

O-323-10

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2504144
IN THE NAME OF IAN SCOTT AND MICHAEL SCOTT

AND

OPPOSITION THERETO UNDER NO 99158
BY WAL-MART STORES INC

TRADE MARKS ACT 1994
IN THE MATTER OF application
No. 2504144 in the name of Ian Scott
and Michael Scott and opposition
thereto under No. 99158 by
Wal-Mart Stores Inc

Background

1. Application No. 2504144 has a filing date of 5 December 2008 and stands in the name of Ian Scott and Michael Scott ("The Scotts"). The application seeks registration of the following trade mark:



2. Registration is sought for the following goods: *Clothing, headgear & footwear.*

3. Following publication of the mark in the *Trade Marks Journal* on 3 April 2009, Notice of Opposition was filed by Wal-Mart Stores Inc. ("Wal-Mart"). Wal-Mart relies on four earlier marks as below:

Registration No	Mark	Registration Date
2113516	GEORGE	21.4.2000
2343416B	GEORGE COLLECTION George Collection	8.4.2005
2446843	GEORGE DESIGN George Design	26.10.2007
2440013	GEORGE KNITWEAR	1.6.2007

4. Wal-Mart's relies on each of the above earlier marks to found objections under section 5(2)(b) of the Act. Additionally, it relies on its earlier mark 2113516 to found objections under section 5(3) and 5(4)(a) of the Act.

5. The Scotts filed a counterstatement in which it is confirmed they do not put Wal-Mart to proof of its marks (where relevant). The counterstatement otherwise essentially denies the grounds of opposition. Both sides filed evidence but neither party requested to be heard, both instead filing written submissions in lieu of attendance at a hearing. I, therefore, give this decision after a careful review of all the papers before me.

The evidence

Wal-Mart's evidence

6. Wal-Mart's evidence takes the form of a single witness statement of Anthony Paul Brierley who is a partner in the firm of Appleyard Lees, Wal-Mart's Trade Mark Attorneys in these proceedings. The witness statement essentially consists of an introduction to 11 exhibits, most of which appear to be copies of pages downloaded from various websites on either 18th or 19th November 2009 (and therefore after the relevant date in these proceedings). The exhibits are:

APB1: printouts from the UK and CTM registers for each of the earlier marks on which the opposition relies;

APB2: a single page copy of what appears to be a promotional article of some sort though its source and date are not identified;

APB3: An extract from Wikipedia entitled "George Davies (retailer)" the person who, Mr Brierley says, founded the GEORGE brand;

APB4: Printouts taken from the Marquesa trade mark search system showing marks incorporating the word LOVE;

APB5: Printouts taken from the Marquesa trade mark search system showing marks incorporating a heart device;

APB6: An extract from Wikipedia entitled "Flag of England";

APB7: Printouts taken from what appear to be various consumer review websites and which are said to show "examples of actual use of the phrase "LOVE GEORGE" as a description wherein the user of the phrase professes to "love" (i.e.the word "love" is used in a laudatory sense and/or to express a liking or a desire for) GEORGE clothing";

APB8: Printouts showing the first page of results of a Google search for the words ""love next" clothing";

APB9: Printouts taken from the Marquesa trade mark search system and said to be "examples, relating to class 25 goods, of situations wherein a brand name in its own right is registered; and wherein the word LOVE, combined with the brand name, is also registered";

APB10: More printouts taken from the Marquesa trade mark search system showing marks incorporating the word LOVE and/or a heart device;

APB11: Printouts taken from various websites said to show LOVE marks in use. The quality of these printouts is so poor that I am unable to read much of what is printed upon them though they appear to be taken from price comparison websites.

The Scotts' evidence

7. This takes the form of a witness statement by Ian Scott. Mr Scott's evidence is, in fact, mostly submission or a critique of Mr Brierley's evidence rather than being evidence of fact. For that reason I do not intend to summarise it here but I do take his comments into account in reaching my decision in this case. That said, I note his statement that it is not disputed by the Scotts that GEORGE is a very well known UK brand.

Decision

8. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) 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,

(b)

(c)

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

9. In these proceedings, Wal-Mart is relying on four trade marks all of which have an application date prior to that of the application for registration. Each qualifies as an earlier trade mark under the above provisions. I intend to proceed in relation to earlier mark no. 2113516 only: if Wal-Mart does not succeed on the basis of this mark it will not be in any better position in relation to the other earlier marks relied upon.

10. I will deal with the objection based on section 5(2)(b) of the Act first. This section reads:

(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.


11. In determining the question under Section 5(2)(b), I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel v Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [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* [2000] E.T.M.R.723, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di Laudato & C. Sas v OHIM* C-334/05 (Limoncello). 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 he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen 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 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) in determining whether similarity between the goods or services covered by the two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer inc*; 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;
- (j) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*;
- (k) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L Laudato & C. Sas v OHIM*.

12. In essence, the test under Section 5(2)(b) is whether there are similarities in marks and goods which, when taking into account all the surrounding circumstances, would combine to create a likelihood of confusion. The likelihood of confusion must be appreciated globally and I need to address factors such as the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements and taking into account the degree of similarity in the goods, the category of goods in question and how they are marketed.

13. The earlier mark is registered in respect of goods in class 14, 18, 25 and 26. The mark applied for seeks registration in respect of goods only in class 25. I therefore intend to carry out the comparison in relation to goods in class 25 as it represents Wal-Mart's strongest case. With that in mind, the marks to be compared are as follows:

The Scotts' application	Wal-Mart's earlier mark
	GEORGE
Class 25: Aprons, babies' diapers of textile, babies' napkins of textile, babies' pants, bandannas, bathrobes, bath sandals, bath slippers, bathing caps, bathing drawers,	Clothing, headgear & footwear

<p>bathing suits, bathing trunks, beach clothes, beach shoes, belts, berets, bibs, boas, bodices, boots, boots for sports, braces for clothing, brassieres, breeches, camisoles, caps, clothing for gymnastics, clothing of imitations of leather, clothing of leather, coats, corselets, corsets, cyclists clothing, clothing drawers, dress shields, dressing gowns, ear muffs, esparto shoes or sandals, football boots, football shoes, foot muffs, footwear, frocks, fur stoles, gabardines, gaiter straps, garters, galoshes, girdles, gloves, gymnastic shoes, half boots, hats, headbands, headgear for wear, hoods, hosiery, inner soles, jackets, jerseys, jumpers, knitwear, layettes, leggings, mantillas, masquerade costumes, mittens, muffs, neck ties, outer clothing, overalls, overcoats, pants, parkas, petticoats, pullovers, pyjamas, sandals, sashes for wear, scarves, shawls, shirts, shoes, shoulder wraps, singlets, skirts, slippers, smocks, sock suspenders, socks, sports jerseys, sports shoes, stocking suspenders, stockings, suits, suspenders, sweat absorbent underclothing, sweaters, swimsuits, teddies, t-shirts, tights, trousers, underclothing, underpants, underwear, uniforms, vests, visors, waistcoats, water-proof clothing, wooden shoes, wrist bands.</p>	
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Comparison of the respective goods

14. The Scotts submit that Wal-Mart’s goods are “solely available to the public for purchase through the Asda chain of stores” whereas their own goods will not be. I am mindful of the findings of the Court of First Instance (now General Court) in *Saint-Gobain SA v OHIM* Case T-364/05 where it said:

“67... it is important to reiterate that the comparison between the goods in question is to be made on the basis of the description of the goods set out in the registration of the earlier mark. That description in no way limits the methods by which the goods covered by the earlier mark are likely to be marketed.”

15. I am also mindful of the findings of the Court of First Instance (now General Court) in the case of *NHL Enterprises BV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-414/05:

“71 The Court considers, first, that that assessment by the Board of Appeal is not called in question by the particular conditions in which the applicant’s goods are marketed, since only the objective marketing conditions of the goods in question are to be taken into account when determining the respective importance to be given to visual, phonetic or conceptual aspects of the marks at issue. Since the particular circumstances in which the goods covered by the marks at issue are marketed may vary in time and depending on the wishes of the proprietors of those marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, namely that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions of the trade mark proprietors-whether carried out or not- which are naturally subjective (see, to that effect, *NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, cited at paragraph 61 above, paragraph 49, and Case T-147/03 *Devinlec v OHIM – TIME ART (QUANTUM)* [2006] ECR II-11, paragraphs 103 to 105, upheld on appeal by the Court by judgment of 15 March 2007 in Case C-171/06 P *TIME ART v OHIM*, not published in the ECR, paragraph 59).”

16. All of the goods of the earlier mark are articles of clothing, headwear or footwear and so are included within these terms. The goods are therefore identical (see *Gérard Meric v OHIM*, Case T-133/05). Given my finding that the goods of the respective marks are identical it follows that this identity will extend to the channels of trade, from manufacturer to retailer.

The relevant public, the purchasing act and the standard for likelihood of confusion

17. All of the respective goods are articles to be worn on (parts of) the body and are items bought by the general public. They may be bought in a variety of ways, e.g. in a retail store, online or by mail order. I bear in mind the comments of the General Court in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)* Joined cases T-117/03 to T-119/03 and T 171/03:

“43 It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.”

18. I am also mindful of the comments of the General Court in cases such as *Société Provençale d'Achat et de Gestion (SPAG) SA v OHIM* Case T-57/03 and the appointed person in *React Trade Mark* [2000] RPC 285, where guidance is provided

that, bearing in mind the manner in which clothing goods will normally be purchased, it is the visual impression of the marks that is the most important. This would normally be from a clothes rail or shelf, a catalogue or a website rather than by oral request. The purchaser will look at a garment to assess e.g. its colour, style or the fabric from which it is made and may try the garment on for size and fit. All of this combines to limit the effect that imperfect recollection will have when seeing a trade mark.

Comparison of the marks

19. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Sabel BV v Puma AG*). I have to consider the visual, aural and conceptual similarities of the respective marks with reference to the overall impressions created by the marks and bearing in mind their distinctive and dominant components (*Sabel BV v Puma AG*). The average consumer, who rarely has the chance to make a direct comparison between marks but must instead rely upon the imperfect picture of them he has kept in his mind, is deemed to be reasonably well informed and reasonably circumspect and observant (*Lloyd Schuhfabrik Meyer & Co GmbH*).

20. Where a mark has a number of component features, the contribution of those individual elements to the marks as a whole and the impression conveyed to the average consumer of the goods in question are important factors in the consideration of whether two marks are similar or not and whether there is a likelihood of confusion. I therefore go on to consider the distinctiveness and dominance of the marks' component parts.

21. Wal-Mart's earlier mark is the single word GEORGE which is a well known name and the mark's distinctiveness and dominance rests in that word.

22. The largest element in the Scotts' mark is the horizontal and vertical line within the oval border. The Scotts refer to this as a "St. George cross background" which is a "clear and deliberate reference to Saint George...and is intended as a celebration of the said saint and all things patriotic" whilst Wal-Mart's submissions refer to it being the "flag of England and "an apt way of referring to any goods which emanate from England or are associated with England or have some element associated with England". The flag of England is, of course, the St. George cross which consists of a red cross on a white background. The mark here is not limited to colour and as presented, the two lines do not actually form a cross as the heart shaped device and its content prevent there being any junction of the horizontal and vertical line. As presented, I consider it to be a distinctive element of the mark.

23. In its submissions Wal-Mart says that the word GEORGE is a dominant component of the mark and that the word LOVE is widely used in trade marks which appear on the UK register. It provides evidence at APB11 which, it says, shows the word LOVE in use. The exhibit consists of 8 pages which appear to refer to four trade marks but all were downloaded well after the relevant date in these proceedings, although I note that page 4 refers to a "Love Moschino" range of clothing having been launched in June 2008. Whilst the word GEORGE is positioned below the word LOVE, both words are identically presented so that

neither stands alone: the two words will be read together. The words are presented on a heart shaped background but of itself the heart shape is somewhat lost in the mark given the position of the words upon it and background behind it. I agree with Wal-Mart that the presence of the heart device (if seen) merely emphasises the word LOVE. In his evidence, Ian Scott accepts Wal-Mart's claim that heart shapes are widely used in trade marks. I do not regard the heart-shaped element as dominant or distinctive. In *Société des produits Nestlé SA v Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) (OHMI) Case T-74/04* it was held that words will normally be the dominant element of a composite mark. In my view, the superimposition of the words LOVE GEORGE on the other elements of the mark makes these words the dominant element of the mark under consideration. As these words neither allude to nor describe the goods, they are also a distinctive element.

24. The Scotts claim that the respective marks differ visually, phonetically and conceptually. In relation to the visual comparison, they submit: "the "Love George" and "George" marks actually contain different words with the interposal of the abbreviated "St" in the former". The mark applied for does not, however, contain the abbreviation "St". And whilst the word LOVE appears only in the mark applied for, the word GEORGE appears in both. The Scotts also submit that their mark "utilises the colours red, white and blue which are deliberately and clearly patriotic in nature" but as I have indicated above, the mark makes no claim to these colours (or indeed to any particular colours).

25. Given the inclusion of the device elements within the mark applied for, which are absent from the earlier mark, there are visual differences between them. But insofar as the Scotts' mark contains the entirety of the earlier mark GEORGE, there must be a degree of visual similarity. In my view that degree of similarity is moderate. From an aural perspective, the Scotts submit: "'Love George" sounds different to the mark "George" which is usually followed by the words "...at Asda"'. As Wal-Mart submit, I have no evidence of this latter claim. In any event, I am required to consider the earlier mark as registered. In oral use, the mark applied for will be referred to as LOVE GEORGE. As this incorporates the whole of the earlier mark, and both words within the mark applied for are single syllable words, this gives rise to a reasonably high degree of oral/aural similarity.

26. The earlier mark consists of the single word GEORGE. This is most likely to bring to mind the male forename though it may also lead some to think of the surname.

27. The mark applied for is a composite mark consisting of figurative and word elements as described above. Some members of the public are likely to be aware of a St. George cross (even if they do not know its name) and, given that the eye will often "fill in" that which appears to the brain to be missing, this element could, to some, bring to mind the St. George cross. It is possible that the inclusion of the word GEORGE within the mark may provide a link to the saint's name (though the name GEORGE conjures up a very different image to that of St. George). For others, the mark may bring to mind the English flag or England. For still others, it may just be seen as background lines and the conceptual image may be somewhat different given the dominance and distinctiveness within the mark of the word element.

28. In *Spa Monopole compagnie fermière de Spa SA/NV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-438/07* it was stated:

“23 Admittedly, the consumer normally attaches more importance to the first part of words (Joined Cases T-183/02 and T-184/02 *El Corte Inglés v OHIM-González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II-965, paragraph 81). However, that argument cannot hold in all cases (see judgment of 16 May 2007 in Case T-158/05 *Trek Bicycle v OHIM –Audi, (ALL TREK)*, not published in the ECR, paragraph 70 and the case-law cited) and does not, in any event, cast doubt on the principle that the assessment of the similarity of marks must take account of the overall impression created by them.”

29. The word LOVE is both a noun and a transitive verb. Where the word is followed by a name, as is the case here, the word could be taken to be a verb with the name, here GEORGE, being the direct object of that verb. In its written submissions Wal-Mart says that the word LOVE has a “laudatory nature...meaning “to have a great attachment to and affection for” or “passionate desire, longing or feeling for” something or someone” and is “an entirely appropriate word to use to refer to clothing which a person “loves” (for example due to their look, fit or brand)”. This view gains support from some of the evidence shown in Exhibit APB7. Alternatively, given that the phrase “LOVE (name)” is often used in everyday speech as a form of “shorthand” meaning “with love from (name)” I consider that the words may be seen as meaning “with love from George”.

30. As the Scotts remind me, I have to consider the mark as a whole. Whichever way it is seen, the subject of the words within the marks is the word GEORGE which is likely to lead to there being a degree of conceptual similarity though the degree of similarity is likely to vary depending on how it is seen by the individual consumer.

Likelihood of confusion

31. In reaching a decision on whether there is a likelihood of confusion, I must make a global assessment based on all relevant factors. I have already found that identical goods are involved. I have found that the marks have a moderate degree of similarity from a visual perspective, a reasonably high degree of similarity from an aural perspective and a variable degree of similarity from conceptual perspective. I have established that the purchasing act is one based predominantly on the visual aspects but not to the extent that I should ignore the aural and conceptual similarities and differences between them. The decision of the General Court in *New Look Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* Joined cases T-117/03 to T-119/03 and T-171/03, indicates that the circumstances in which the relevant goods and the marks are encountered by the consumer, particularly at the point at which the purchase is made, is an important consideration. But I also have to make an assessment of all relevant factors and take into account the fact that the consumer will rarely have an opportunity to compare marks side by side but will instead rely on the imperfect picture of them he has kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.* paragraph 27).

32. Another factor to be taken into account is the distinctive character of the earlier trade mark having regard to its inherent characteristics and the reputation it enjoys with the public. In their submissions, the Scotts “question the Opposition’s right to claim sole ownership of the name “George””. Of course, Wal-Mart does not have sole ownership of the name George: it has a registered trade mark consisting of that word, in relation to the goods for which that mark is registered. I have not been made aware of any attack against that registration and so, being a registered trade mark, there is a presumption under section 72 of the Act that it is validly registered. The mark GEORGE has a reasonable degree of inherent distinctiveness and I go on to consider whether this has been enhanced through use.

33. In his evidence, Ian Scott refers to Wal-Mart’s claim that GEORGE is a very well known UK brand and states that this is not disputed by the Scotts. For Wal-Mart, Mr Brierley gives little detail himself, referring me instead to exhibit APB2 which, he says, shows that sales in excess of £1billion take place under the mark GEORGE each year through sales in 302 stores. Whilst the evidence is somewhat short on detail, these are significant figures. The exhibit also shows that in addition to its stores, an Internet site was launched in 2004 selling a wide range of clothing etc., that in 2002, 35.5% of all shoppers are said to have bought an item of George clothing or footwear and that in 2006 George was the second biggest retailer of these types of goods by volume. The use claimed has not been disputed by the Scotts and I have no reason to disbelieve it (see *Extreme* BL O/161/07). In view of this, I have no doubt that the earlier mark’s inherent distinctiveness will have been enhanced through the use made of it.

34. I need to consider both direct and indirect confusion. In relation to direct confusion, where the average consumer, who rarely has the chance to make direct comparisons between marks but must instead rely upon the imperfect picture of them he has kept in his mind, mistakes one mark for another, the visual differences between the marks leads me to find that it is unlikely that the average consumer would mistake one mark for the other. This is the case even taking into account that identical goods are involved and the higher degree of distinctiveness in the earlier mark. I find there is no likelihood of direct confusion.

35. In relation to indirect confusion, where the similarities between the marks lead the consumer to believe the goods or services sold under them are from the same or an economically linked undertaking, further consideration is necessary. I have already found the goods are identical and that the earlier mark has a higher degree of distinctive character. The respective marks have some visual differences but equally have some visual similarities and clear aural and possible conceptual similarities. Taking these points together, I consider the average consumer familiar with the earlier mark is likely to assume that the mark applied for is an extension of the GEORGE brand. As such, there is a likelihood of indirect confusion in that whilst the marks may not be confused with one another, the average consumer will believe the respective goods originate from the same or a linked undertaking.

36. The opposition, based on section 5(2)(b) of the Act is successful in its entirety.

37. In view of my findings, I do not intend to consider the objection raised under section 5(3) and 5(4)(a) of the Act in relation to the same earlier mark.

38. The opposition has succeeded and Wal-Mart is entitled to an award of costs in its favour. I take into account the fact that limited evidence was filed by both parties and that no hearing took place. I therefore award costs the following basis:

Filing Form TM7 and considering Counterstatement	£300
Fee for filing Form TM7	£200
Filing and reviewing evidence	£300
Preparing written submissions	£100
Total	£900

39. I order Ian Scott and Michael Scott to pay Wal-Mart Stores, Inc the sum of £900. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 21 day of September 2010

**Ann Corbett
For the Registrar
The Comptroller-General**