

O/162/12

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2547975

BY

PLYMOUTH CITY COUNCIL

TO REGISTER THE TRADE MARK:

PLYMOUTH LIFE CENTRE

IN CLASSES 41 AND 43

AND

THE OPPOSITION THERETO

UNDER NO 101144

BY

AWARENESS LIMITED

1) On 18 May 2010 Plymouth City Council (PCC) filed an application to register the trade mark PLYMOUTH LIFE CENTRE (the trade mark). The application for registration was published on 30 July 2010. The application is for services in classes 41 and 43; this opposition only relates to the class 41 services, namely:

sporting and cultural activities; recreation, leisure and sports centre services; provision of sports and leisure facilities; rental of sports facilities; provision of sports hall and sports court facilities; provision of martial arts studios; provision of dance studios; provision of swimming, diving and leisure pools; provision of bowls facilities; provision of indoor climbing facilities; teaching, coaching and instruction in sports, martial arts, dance and physical fitness; entertainment services; organisation of exhibitions and cultural events; organisation of sporting events; education services; advisory and consultancy services relating to the aforementioned.

2) On 29 October Awareness Limited (Awareness) filed a notice of opposition to the registration of the trade mark in respect of the class 41 services. Awareness relies upon section 5(2)(b) of the Trade Marks Act 1994 (the Act). Under section 5(2)(b) of the Act a trade mark shall not be registered if because:

“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.”

Awareness relies upon United Kingdom trade mark registration no 2294449 of a series of 4 trade marks:

THE LIFE CENTRE

the life centre

the **life** centre

the**lifecentre**

The application for registration was filed on 5 March 2002 and the registration process was completed on 15 November 2002. The trade marks had been registered for more than five years at the date of the publication of the application; consequently, they are subject to proof of genuine useⁱ for the period from 31 July 2005 to 30 July 2010 (the material period). Awareness only relies upon the class 41 services of its registration, namely:

tuition, training and workshop services; tuition, training and workshop services in respect of fitness, yoga, pilates, tai chi, complementary therapies, beauty treatments, massage, bodywork, aromatherapy, osteopathy, homeopathy, reflexology, herbal and nutritional treatments, naturopathy and Chinese medicine.

It claims to have made genuine use of its trade marks in relation to all of the above services in the material period.

3) PCC filed a counterstatement in which it denies that there is a likelihood of confusion and puts Awareness to proof of use of its earlier trade mark.

4) Only Awareness filed evidence. A hearing was not requested. Awareness filed written submissions (on two occasions).

Evidence of Awareness

Witness statement of Elizabeth Stanley

5) Ms Stanley is a director of Awareness.

6) The Life Centre was established in Notting Hill in 1993. Ms Stanley states that it was one of London's first yoga, Pilates and complementary health centres. Ms Stanley states that Awareness provides yoga and Pilates classes and "children's activities" and has also provided tai chi classes. She states the Life Centre offers a wide range of therapies, including acupuncture, aromatherapy, Cranio-Sacral therapy, deep tissue massage, facial yoga, homeopathy, hypnobirthing, hypnotherapy, Indian head massage, kinesiology, McTimoney chiropractic, manual lymphatic drainage, metamorphic technique, osteopathy, cranial osteopathy, past life regression, pregnancy aromatherapy massage, pregnancy massage, pregnancy reflexology, reflexology, Reiki, rejuvenessence facial massage, Rolfing, skilful touch bodywork, somatic experiencing, sports massage, Thai yoga massage, therapeutic massage and Tui-Na. Ms Stanley states that ante-natal classes are also provided at the Life Centre. She states that Awareness offers a training programme for yoga teachers; this was established in 2003 by a not for profit educational body called The Life Centre Education Limited (now trading as Yoga Campus). Ms Stanley states that the Life Centre markets holidays and retreats involving yoga and meditation. Exhibited at ES1 is a copy of the agreement for the sale of the business to Awareness. The business is described as being "a yoga centre and therapy centre".

7) Ms Stanley states that Awareness has made consistent use of The Life Centre in the United Kingdom in relation to the class 41 services of its registration in the material period.

8) Ms Stanley states that, in common with many yoga centres, The Life Centre uses a program called MindBody On Line to manage the running of the centre,

including class attendance and client purchases. Included in exhibit ES2 are screenshots of pages from the program for 14 September 2005 and 8 March 2008. These show yoga, Pilates, MySore self practice and baby massage sessions. Also in the exhibit are screenshots showing a “Breathing Space Workshop” (which is based on yogic philosophy) for 18 October 2009, “Yoga, Shiatsu and the Chinese Five Element Cycle – Metal” for 25 October 2009, “Back to life again: a practice to awaken the spine” (this involves a yoga session) for 21 March 2010 and “Breastfeeding Workshop” for 28 March 2010. Exhibited at ES3 are screenshots from the MindBody program which show payments for classes, treatments and workshops by three clients; these include purchases in the material period. Exhibited at ES4 is a copy of a galley proof for a studio timetable valid from 2 October 2006. The classes relate to yoga, Pilates and mother and baby classes. The studio timetable states that yoga discount cards can be used for all classes with the exception of baby massage.

9) Exhibited at ES5 is a copy of a licence, dated 14 September 2007, from the Royal Borough of Kensington and Chelsea in relation to treatments supplied at the centre. The names of those who are licensed to give the treatments are given. The treatments licensed are for acupuncture, massage, sports massage, aromatherapy, facials, Indian head massage, Swedish massage, reflexology, shiatsu, eye brow/lash tint, manicure/pedicure and waxing.

10) Copies of references to the Life Centre in press articles are exhibited:

ES6 – *Evening Standard Beauty* of 24 April 2009. Readers are advised that Tara Lee “teaches pregnancy, post-natal and dynamic yoga classes at The Life Centre” and that “[r]egular yoga sessions with her keep muscles and joints in top condition”. It advises that Laura Bailey and Cat Deeley go to the centre. Readers are advised that Liz Lark organises courses at the Life Centre and that Alan Rickman, Ralph Fiennes and Donna Karan go to the centre. The following is included in the articles: “[y]oga is not a sport. Perform outside close to nature and enjoy yourself”.

ES7 – *Healing Touch* magazine from 2009. The article is about various massage techniques and at the end lists 4 undertakings from whom further information can be obtained; one of these is the Life Centre.

ES8 – *Daily Telegraph* magazine from 2007. At the end of an article about facial yoga the reader is advised that “[a] holistic ISHTA session” with Katrina Repka can be attended at the Life Centre.

ES9 – *Time Out London* for 30 May to 5 June 2007. The reader is advised that MV skin therapy is available at the Life Centre.

ES10 – *The Hill* for March 2009. The reader is advised that there are classes for children at the Life Centre in music, yoga, art, craft, scent making and a morning bakery club.

ES11 – timeout.com/london for 27 February to 4 March 2008. The article is about facial yoga taught by Katrina Repka and advises that she supplies her services at the Life Centre.

ES12 – *Time Out London* consumer section for 9 January to 15 January 2008. The Life Centre is listed as one of London’s best gyms. The reader is advised that the centre is one of London’s original yoga centres and has over 60 classes a week including pregnancy yoga, mother and baby yoga and baby massage.

ES13 – *TimeOut London* for 12 to 19 January 2005. The Life Centre is described as supplying yoga and “a wide range of complementary therapies”. The article states that classes include “astanga, shadow, Scaravelli and pre- and post-natal yoga”.

ES14 – *FT Magazine* for 6/7 August 2005. An article about yoga teaching where quotations appear from a teacher and a former student at the Life Centre.

ES15 – *Time Out London* for 16 – 23 November 2005. A list of alternative health establishments. The first undertaking listed under Yoga classes is the Life Centre, the reader is advised that “[t]his is one of London’s premier yoga centres”.

ES16 – *The Hill* for January 2010. An advertorial for the Life Centre promoting family yoga classes.

ES17 – *Time Out Health & Fitness 2006*. Under the heading yoga centres a description of the Life Centre is given.

ES18 – *Yogini* – a Japanese yoga magazine, in Japanese. Ms Stanley states that it was published in 2011, however, handwritten on the front is 2010.

ES19 – *Blossom* – a Swedish magazine from 2011 and so after date of application and outside the material period.

ES20 – *deltaskymag.com* from January 2011 and so after date of application and outside the material period. It refers to “throng of faithful yoga practitioners”.

11) Ms Stanley states that Awareness has trained yoga teachers since 2003. Exhibited at ES21 is a copy of the accreditation issued by the British Wheel of Yoga for a course running from 2007 to 2009. Exhibited at ES22 is a copy of the manual for the course. The manual shows that a number of teachers will be presenting the course. Exhibited at ES23 is a booking form for a yoga teacher training workshop to take place from 5 to 9 December 2007. Ms Stanley states that Awareness engages experts to perform their services at the Life Centre. She exhibits at ES24 extracts from the contracts between Life Centre Education Limited and Beata Ghavimi and Khati Goupil, both from March 2008. Included in the contract are requirements for the teacher to maintain professional indemnity insurance and to arrange for a substitute teacher if he/she is not available. Life Centre Education accepts no responsibility in respect of any claim brought by a student against a teacher. Life Centre Education will pay the teacher for conducting the classes. Payments for course are to be made to the receptionist at the Life Centre and not directly to the teacher.

12) Exhibited at ES25 are copies of extracts from contracts between TLC Natural Care Limited and individuals providing: osteopathy and cranial osteopathy, massage, Thai massage, pregnancy massage, hypnobirthing, homeopathy, Chinese herbs, acupuncture, pregnancy reflexology and cranial sacral therapy. The contracts emanate from between 17 December 2007 and 17 April 2008. All

of the services are supplied at the Life Centre; TLC Natural Care Limited is a wholly owned subsidiary of Awareness. (Such services as not pertinent to the the opposition which does not rely upon the class 44 services of the earlier registration.)

Witness statement of Ryan Pixton

13) Mr Pixton is a trade mark attorney. He exhibits at REP1 pages from the website plymouth.gov.uk, downloaded on 12 October 2011. References are made to Life Centre on its own, ie without Plymouth preceding the words. The Plymouth Life Centre is due to open in February 2012 and “will be one of the country’s leading centres of sporting excellence”.

14) Exhibited at REP2 is a list of sporting activities and governing bodies recognised by the Sports Councils, as of October 2010. Included in the list is exercise and fitness which includes yoga.

15) Exhibited at REP3 is a page downloaded from everyoneactive.com on 12 October 2011. Included on the page is the following:

“Our huge range of classes includes Body Pump, Body Combat & Body Balance, Aerobics, Spin, Circuits, Yoga, Legs Bums & Tums LBT, Step and 50+ forever fir sessions”.

16) Mr Pixton states that exhibit REP4 is an extract from the website virginactive.co.uk. The pages exhibited relate to Heaven V Farnborough. The pages show a menu of health and beauty treatments available at Heaven V: facials, massage, make-up, waxing, nail care, eye shaping, tinting and perming and tanning. The pages give the web address as being heaven.co.uk.

Findings of fact

17) Awareness has supplied evidence in relation to the actual provision of therapies, for example at ES25. Awareness has not relied upon such services in its statement of grounds. The case can only be considered within the parameters of the statement of grounds and the statement of grounds has limited the basis of the claim to the class 41 services of its registration: tuition, training and workshop services both generally and in relation to specific topics.

18) Section 100 of the Act states:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Consequent upon section 100, the onus is upon the registered proprietor to prove that it has made genuine use of the trade mark within the material period.

19) The Court of Justice of the European Union (CJEU) in *Ajax Brandbeveiliging BV v Ansul BV* Case C-40/01 stated:

“36. “Genuine use” must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark. Such use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

37. It follows that genuine use of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. The protection the mark confers and the consequences of registering it in terms of enforceability vis-à-vis third parties cannot continue to operate if the mark loses its commercial *raison d'être*, which is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns. Such use may be either by the trade mark proprietor or, as envisaged in Article 10(3) of the Directive, by a third party with authority to use the mark.

38. Finally, when assessing whether there has been genuine use of the trade mark, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, in particular whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark.

39. Assessing the circumstances of the case may thus include giving consideration, *inter alia*, to the nature of the goods or service at issue, the characteristics of the market concerned and the scale and frequency of use of the mark. Use of the mark need not, therefore, always be quantitatively significant for it to be deemed genuine, as that depends on the characteristics of the goods or service concerned on the corresponding market.”

20) In *Anheuser-Busch Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-191/07 the General Court (GC) stated:

“105 Moreover, the Court of First Instance has held that genuine use of a trade mark could not be proved by means of probabilities or suppositions, but had to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (Case T-39/01 *Kabushiki Kaisha Fernandes v OHIM – Harrison (HIWATT)* [2002] ECR II-5233, paragraph 47).”

The above judgment relates to a Community trade mark opposition. Owing to the effects of regulation 22(3) of Commission Regulation (EC) No 2868/95, care has to be taken when applying judgments relating to cases the subject of appeal from OHIM. The above finding is not directly born of this regulation, it is about providing evidence rather than relying upon speculation or assertionⁱⁱ and is in keeping with the onus that section 100 of the Act places in relation to proof of genuine use. In *Laboratories Goemar SA's Trade Mark* [2002] ETMR 34 Jacob J stated:

“9 In the present cases, use was not proved well. Those concerned with proof of use should read their proposed evidence with a critical eye, to ensure that use is actually proved, and for the goods or services of the mark in question. All the ‘t’s should be crossed and all the ‘i’s dotted. In the present cases there was a difference between the total sales figures and relevant sales. Mr Mellor, for the applicants for revocation, told me that sorting out the wheat from the chaff involved a lot of work. In the end, however, he accepts that some very small potentially relevant sales under the marks were proved.”

21) A certain ambiguity arises from the evidence of Awareness. It might be seen that rather than furnishing any training related services, it is supplying a location for the services to take place. Individuals taking the courses are identified; the contracts of those supplying classes, place the liabilities upon the individuals. However, payments are made to Awareness and bookings are made through Awareness’s booking system. The publicity for the Life Centre gives the perception that it is the Life Centre that is supplying the services. The public will make enquiries of the Life Centre in order to take courses. From the material furnished the customers will believe that the Life Centre is responsible for the courses being supplied.

22) Awareness has not furnished any turnover figures nor has it supplied any figures in relation to promotion. However, during the material period it is clear that services have been supplied at the Life Centre at its premises in London. The press reports show that a business was taking place at these premises and that the trade mark the Life Centre was being used in relation to these services in

order to maintain a market in them. There is nothing token about the use shown, owing to the continuity of use. Awareness has established genuine use in relation to its trade marks. (For the purposes of this decision, discussion will be limited to the version of the trade mark in upper case.) There is very limited evidence in relation to certain services eg the training services for children; the sole evidence being ES10 . In the absence of turnover figures in relation to such services and any other more extensive evidence in relation to them, to decide that the use on such services was warranted in the market place would be the exercise of pure speculation and conjecture. Awareness has not dotted i's nor crossed t's. (It is noted that Awareness has also put in evidence relating to services upon which it has not relied for these proceedings, ie the actual practice of therapies.)

23) It is necessary to decide upon a fair description for the services for which genuine use has been shown and which fall within the parameters of the specification. The description should not be over pernicketyⁱⁱⁱ. It is necessary to consider how the relevant public would describe the goods^{iv}. The General Court (GC) in *Reckitt Benckiser (España), SL v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-126/03 held:

44 With that in mind, it is necessary to interpret the last sentence of Article 43(2) of Regulation No 40/94 and Article 43(3), which applies Article 43(2) to earlier national marks, as seeking to prevent a trade mark which has been used in relation to part of the goods or services for which it is registered being afforded extensive protection merely because it has been registered for a wide range of goods or services. Thus, when those provisions are applied, it is necessary to take account of the breadth of the categories of goods or services for which the earlier mark was registered, in particular the extent to which the categories concerned are described in general terms for registration purposes, and to do this in the light of the goods or services in respect of which genuine use has, of necessity, actually been established.

45 It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or sub-categories relating to which the goods or services for which the trade mark has actually been used actually belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

46 Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of 'part of the goods or services' cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.

In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited* BL O/345/10 Mr Geoffrey Hobbs QC, sitting as the appointed person, stated:

"However, that does not appear to me to alter the basic nature of the required approach. As to that, I adhere to the view that I have expressed in a number of previous decisions. In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

24) Awareness claims, inter alia, use in relation to *tuition, training and workshop services* at large. This covers a very wide spectrum of services; from classes for pre-school children to post-graduate supervision, from finger painting classes to training as a gas fitter. In *Galileo International Technology, LLC v European Union (formerly European Community)* [2011] EWHC 35 (Ch) Floyd J stated:

"39. The unrestricted specification is of enormously wide scope. The Hearing Officer wisely reminded himself of what Laddie J had said about wide specifications for computer software in *Mercury Communications Ltd v Mercury Interactive (UK) Ltd* [1995] FSR 850. Laddie J considered that:

"... there is a strong argument that a registration of a mark simply for "computer software " will normally be too wide. In my view the defining characteristic of a piece of computer software is not the medium on which it is recorded, nor the fact that it controls the computer, nor the trade channels through which it passes but the function it performs. A piece of software which enables a computer to behave like a flight simulator is an entirely different product to

software which, say, enables a computer to optically character read text or design a chemical factory. In my view it is thoroughly undesirable that a trader who is interested in one limited area of computer software should, by registration, obtain a statutory monopoly of indefinite duration covering all types of software, including those which are far removed from his own area of trading interest. If he does he runs the risk of his registration being attacked on the ground of non-use and being forced to amend down the specification of goods. I should make it clear that this criticism applies to other wide specifications of goods obtained under the 1938 Act. I understand that similar wide specifications of goods may not be possible under the 1994 Act."

40. That was a case decided under the Trade Marks Act 1938, but, like Laddie J, I see no reason why the views there stated should not apply under the Act. "

The same sort of considerations are appropriate in relation to training related services owing to the enormous spectrum of services that they encompass. Taking into account the absence of turnover figures at all, or in relation to specific services, and the nature of the evidence, all that can be concluded, without recourse to probabilities or suppositions, bearing in mind the constant identification of the Life Centre with yoga, is that genuine use has been established in the material period in relation to *tuition, training and workshop services in respect of yoga*. The evidence as submitted does not allow for any wider use to be concluded as it does not allow for consideration of whether the use is warranted in the marketplace. In reaching this conclusion it is taken into account that there is no de minimis quantum of use^v but Awareness has to establish on an evidential basis that any particular use is warranted in the marketplace. In relation to non-yoga services the evidence is marked by its lacunae.

25) The evidence clearly shows that yoga and yoga teaching has its own area of the market place and expertise. The specification makes particular reference to yoga. Consequently, an appropriate specification for the earlier registration is:

tuition, training and workshop services in respect of yoga.

26) In its written submissions Awareness claims that it has a significant renown in the trade mark THE LIFE CENTRE. This was not a matter that was pleaded in its statement of grounds. The evidence shows use at one location in London. Awareness comments upon reference to it being made in a publication in Sweden, a publication in Japan and in Delta Airline's magazine and being visited by celebrities. There are no turnover figures, the publicity is limited. Notting Hill is not London and London is not the United Kingdom^{vi}. There is no evidence to

indicate even how wide a catchment area in London the centre has. If an establishment has one base, one area to which customers must go, those outside the catchment area are unlikely to take cognisance of it as it is not pertinent to them. The level of publicity does not establish that this one establishment had broken its geographical bounds. (It is accepted that being based in one location is not of itself a bar to renown; single location restaurants sometimes have great fame.) Awareness has not established that at the date of the filing of the application that THE LIFE CENTRE enjoyed “a significant renown for its services”, as it claims in its submissions. (In two sets of written submissions Awareness refers to having two locations in London, however, one of these was opened in 2011 and so is not pertinent.)

Likelihood of confusion – section 5(2)(b) of the Act

Average consumer and nature of purchasing decision

27) The average consumer “is deemed to be reasonably well informed and reasonably circumspect and observant”^{vii}. Before training, tuition or workshop services are purchased, the potential customer is likely to explore what the services involve and offer and the standard of service that is being offered; in order to make sure that they satisfy his or her requirements. Such services are likely to be purchased, therefore, as a result of a careful and educated decision; limiting the effects of imperfect recollection. The services are likely to be purchased after perusal of literature, whether physical or online. Consequently, visual similarity is likely to have greater impact than aural similarity. In relation to such considerations the GC 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 stated:

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

The training related services of the application are equally likely to be bought with some care and consideration. However, many of the other services may well be

purchased simply because of proximity, ie using a swimming pool or bowling green. In the former case the effects of imperfect recollection are likely to be decreased and in the latter case increased. The services of the application are likely to be bought following the perusal of the Internet, seeing print advertisements or seeing external signage. So visual similarity will have a greater impact than aural similarity.

Comparison of trade marks

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

29) The trade marks to be compared are THE LIFE CENTRE and PLYMOUTH LIFE CENTRE. In the former trade mark, centre is descriptive of a location in which a number of activities take place. However, the trade mark, despite being composed of common words, does not lend itself to ready or easy dissection; it “hangs together”, there is no one distinctive and dominant component. The latter trade mark consists of LIFE CENTRE with the well-known location Plymouth. 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* the GC 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.”

Plymouth will be seen as the geographical location of the services. The dominant and distinctive component of the trade mark is the words LIFE CENTRE. The common LIFE CENTRE element of the trade mark gives rise to a good deal of visual and aural similarity. LIFE CENTRE has no clear meaning,

however, life and centre are commonly known words and so these elements bring a degree of conceptual similarity between the respective trade marks; the words having meaning rather than sense^{xii}.

30) Taking into account the similarities between the trade marks and the geographically descriptive nature of PLYMOUTH; the respective trade marks are similar to a high degree.

Comparison of services

31) In “construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade^{xiii}”. Words should be given their natural meaning within the context in which they are used, they cannot be given an unnaturally narrow meaning^{xiv}. Consideration should be given as to how the average consumer would view the services^{xv}. The class in which goods and services are placed may be relevant in determining the nature of the goods or services^{xvi}. In assessing the similarity of services it is necessary to take into account, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary^{xvii}. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T- 325/06 GC* explained when goods were to be considered to be complementary:

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

In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, Jacob J also gave guidance as to how similarity should be assessed^{xviii}. Jacob J in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16 stated:

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

Services can be considered as identical when the services designated by the earlier trade mark are included in a more general category, designated by the trade mark application^{xix}.

32) The services to be compared are:

sporting and cultural activities; recreation, leisure and sports centre services; provision of sports and leisure facilities; rental of sports facilities; provision of sports hall and sports court facilities; provision of martial arts studios; provision of dance studios; provision of swimming, diving and leisure pools; provision of bowls facilities; provision of indoor climbing facilities; teaching, coaching and instruction in sports, martial arts, dance and physical fitness; entertainment services; organisation of exhibitions and cultural events; organisation of sporting events; education services; advisory and consultancy services relating to the aforementioned.

and

tuition, training and workshop services in respect of yoga.

33) *Education services and teaching, coaching and instruction in physical fitness* will include the services of the earlier registration and so must be considered to be identical. (The evidence indicates that yoga is now, inter alia, part of physical fitness regimes. Various high profile sports persons, such as Ryan Giggs, David James and Brad Friedel, are known for practising yoga in order to maintain physical fitness. This is not to equate yoga with being a sport.)

34) *Provision of sports and leisure facilities; rental of sports facilities; provision of sports hall and sports court facilities; provision of martial arts studios; provision of dance studios; provision of swimming, diving and leisure pools; provision of bowls facilities; provision of indoor climbing facilities* are all services simply for the provision of facilities. Although training might take place in them, they are not training services. The core of the services is that a physical facility is made available for hire, just as a warehouse or office could be made available for hire. The respective users are those who wish to be trained and those who wish to use facilities, and so they differ. The respective services are not fungible, they are not in competition. The respective services are not indispensable to each other. The purposes, on one hand, are to train and, on the other, to provide facilities; so they do not have the same purposes. An undertaking renting out offices is not supplying the services of the offices and neither is the undertaking renting out sporting facilities responsible for the services provided therein. **The services rehearsed at the beginning of the paragraph are not similar to the services of the earlier registration.** (In its written submissions Awareness refers to *Time Out* listing its services as one of London's best gyms. *Time Out* putting them in this category does not mean that the average consumer will do so. It is very difficult to see the services upon which Awareness relies as being described as those of a gymnasium. The specification of Awareness also does not cover the provision of sporting facilities.)

35) Awareness in its submissions refers to yoga being on the list of sports councils as if this is evidence that yoga is a sport. Yoga is under the heading of exercise and fitness, which does not make it a sport. The list also includes ballroom and highland dancing and caving. It is difficult to envisage anyone in the normal course of affairs, as describing these as sports. Awareness's own evidence at ES6 states "[y]oga is not a sport".

36) Awareness makes the submission that tuition and training services in relation to, inter alia, Chinese medicine and osteopathy (in relation to which there is no evidence of use) are often found alongside sporting and cultural activities and organisation of sporting events. There is no evidence to this effect. It is difficult to see any connection with cultural activities. Arts centres, museums and concert halls are not known for the supply of training in relation to such activities. Awareness also makes submissions on the import of HeavenV Farnborough. The exhibit shows no relation with gymnasias services. Even if this were shown it would not establish this as the norm. Gymnasias may also have cafés or vending machines, this does not give rise to similarity between catering services and the services of gymnasias.

37) It is not possible to see that *organisation of exhibitions and cultural events; organisation of sporting events, entertainment services* coincide within any of the parameters of the case law in relation to similarity of services in relation to the services of the earlier registration. These services are not similar to the services of the earlier registration.

38) Taking into account the core of the meaning of the terms, the same applies in relation to *sporting and cultural activities*. That some sportspersons may use yoga, does not make it a sporting activity or similar to sporting activity, no more than physiotherapy is similar to them because sportspersons undertake physiotherapy. (There is no evidence, for example, of yoga appearing in the menus of sport websites or on the back pages of newspapers or being considered for inclusion in the Olympics.) It is particularly difficult to see any connection with *cultural activities*. ***Sporting and cultural activities* are not similar to the services of the earlier registration.**

39) *Teaching, coaching and instruction in sports, martial arts, dance* are all teaching services. At this high level of generality there is a coincidence with the services of the earlier registration. However, as noted above training related services cover an enormous spectrum of activity, as does computer software. None of the services rehearsed above are encompassed by the services of the earlier registration. Persons giving such services are unlikely to be the same persons who give the services of the earlier registration. The person using such services is seeking an expertise in a different area to that supplied by Awareness. There is nothing to connect martial arts and dance with the services of the earlier registration. Despite the list of the sports councils, dance is primarily an artistic activity and not a sporting activity. Yoga may be used by

sportspersons but giving instruction in yoga is not giving instruction in a sport. **Taking into account the core of the activities, teaching, coaching and instruction in sports, martial arts, dance are not similar to the services of the earlier registration.** (That there may be a similarity at the most general level, ie teaching being involved, does not give rise to the services being similar. On a reductio ad absurdum basis, all goods and services would be found similar as at some level there will be a similarity^{xx}.)

40) *Recreation, leisure and sports centre services* will cover any of the services that take place within such centres. It is an exceptionally vague term. As the services of the earlier registration could be included in these services, they must be considered to be identical.

41) The *advisory and consultancy services relating to the aforementioned* stand and fall with the services to which they relate.

Conclusion

42) In considering whether there is a likelihood of confusion various factors have to be taken into account. There is the interdependency principle – a lesser degree of similarity between trade marks may be offset by a greater degree of similarity between services, and vice versa^{xxi}. In this the respective trade marks are highly similar.

43) It is a sine qua non that, for there to be a likelihood of confusion, the respective services have to be similar or identical. Consequently, there can be no likelihood of confusion in respect of the services which are not similar.

44) It is necessary to consider the distinctive character of the earlier trade mark; the more distinctive the earlier trade mark the greater the likelihood of confusion^{xxii}. The distinctive character of a trade mark can be appraised only, first, by reference to the services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public^{xxiii}. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the mark to identify the services for which it has been registered as coming from a particular undertaking, and thus to distinguish those services from those of other undertakings^{xxiv}. The earlier trade mark is neither descriptive nor clearly allusive of the services. It enjoys a reasonable degree of distinctiveness.

45) Awareness in its submissions commented upon the use by PCC of Life Centre without Plymouth. The matter to be decided relates to the trade mark the subject of the application and not to another sign that has been used by PCC. Use of the trade mark without Plymouth would certainly not be normal and fair use of the trade mark.

46) Taking into account the similarity of the trade marks the opposition succeeds in relation to the services which are similar or identical. The application, therefore, can go forward for registration (subject to appeal) in respect of the following services in class 41 (there is no attack upon the class 43 services):

sporting and cultural activities; provision of sports and leisure facilities; rental of sports facilities; provision of sports hall and sports court facilities; provision of martial arts studios; provision of dance studios; provision of swimming, diving and leisure pools; provision of bowls facilities; provision of indoor climbing facilities; teaching, coaching and instruction in sports, martial arts and dance; entertainment services; organisation of exhibitions and cultural events; organisation of sporting events; advisory and consultancy services relating to the aforementioned.

Costs

47) Taking into account the limited degree of success of Awareness and that PCC, other than filing a counterstatement, has been passive in the opposition, each party shall bear its own costs.

Dated this 16th day of April 2012

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

ⁱ Section 6A of the Act reads:

“(1) This section applies where –

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes –

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a Community trade mark, any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(7) Nothing in this section affects –

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4)(relative grounds of refusal on the basis of an earlier right), or

(b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration)."

Under Section 100 of the Act the onus is upon the proprietor of the earlier trade mark(s) to show genuine use:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

ⁱⁱ See *Almighty Marketing Limited v Milk Link Limited* [2005] EWHC 2584 (Ch):

"16. I am unable to accept this submission. It goes too far and pays no regard to the purpose of the provisions in issue. Section 100 and rules 31 and 31A address the difficulty facing anyone who wishes to establish a trade mark has not been used. As explained in the White Paper: Reform of Trade Marks Law, September 1990 at paragraph 4.30:

"It is however difficult and time consuming to have to prove a negative, whereas if a trade mark is in fact being used it is a straightforward matter for the proprietor to demonstrate this. The law will therefore provide for a person who is affected by the presence of a mark on the register ... to call upon the proprietor to produce evidence of use; failure to produce such evidence will be treated as an admission of non-use."

To my mind the requirement laid down by rule 31(3) is not therefore satisfied by a proprietor who simply asserts, through a relevant witness, that the trade mark has been used. Such a bare assertion would provide no evidence as to the actual use made by the proprietor. The evidence must provide a sufficient explanation of how the mark has been used for the tribunal to conclude

that the proprietor has an arguable defence to the application. I respectfully concur with Mr. Geoffrey Hobbs QC, sitting as the appointed person, in *York Trade Mark* [decision 0-191-05 of 1 July 2005] when he said, at paragraph 10 :

"The purpose of rule 31(3) is to allow the Registrar to make an order for revocation if it does not appear from information provided in the manner prescribed by rule 31(2) that the proprietor has a viable defence to the pleaded allegation(s) of non-use."

Conversely, however, the evidence does not have to be so persuasive that, if unanswered, it would necessarily discharge the burden of proof lying upon the proprietor. The scheme which I have summarised clearly contemplates that the proprietor should have an opportunity to supplement its evidence even if the applicant for revocation chooses to file no evidence. The purpose of the evidence under rule 31(3) is to establish that the proprietor has an arguable or viable defence to the attack mounted upon the registration and to provide the applicant for revocation with sufficient information to enable him to investigate the use of the mark upon which the proprietor proposes to rely."

ⁱⁱⁱ *Animal Trade Mark* [2004] FSR 19:

"20 The reason for bringing the public perception in this way is because it is the public which uses and relies upon trade marks. I do not think there is anything technical about this: the consumer is not expected to think in a picky way because the average consumer does not do so. In coming to a fair description the notional average consumer must, I think, be taken to know the purpose of the description. Otherwise they might choose something too narrow or too wide. Thus, for instance, if there has only been use for three-holed razor blades imported from Venezuela (Mr T.A. Blanco White's brilliant and memorable example of a narrow specification) "three-holed razor blades imported from Venezuela" is an accurate description of the goods. But it is not one which an average consumer would pick for trade mark purposes. He would surely say "razor blades" or just "razors". Thus the "fair description" is one which would be given in the context of trade mark protection. So one must assume that the average consumer is told that the mark will get absolute protection ("the umbra") for use of the identical mark for any goods coming within his description and protection depending on confusability for a similar mark or the same mark on similar goods ("the penumbra"). A lot depends on the nature of the goods--are they specialist or of a more general, everyday nature? Has there been use for just one specific item or for a range of goods? Are the goods on the High Street? And so on. The whole exercise consists in the end of forming a value judgment as to the appropriate specification having regard to the use which has been made."

^{iv} *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32:

"29 I have no doubt that Pumfrey J. was correct to reject the approach advocated in the Premier Brands case. His reasoning in paras [22] and [24] of his judgment is correct. Because of s.10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply for a general description of goods and services. As Mr Bloch pointed out, to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take, for instance, a registration for "motor vehicles" only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under s.10(1). That might be understandable having regard to the similarity of goods. However, the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under s.10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when the only use was in relation to motor cars. In my view the court is required in the words of Jacob J. to "dig deeper". But the crucial question is--how deep?

30 Pumfrey J. was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services

should be described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox's Orange Pippins, should the registration be for fruit, apples, eating apples, or Cox's Orange Pippins?

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

^v In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (*OHIM*) Case T- 325/06 the GC stated:

“32 To examine whether an earlier trade mark has been put to genuine use, an overall assessment must be carried out, which takes into account all the relevant factors of the particular case. That assessment entails a degree of interdependence between the factors taken into account. Thus, the fact that commercial volume achieved under the mark was not high may be offset by the fact that use of the mark was extensive or very regular, and vice versa. In addition, the turnover and the volume of sales of the product under the earlier trade mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the trade mark and the characteristics of the products or services on the relevant market. As a result, the Court has stated that use of the earlier mark need not always be quantitatively significant in order to be deemed genuine. Even minimal use can therefore be sufficient to be deemed genuine, provided that it is viewed as warranted in the economic sector concerned in order to maintain or create a share in the market for the goods or services protected by the mark (*VITAFRUIT*, paragraph 27 above, paragraph 42, and *LA MER*, paragraph 26 above, paragraph 57; see, by analogy, *Ansul*, paragraph 24 above, paragraph 39, and the order in Case C-259/02 *La Mer Technology* [2004] ECR I-1159, paragraph 21).”

There is, therefore, no de minimis level of use to establish genuine use (also see inter alia *Sonia Rykiel création et diffusion de modèles v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (*OHIM*) Case T-131/06 and *The Sunrider Corp v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (*OHIM*) Case C-416/04 P). In *Ajax Brandbeveiliging BV v Ansul BV* Case C-40/01 the Court of Justice of the European Union (CJEU) held that it is necessary to establish whether the use “is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of the goods or services at issue, the characteristics of the market and the scale and frequency of use of the mark”. In *Il Ponte Finanziaria SpA v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (*OHIM*) Case C-234/06 P the CJEU stated:

“73 The question whether use is sufficient to maintain or create market share for the goods or services protected by the mark thus depends on several factors and on a case-by-case assessment. The frequency or regularity of the use of the trade mark is one of the factors which may be taken into account (see *Sunrider v OHIM*, paragraph 71; see also, to that effect, *La Mer Technology*, paragraph 22).”

^{vi} See by analogy: *Bovemij Verzekeringen NV v Benelux-Merkenbureau* Case C-108/05.

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

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

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

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

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

^{xii} “The first and basic one is the preponderance of the sense [smysl] of a word over its meaning [znachenie] – a distinction we owe to Frederick Paulhan. The sense of a word, according to him, is the sum of all the psychological events aroused in our consciousness by the word. It is a dynamic, fluid, complex whole, which has several zones of unequal stability. Meaning is only one of the zones of sense, the most stable and precise zone. A word acquires its sense from the context in which it appears; in different contexts it changes its sense. Meaning remains stable throughout the changes of sense. The dictionary meaning of a word is no more than a stone in the edifice of sense, no more than a potentiality that finds diversified realization in speech.” *Thought and Language* by Lev Vygotsky translated by Alex Kozulin, The MIT Press.

^{xiii} *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281.

^{xiv} *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267.

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

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

^{xvi} *Altecnic Ltd's Trade Mark Application* [2002] RPC 34.

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

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

- “(a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

^{xix} See *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-133/05 paragraph 29:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

^{xx} See *Assembled Investments (Proprietary) Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-105/05 and *Waterford Wedgwood plc v Assembled Investments (Proprietary) Ltd and Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case C-398/07 P

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

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

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

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