

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2193307
BY CATHAY PACIFIC AIRWAYS LIMITED
TO REGISTER A TRADE MARK
IN CLASSES 16, 39 & 42**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO 50654 BY AIR MILES TRAVEL
PROMOTIONS LIMITED**

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**IN THE MATTER OF Application No 2193307
by Cathay Pacific Airways Limited
to register a Trade Mark
in Classes 16, 39 & 42**

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**IN THE MATTER OF Opposition thereto
under No 50654 by Air Miles Travel
Promotions Limited**

BACKGROUND

1. On the 31 March 1999, Cathay Pacific Airways Limited (“the applicants”) applied to register a series of two trade marks under application No 2193307 in Classes 16, 39 and 42. The series of two marks is reproduced below:



2. The application was accepted and published in Trade Marks Journal No 6303, page 14814 on the 17th November 1999 for the following specifications of goods and services:

Class 16

Magazines, publications relating to travel and recreational information; merchandise catalogues; newsletters; periodicals; pamphlets; journals, manuals; promotional materials; advertisement boards of paper or cardboard; photographs; posters; packaging materials; wrapping materials; travel bags (not included in other classes); plastic bags; posters; greeting cards, maps; announcement cards; cards; stickers; brochures; baggage cards, postcards, membership cards, stickers, brochures, leaflets, booklets, timetables, guides, paper wallets, paper folders, Christmas cards, Chinese New Year cards, Lai See (gift money) packets, posters, pens, pencils, plastic racks (for holding brochures), plastic folders and files, display cards, calendars, diaries, note paper, envelopes, writing paper, books, wrapping paper, forms, certificates, catalogues, luggage tag cards; all included in Class 16.

Class 39

Air transport services; tourist office and travel agency services for arranging travel; package holiday services; provision of tourist information; air passenger transport and air cargo transport services; travel courier services; courier services for messages and letters; transport and delivery of goods; transport of passengers vehicle; vehicle rental and charter services; handling of baggage and of goods; provision of free and discounted travel; travel information services; inflight information services relating to travel and transportation; arranging of tours; reservation services for travel by rail, sea, and car rental; cargo unloading services; crating and delivery of air transportation goods; freight forwarding services; storage of air transportation goods; parcel delivery services; escorting of travellers; warehousing services; transportation of baggage, freight and of passengers to and from airports; all included in Class 39.

Class 42

Booking services for hotel accommodation; all included in Class 42.

3. On the 26th January 2000, Air Miles Travel Promotions Limited (“the opponents”) filed a notice of opposition, accompanied by a Statement of Grounds of opposition. This, in summary, said the following:

- (a) The opponents are licensees of Air Miles International Holdings N.V, who are the proprietors of the following UK trade mark registrations.

NUMBER	MARK	CLASSES
1449995	AIR MILES (LOGO)	16, 35
1449999	AIR MILES (WORDS)	16, 18, 25, 35
1465525	AIR MILES (LOGO)	16, 35
1465527	AIR MILES LATITUDES (WORDS)	16, 35
1465784	AIR MILES TRAVEL THE WORLD (WORDS)	16, 35
1465785	AIR MILES (LOGO)	16, 18, 25, 35

and the following community trade mark application:

NUMBER	MARK	CLASS
1179266	AIR MILES (LOGO)	35

(b) The opponents are proprietors of the following UK trade mark application:

NUMBER	MARK	CLASSES
2191003	MERCEDES MILES	16, 35, 39

(c) The application under opposition offends Section 5(2)(b) of the Act in the face of the above applications and registrations.

(d) A reputation attaches to the registrations of the mark AIR MILES because the mark has been used in the UK.

(e) Section 5(3) of the Act is offended by the applicants under opposition insofar as it covers dissimilar goods to the above mentioned AIR MILES registrations.

(f) By its prior use of AIR MILES, Air Miles Holdings N.V has common law rights, in particular, it has claim to goodwill. The opponents therefore claim that the application under opposition offends Section 5(4) of the Act.

4. Subsequently on the 16th October 2000, the opponents sought leave to include into the proceedings a new ground of opposition. This was agreed by the Registrar. The new ground was under Section 3(6) of the Act and claimed that the applicants had no intention to use the trade mark ASIA MILES (LOGO) (as in the application under opposition) in the UK.

5. On 28th April 2000, the applicants filed a form of counterstatement and counterstatement, which because of the opponents amended Statement of Grounds, was amended on 2nd February 2001 to say (in summary):

(a) the opponents claims as to the rights of the proprietor of UK and Community trade mark applications and registrations and its rights relating thereto are not denied, but no admission as to the validity of those applications and registration is made.

(b) the Section 5(2)(b) and 5(3) grounds are denied because the trade mark applied for is not similar to any of the trade marks referred to by the opponents.

(c) the opponents' claim to reputation in the trade mark AIR MILES is not admitted, even if it has been used and is irrelevant in any case as it is not similar to the application under opposition.

(d) any common law rights or goodwill claimed by the opponents in the mark AIR MILES is not admitted and would not assist in any case as the mark is not similar to the application under opposition.

(e) use of the mark applied for in the UK would not amount to passing-off or

otherwise be liable to be prevented, and registration of the mark applied for would not offend against the provisions of Section 5(4) of the Act.

(f) the ground under Section 3(6) is denied.

6. Both sides seek an award of costs in their favour.

OPPONENTS' EVIDENCE

7. This consisted of the Witness Statement of Mr Ian Wilkes, a trade mark attorney with the firm of R G C Jenkins & Co, who represent the opponents. At exhibit IW1 to his Witness Statement, he attaches print-outs taken from the UK Patent Office's Web Site, of UK trade mark registration No's 1449995, 1449999, 1465525, 1465527, 1465784 and 1465785. These are said to reflect the present status of the registrations.

8. Mr Wilkes at IW2 attaches a print-out relating to Community trade mark registration No 1179266. This is taken from the Marquesa database and is said to reflect the accurate status of the registration. I note, however, that the status on this print-out appears to show "advertised" and not registered.

9. IW3 is a copy of the License Agreement between Air Miles Holdings N.V (the owners of the AIR MILES trade mark) and the opponents (the permitted user of the AIR MILES trade mark).

APPLICANTS' EVIDENCE

10. This consisted of the following:

- Witness Statement by Mark A Armitage with Exhibits MAA 1-3
- Witness Statement by Graham Michael Robinson with Exhibits FC 11-13
- Witness Statement by Angela Law with Exhibit CP 1

11. Exhibit MAA 1 to Mr Armitage is essentially "state of the Register" evidence, trying to establish that the word MILES is not capable of being monopolised by one party. The exhibit shows the selective results from a search conducted of the UK register in Class 39.

12. Exhibit MAA 2 is a leaflet from Sainsbury's supermarkets advertising a rewards scheme, but is not dated, so is of no assistance to me in these proceedings. Exhibit MAA 3 is a copy of an official decision relating to opposition (No 47466) proceedings taken against UK trade mark application No 2123875 for the mark FERRY MILES and device, by the same opponents as in these proceedings. In actual fact the opponents in that case were Air Miles International Holdings N.V, the licensor of the opponents in this case. The official decision (BL. 0/172/99) shows the opposition to have been unsuccessful and Mr Armitage draws my attention to particular passages which he claims support his case that the opponents have no exclusivity in the word MILES. I shall refer to this evidence later in this decision.

13. The second Witness Statement filed by the applicants is that of Mr Robinson, an investigator with the firm of Farncombe International Limited, who are said to carry out commercial investigations, in particular into the use of trade marks . This evidence relates largely to investigations into use in the marketplace of some of the marks found in the research done by Mr Armitage and filed as his exhibit MAA 1.

14. The third Witness Statement submitted by the applicants is from Angela Law, Marketing Manager of the applicant company. In this she states (in what I take to be a reference to the Section 3(6) ground of bad faith):

“I have read the opponent’s amended Statement of Grounds and consider the allegations made to be completely unfounded. The mark applied for was adopted in good faith and at the time of filing the application my company was either using, or had a bona fide intention to use, the trade mark applied for in the UK in relation to all the goods and services covered by the application. Indeed the mark had already been brought into use in the UK in relation to certain of the goods and services covered by the application as long ago as October 1998..... I confirm that the trade mark applied for has been used in relation to the applicant’s airline related industry around the world, including that in the United Kingdom, and that the goods and services have been made available to customers located in the United Kingdom”.

15. Her exhibit CP 1 showing use of the mark in a members’ guide, newsletter, envelope and folder appear to be from either after the material date in these proceedings or are undated. The opponents make reference to the members’ guide in particular in written submissions - see paragraph 17 (d) below. Although that specific exhibit is marked “Effective November 1999” (ie outside the material date of 31st March 1999 in these proceedings) the opponents clearly feel it says something about the applicants’ likely intentions, so I will consider it later in this decision.

16. That concludes my summary of the evidence from both parties. The opponents chose not to submit any evidence in reply to the applicants’ evidence.

17. Neither party requested to be heard, but in lieu of a hearing, both parties submitted their written comments for my consideration. I have made a careful study of these submissions, and would characterise them in summary thus:

Opponents’ Written Submissions

- (a) Particular reference is made to the pleadings under Sections 5(2)(b) and 3(6). No reference at all is made to the Section 5(3) ground.
- (b) On the Section 5(2)(b), a “family” of “MILES” marks is claimed with reference to all the opponents’ registered marks listed in the Statement of Grounds, but particular attention is down to registration No 1449999 (AIR MILES) (words alone). Arguments are set out as to the opponents views on the similarity of this mark with the mark being opposed ie ASIA MILES (plus device), in particular the similarity of the words AIR and ASIA and the fact that both contain the word MILES. A brief comparison of the goods and services involved in both cases is made.
- (c) It is acknowledged that no evidence of prior use of AIR MILES by the opponent has been submitted, but AIR MILES is asserted to be a household name.

- (d) It is said that the Section 3(6) ground provides “the most interesting and, we would say, the most pertinent ground of this particular opposition”. The submissions make reference to exhibit CP 1 of Angela Law’s Witness Statement and in particular to a brochure entitled “Air Miles Members’ Guide”. Various references from within are brought to attention or are commented on. These are:
- (From page 1) “Welcome to Asia Miles, the travel reward programme which offers residents of Asia bigger and better travel rewards than ever before”.
 - (From page 15) The opponents comment that “examples of possible travel rewards are given and it is noted that none of these make reference to any flights from, or indeed involving, the UK. This appears to indicate that the services provided under ASIA MILES are not provided in the UK”.
 - (On page 27) the opponents point out that “a number of “hotline” telephone numbers are given and it is noted that these are all Middle/Far East specific. “ASIA MILES” does not appear to operate in the UK”. Also on page 27, a Hong Kong postal address is given.
 - (On page 33) it is stated “These terms and conditions and the relationship between CPLP and Partners and each Member are governed by Hong Kong law. By using the Programme each Member submits to the non-exclusive jurisdiction of the Hong Kong courts”.

The conclusions drawn by the opponents from these references are that the mark is not used in the UK, only in the Far East, specifically in Hong Kong, and that there is no bona fide intention to do so.

Applicants’ Written Submissions

- (i) This says that as no evidence of use of the opponents marks has been provided, therefore the claims of reputation, goodwill and the grounds under Section 5(3) and 5(4) should be disregarded.
- (ii) The Section 3(6) ground is said to be not well founded as it has not been supported with any evidence of the opponents’ own. Rather, reliance is placed on the applicants’ evidence, in spite of the Witness Statement of Angel Law in which she comments on the applicants’ intention to use and indeed, *use* of the marks, in the UK on at least some of the goods and services in question, since October 1998.
- (iii) Only the Section 5(2)(b) ground appears to have any weight and even here there is only the prima facie case to answer in the absence of any evidence of enhanced reputation from the opponents. Arguments on the comparison of the marks are put forward, particularly in relation to the distinctiveness or otherwise of the MILES element in the opponents’ marks. Reference is made in particular to the exhibit MAA 3 - the copy of the official decision on the opposition brought by the opponents against application No 2123875 for the mark FERRY MILES and device.

18. As I have said, no hearing was requested by either party and therefore, after a careful study of all the papers, I give this decision.

THE DECISION

19. At the outset, I can dismiss three out of the four pleaded grounds. These are under Sections 5(3), 5(4)(a) and 3(6) for the following reasons:

Sections 5(3) & 5(4)(a)

20. The relevant sections of the Act state:

5.-(3) A trade mark which -

(h) is identical with or similar to an earlier trade mark, and

(i) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

5.-(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.

21. It is a pre-requisite for success under either of these grounds that the opponents’ must rely on their reputation and/or goodwill in their claimed prior trade mark or other sign used in the course of trade.

22. It can be seen from my summary of the evidence filed by the opponents, that they have filed no evidence relating to reputation or prior use of the earlier rights they claim. They assert that their AIR MILES marks carry a reputation and goodwill and are household names, but these are all expressly denied by the applicants. In these circumstances, to support a case under Section 5(3) and 5(4)(a), the opponent should have filed specific and relevant documentation going to the repute of the mark eg income/turnover in the UK market share press cuttings, advertisements, independent trade support or analysis, etc. There is nothing and therefore no basis for me to judge the claimed (and disputed) reputation/goodwill. These grounds must, in the circumstances fail.

Section 3(6)

23. This states:-

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

24. This was the ground which the opponent introduced late in the proceedings, and which in their written submissions made in lieu of a hearing, they characterised as their primary ground. It is an allegation of “bad faith”, which of course is a serious allegation and one which should not be lightly raised, as the following extract from the appeal decision of Mr Simon Thorley QC acting as the Appointed Person in the Royal Enfield Motor Units case (BL 0-363-01) shows at paragraph 31:

“An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of a form of commercial fraud. A plea of fraud should not lightly be made (see Lord Denning M.R, in Associated Leisure v Associated Newspapers [1970] 2 QB 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see Davy v Garrett (1878) 7 Ch D 473 at 489). In my judgement precisely the same consideration apply to an allegation of lack of bad faith made under Section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference. Further I do not believe that it is right that an attack based upon Section 3(6) should be relied on as an adjunct to a case raised under another section of the Act. If bad faith is being alleged, it should be alleged up front as a primary argument or not at all.”

25. The allegation made here is that there is no bona fide intention on the part of the applicants to use the mark applied for in the UK, but no evidence is adduced to support this allegation, save the references to Angela Law’s exhibit CP 1 (see paragraph 17(d) above). The specific extracts relied upon, are in my view, far from conclusive evidence that there was no intention on the part of the opponents to use the mark ASIA MILES in the UK. Indeed, the allegations are expressly denied in the Witness Statement of Angela Law, as can be seen at paragraph 14 above. It is for the opponents to present a *prima facie* case of bad faith. They have filed no evidence of such. In the circumstances, as can be seen from the above extract, they cannot rely purely on inferred ambiguities in the applicants’ evidence to make good the serious allegation of bad faith.

26. Section 32(3) of the Act is relevant to this pleading. It states:

*32.- (3) The application shall state that the trade mark is being used, by the applicant or with his consent, in relation to those goods or services, or that he has a **bona fide** intention that it should be so used.*

27. The fulfilment of this requirement is satisfied by the signing of the declaration on the trade mark application form TM3, either by the applicant or an authorised representative. This was completed to the registrar’s satisfaction in the application under opposition.

28. And it is clear from the revocations provisions of the Act (Section 46(1)(a) specifically) that once registration is achieved, the proprietors of that registration have up to a date of five years following the date of completion of the registration procedure in which to put the trade mark to genuine use. That procedure has of course yet to be completed for the application in suit.

29. The applicants correctly fulfilled their obligations under section 32(3) of the act and in addition have stated in the Witness Statement of Angela Law that they either were already using the trade mark on certain goods or had an intention to do so. In any event, the five years afforded them under section 46 (1)(a) has yet to begin. In all the surrounding circumstances therefore, the section 3(6) ground must also fail.

30. This only leaves the Section 5(2)(b) ground. This section of the Act states:

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.

31. An earlier right is defined in Section 6 of the Act, the relevant part of which states:

6.-(1) In this Act an "earlier trade mark" means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks;

32. In deciding this ground, I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v. Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG* [2000] E.T.M.R. 723.

33. It is clear from these cases that:-

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v. Puma AG*, paragraph 22;

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG*, paragraph 23, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between

marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* paragraph 27;

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v. Puma AG*, paragraph 23;
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v. Puma AG*, paragraph 23;
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*, paragraph 17;
- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG*, paragraph 24;
- (g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG*, paragraph 26;
- (h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG*, paragraph 41;
- (i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*, paragraph 29.

34. The opponents state their best case under this section to be the earlier registration of the mark AIR MILES (words only) under No 1449999 in Classes 16, 18, 25 and 35. I concur with this view. As far as the goods are concerned, I note that in Class 16 it is possible that identical goods are involved between the two marks. Regarding the services, there is to my mind, a complementary link between the services in the opponents' mark in Class 35 and the services of the application in Classes 39 and 42, although the services themselves are not similar per se. Those of the application are largely limited to the "travel and tourism" field, although the opponents' services are not limited to any particular field of interest, so could include services relating to the same field. This is the background against which I make the comparison of the trade marks involved.

35. It can be seen from the recent guidance outlined above, that the test to determine whether these two trade marks are likely to cause confusion to the public boils down to a comparison of the marks on a visual, aural and conceptual consideration of the issues involved. I should bear in mind all the relevant considerations in a global appreciation of the question, including the doctrine of "fair and notional use" of the marks on the goods/services that they cover(see

Origins Natural Resources Inc v Origin Clothing Limited [1995] FSR 280 and the comments of Simon Thorley QC acting as the Appointed Person in *React Trade Mark* [2000] RPC 288.

36. To my mind the immediate difference which strikes the eye is the device element in the application, in both versions of the series. It looks like a stylised letter “A”, and is prominent in both marks, although perhaps more so in the first (top) version. However it is often said that “words speak loudest” in trade mark terms, so of course these must be an important factor in the comparison. To my mind there is little or no similarity between the words “ASIA” and “AIR”, as contended by the opponents. They argue that they share certain letters (ie an “A” and an “I”), but that in itself is not a strong argument to reach a finding that they are similar, even visually. They are not. Clearly however, the words MILES appears in both marks. Considered as wholes however, I do not find the marks to be similar to the eye.

37. As far as aural similarity is concerned, I doubt the device element is a significant factor as it is unlikely to be spoken. Therefore the comparison is between the words ASIA MILES and AIR MILES. The considerations here are much the same as in the visual comparisons above, and my conclusions are the same.

38. The conceptual assessment to my mind is that there is no similarity between the ASIA or AIR elements in the marks, but that in totality, when considered in the context of the goods and particularly the services in question, there *is* a proximity of ideas painted by both marks, in particular the shared MILES elements.

39. It can be seen from my considerations above, that it is my view that the only real point of similarity in the marks is the word MILES present in both. This however, cannot simply be discounted, as it could in itself be enough to reach a finding of a likelihood of confusion to the public. It rests on the distinctiveness or otherwise conferred upon the marks as a whole by the effect of that word. It is a point on which the Registrar has already recently come to a view.

41. The applicants adduce at exhibit MAA 3 to Mr Armitage’s Witness Statement, an earlier decision of the Registrar in which the same party opposing the current application was involved in another opposition against the mark FERRY MILES plus device. That opposition failed, the crucial element in that decision being the Hearing Officer’s unequivocal finding that the opponents “do not have exclusive use of the word MILES in the market place” (see page 10 to that decision).

42. The opponents in that case, as has been said, were Air Miles International Holdings NV (the licensor of the opponents in these proceedings) and it is worth noting the Hearing Officer’s footnote at page 1 of the said proceeding. This said:

“Apparently Air Miles International Holding NV licence the marks in the Annex to Air Miles Travel Promotions Limited, who conducts the opponents’ business in the UK. Throughout this decision I have referred to both businesses collectively as the ‘opponents’”.

43. The position in the current proceedings reflects the Hearing Officers note above.

44. Although I have been provided with the previous hearing officer’s decision, I do not have the benefit of the evidence filed before him in those proceedings. However, the opponents

have not filed any evidence in these proceedings to show that they have an exclusive use of the word MILES in the relevant field of trade. The material date of *those* proceedings was 15 February 1997, a date anterior (and therefore relevant) to these proceedings. The relationship of the opponents in that and this case is clearly the same and the declarant in the first proceedings on which the Hearing Officer relies in relation to his findings was “a director of Air Miles International Holdings NV” (from page 1 of the first decision). In the circumstances, I cannot come to any other view than that taken by the Hearing Officer in the previous case.

45. As with the first Hearing Officer, I find little or no assistance in the state of the register evidence presented in Mr Armitage’s exhibit MAA 1. But in addition to the Hearing Officers findings in the previously mentioned case, the applicant’s have also filed an investigators report (see paragraphs 10 and 14 above) into the use in the market place of various ‘MILES’ marks. In the light of my above comments it is not necessary to assess the weight of that evidence in detail, save to say that while I find it inconclusive on its own in judging the use of the word “MILES” (in a travel related context) in the market place, it does not detract from the applicants case.

46. It follows, in the overall consideration of the likelihood of confusion between the two marks in suit, that I find the marks are not likely to cause confusion to the public, including the likelihood of association with the earlier mark.

47. I find this to be the case even where the goods at issue are identical (in Class 16) and it follows that where with regard to the services of both marks where I have found the link is less direct, the decision will be the same.

48. All the grounds of opposition have failed. The applicants are entitled to a contribution towards their costs. I order the opponents to pay the application the sum of **£ 435** . This sum is to be paid within seven days of the of the final determination of the case if any appeal against the decision is unsuccessful.

Dated this 12 Day of December 2001

**G J Rose’Meyer
For the Registrar
The Comptroller-General**