent's earlier trade marks with that or a comparable degree of spontaneity and specificity. The Opponent could have adduced objective evidence in support of its position on that important issue, if it had wished and been able to do so. Although the Hearing Officer was prepared to rule in its favour without such evidence, his finding of the existence of a likelihood of confusion was based on an approach to assessment which provided for the images of the Respondent's marks and the Applicant's word mark **ALLIGATOR** to be given the same significance because

'there will be some who would describe the device as a crocodile and some who will describe the device as an alligator';⁴¹ and for those who 'may convert the devices into the word ALLIGATOR, this will be held in the memory and act as a hook for the memory: it will give rise to conceptual identity'. For the reasons I have endeavoured to explain above, I consider that substantially more was required by way of evaluation for the purpose of determining the existence of a likelihood of confusion in accordance with the case law of the Court of Justice. In the absence of any objective evidence of the kind I have referred to, I can see no basis for regarding the Applicant's and the Respondent's marks as sufficiently similar to result in anything more than a loose, general and non-confusing association between them. The factors mentioned in paragraph [50] above point to that conclusion, even if they do not point to the absence of appreciable conceptual similarity. Either way, the Respondent's objections to registration fell short of the requirements established by the case law relating to Section 5(2)(b) and I am satisfied that the Hearing Officer should have rejected them on fuller assessment of the position.

44) In relation to the *Alligator* decision, Electronics submitted that the decision re-enforced its view that there was no likelihood of confusion and highlighted Mr Hobb's references to the lack of evidence supporting a finding of a likelihood of confusion.

45) For Automotive, it was submitted that Mr Hobb's decision focused on the fact that the name *Lacoste* was tied inextricably with the device mark in question. It also highlighted, as key points of principle from Mr Hobbs decision, that word marks and non-verbal marks can be relevantly and objectionably similar to each other; that when assessing similarity, as much or as little significance to the visual, oral and conceptual differences and similarities between the marks in issue must be given, as would be given by the notional average consumer; that conceptual similarities may diminish the significance of visual and oral differences and; weight must be given to the way in which a non-verbal mark is likely to be vocalized by the average consumer. On the basis of all this it was submitted that the marks are sufficiently similar so as to cause confusion particularly given the clear meaning of the word and that the applied for mark has a "simple subject" and is clearly capable of easy vocalization (unlike the facts in *Alligator*). It is submitted that the device mark acts to implant the concept of a cobra and nothing else on the average consumer. Automotive also refers to the intention of Electronics which is that the mark is intended to be recognized as a Cobra.

46) I will come back to the *Alligator* decision shortly because, as Mr Hobbs stated:

"[t]he correct approach is to assess the effect of the difference between the two modes of expression as part of the process of global appreciation required by the case law of the Court of Justice".

47) I should, though, begin by giving some views as to the concept that underpins the device mark and whether, for example, there is any conceptual and/or aural similarity. I say this because it was Electronics' submission that the device mark may not even be seen as a snake let alone as a cobra. To this extent, it was argued that the device mark may be seen simply as an abstract design. It did though concede that it was not impossible for some average consumers to see it as a snake but that very few would perceive it as a cobra. Automotive took the opposite view arguing that the device mark was clearly and unambiguously a cobra and that the average consumer would recognise this as they would be aware of what a cobra looks like due to its distinctive hood and its upright position on its tail.

48) My first reaction to the device mark is that it is clearly, at the very least, a snake. It is a simplistic representation with a curved body, standing up on its tail with a flared hood. It will not be seen as a simple abstract design. The real question is whether its will be perceived purely as a snake or as a cobra, a particular type of snake. Electronics submitted that the average consumer is unlikely to be a snake expert and that there is no evidence at all to support the proposition that they would identify the snake as a cobra. I understand the submission, and whilst I must guard against the danger of inferring too much

knowledge into the mind of the average consumer¹², I am prepared to accept that the average consumer will recognise and thus perceive the snake in question as a cobra. Some may not, but in my view this will be the minority and not the majority. Electronics would have had a stronger point had the snake in question been an adder, a boa, a python or a grass snake. Whilst snake experts, or indeed slightly more informed consumers may be able to recognise such snakes, the average consumer would not. However, a cobra is one of the most recognisable of snakes. It is characterised by its flared hood and its propensity for standing up-right. In view of the caution expressed in *Chorkee*, I have considered whether I am merely imparting my own knowledge, however, I am satisfied that the facts I refer to are those that may legitimately be considered as notorious. I have characterised the device mark as simplistic. To this extent, Mr Jones highlighted at the hearing that it had no fangs or other detail. However, the details it does have (its hood and its up-right configuration) is the type of detail that separates cobras from other snakes. It is what makes (from the viewpoint of the average consumer) a cobra a cobra - it is still a simple and basic representation of a cobra. In view of this, the marks have the same concept underpinning them, namely that of a cobra snake.

49) The above assessment follows through to the aural comparison in that as the average consumer will perceive the device as a cobra then this is how they are likely to verbalise it if called upon to do so. Some consumers may, of course, and even though they may recognise that the snake a cobra, simply refer to it with less precision i.e. as a snake. However this, again, is likely to be the minority and not the majority. This means that if the device mark is verbalised then there will be aural identity with the earlier COBRA word mark.

50) There is no visual assessment needed because, self-evidently, there is no visual similarity between a word and a picture. I will bring all these factors forward into my assessment of whether there is a likelihood of confusion.

Likelihood of confusion

51) The final question is whether all these factors combine to create a likelihood of confusion. All the relevant factors have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17) and a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

¹² See the decision of Anna Carboni, sitting as the Appointed Person in *Chorkee* (O/048/08).

Likelihood of confusion in relation to application 2469111 – COBRA MICROTALK

52) I have found that the applied for mark is similar to a reasonably high degree with the COBRA earlier mark. It is less similar to COBRA CONNEX but there is still a good deal of similarity. As a primary finding, the only goods I found to be similar were “global positioning systems” with “devices for remote location of vehicles”. This conflict exists in relation to the COBRA earlier mark. I considered there to be a reasonably high degree of similarity. The goods are, though, purchased with a higher than normal degree of care and attention. This militates, to a degree, against imperfect recollection. The average consumer will be more careful in his or her purchasing decision. That being said, I also bear in mind that the earlier mark has a high degree of distinctive character. Bearing all these factors in mind, I come to the view that there is a likelihood of confusion. The marks are so similar that even though there may be a difference between specific vehicle based location devices and non-specific positioning systems (although they are still similar to a reasonably high degree), such similarity will be put down to the goods being the responsibility of the same undertaking. The opposition in relation to this mark succeeds against “global positioning systems”.

53) In relation to the other terms “radar/laser detectors” and “satellite navigation systems of all kinds” I found that there was no similarity between these goods and those of the earlier mark. As such, there can be no likelihood of confusion¹³. As a fall-back position, I indicated that if I was wrong on my primary assessment in relation to satellite navigational systems, and that there was some similarity between the goods, then such similarity was of only a very low level. In my view, if this is the case then the similarity is of such a low and superficial level then despite the degree of similarity between the marks and the fact that the earlier mark is high in distinctiveness, there would be no likelihood of confusion.

Likelihood of confusion in relation to application 2380658 – the device only mark

54) One point I will deal with briefly is in relation to the proceedings in Slovakia. They are simply not relevant. Automotive did not argue that Electronics were estopped in any way from defending its application. It is not clear as to the exact nature of the marks in issue in those proceedings or exactly what Automotive did argue in that case. I see no relevance in this evidence as to the likelihood of confusion.

55) Returning to the *Alligator* decision, whilst I agree with Electronics that that case is different from the one before me due to the use made of the device mark in association with the word *Lacoste*, Mr Hobbs did go on to consider the position out-with that scenario and I am particularly mindful of the following comments:

¹³ See, for example, the ECJ's judgment in *Waterford Wedgwood plc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case C-398/07*.

The outcome of the case might well have been different if it had been established to the satisfaction of the Court that the word mark **HAI** had the power to trigger perceptions and recollections of the imagery of the earlier trade mark with the same degree of spontaneity and specificity as (say) the words **MONA LISA** in relation to the imagery of the specified portrait; or **EIFFEL TOWER** in relation to imagery of the specified structure; or **STARS-AND-STRIPES** in relation to a basic image of the American national flag; and so on

56) Although I have found that the average consumer will perceive the device mark as a COBRA, it is a different matter as to whether the word COBRA is likely to trigger in the mind of the average consumer any specific image let alone the specific image of the device mark applied for. The word COBRA is not like Mona Lisa, which is likely to conjure up the well-known painting by Da Vinci. The average consumer may not conjure up any image at all when they see the word mark. Nevertheless, I am conscious of my earlier finding that the device mark is a simple and basic representation of a cobra. Whilst I bear in mind Mr Hobbs decision, it seems to me that word COBRA has the capacity to conjure up a basic representation of a cobra in the mind of the average consumer and the imagery of the applied for mark would fall into that realm. It does not have as direct and clear a link as in the Mona Lisa example, but a link still exists. It is certainly a stronger link than would have been found in the *HAI/SHARK* case. The finding on likelihood of confusion neither rests nor falls on this point alone. It is but one of the factors to weigh. Another issue that Mr Hobbs stressed was the global appreciation aspect and that

“46. I do not doubt that word marks and non-verbal marks can be relevantly and objectionably similar to one another for the purposes of the harmonised law of trade marks in the European Union. The correct approach is to assess the effect of the difference between the two modes of expression as part of the process of global appreciation required by the case law of the Court of Justice. Which is not to say that the difference should be treated as a matter of little significance or low importance in that connection.

47. It is well-established that the decision taker must give as much or as little significance to the visual, aural and conceptual differences and similarities between the marks in issue as an average consumer of the relevant goods or services would have attached to them at the date of the request for protection.....”

57) In relation to the significance of the aspects of similarity that the average consumer would attach, there is no evidence as to, for example, the nature of the purchasing processes. I have said that they are likely to constitute considered purchases but it is difficult to say any more than that. It is clear though that the goods are not those such as clothing where the purchasing process is predominantly a visual one (and any visual similarity/dissimilarity takes on a greater role), on the other hand there is nothing to suggest that the goods are purchased predominantly through oral means. It is likely to be a combination of both. Aural similarity may come into it because electronic goods such as these may be kept under lock and key (to prevent theft) in a display cabinet or behind a counter, so requiring the average consumer to identify the product that he or she wishes to purchase. If the device mark is presented on the packaging (which would constitute a normal and fair use) then the device mark may be referred to

as the COBRA. That is, of course, just an example, I do not suggest that this is the primary means – it is but one of a number of possibilities but it nevertheless highlights that aural similarity has a role to play in my decision.

58) I must weigh the above factors with the similarity between the goods. I have found the goods to be similar to a reasonably high degree. The earlier mark is also highly distinctive. I also bear in mind, on the other hand, that the purchasing process is a considered one. In my view, all these factors combine to inform me that there is a likelihood of confusion. The use of a simplistic cobra device and the word COBRA on the respective goods will be put down to same company use rather than merely indicating a loose non-confusing association. There is a likelihood of confusion in relation to “global positioning systems”. As with its other opposition, Automotive is in no better position in relation to the other goods it objected to.

Summary

59) Both oppositions succeed in relation to “global positioning systems” but fail in relation to “radar/laser detectors” and “satellite navigation systems of all kinds”.

Costs

60) Both parties have achieved a measure of success so I do not propose to favour either of them with an award of costs.

Dated this 1 day of November 2010

**Oliver Morris
For the Registrar,
The Comptroller-General**