

O-012-13

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NOS 2517165 AND 2517172

BY

GIANT UK LIMITED

TO REGISTER THE TRADE MARKS:

GIANT

AND



IN CLASSES 35 AND 42

AND

THE CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS 100107 AND 100108

BY

MAJOR LEAGUE BASEBALL PROPERTIES, INC

1) On 29 May 2009 Giant UK Limited (UK) filed two trade mark applications. Application no 2517165 is for the trade mark GIANT, application no 2517172 is for the trade mark:



Both applications were published on 4 December 2009 with the specifications:

advertising; business management; business administration; office functions; provision of business information; retail services connected with the sale of bicycles, cycling clothing and cycling accessories namely, complete bicycles, cycle clothing, bicycle components and parts, bicycle helmets, cycling shoes, body armour and pads for cyclists, eye wear for cyclists, namely glasses and goggles, bicycle pumps, bicycle bags, car racks and accessories for the transportation of bicycles, bicycle and frame protectors, lights for bicycles, mirrors for bicycles, locks, chains and cables for the security of bicycles, mud guards for bicycles, kits and parts for puncture repairs and prevention in bicycle tyres, bicycle saddles and bicycle saddle covers, goods for the cleaning and maintenance of bicycles, bicycle trailers, water bottles and cages for bicycles, bells and horns for bicycles, map holders for bicycles, books, maps, DVDs, digital maps for cyclists, pollution masks for cyclists, cycling computers, GPS systems for bicycles, heart rate monitors for cyclists; retail store services, mail order retail services, Internet retail services all in the field of bicycles, cycling clothing and cycling accessories namely, complete bicycles, cycle clothing, bicycle components and parts, bicycle helmets, cycling shoes, body armour and pads for cyclists, eye wear for cyclists, namely glasses and goggles, bicycle pumps, bicycle bags, car racks and accessories for the transportation of bicycles, bicycle and frame protectors, lights for bicycles, mirrors for bicycles, locks, chains and cables for the security of bicycles, mud guards for bicycles, kits and parts for puncture repairs and prevention in bicycle tyres, bicycle saddles and bicycle saddle covers, goods for the cleaning and maintenance of bicycles, bicycle trailers, water bottles and cages for bicycles, bells and horns for bicycles, map holders for bicycles, books, maps, DVDs, digital maps for cyclists, pollution masks for cyclists, cycling computers, GPS systems for bicycles, heart rate monitors for cyclists, the bringing together for the benefit of others of a variety of goods including the aforesaid products; enabling customers to conveniently view and purchase these goods; retail services connected with the sale of bicycles, cycling clothing or the aforesaid cycling accessories through high street stores; information and advice in relation to retail services relating to the aforesaid goods; business management consultancy namely giving assistance and advice in the establishment of retail stores in the field of the aforesaid goods;

industrial analysis and research services, design services and technical consultancy and advising in the establishment of retail stores all in the field of bicycles, cycling clothing or cycling accessories namely, complete bicycles, cycle clothing, bicycle components and parts, bicycle helmets, cycling shoes, body

armour and pads for cyclists, eye wear for cyclists, namely glasses and goggles, bicycle pumps, bicycle bags, car racks and accessories for the transportation of bicycles, bicycle and frame protectors, lights for bicycles, mirrors for bicycles, locks, chains and cables for the security of bicycles, mud guards for bicycles, kits and parts for puncture repairs and prevention in bicycle tyres, bicycle saddles and bicycle saddle covers, goods for the cleaning and maintenance of bicycles, bicycle trailers, water bottles and cages for bicycles, bells and horns for bicycles, map holders for bicycles, books, maps, DVDs, digital maps for cyclists, pollution masks for cyclists, cycling computers, GPS systems for bicycles, heart rate monitors for cyclists.

The above services are in classes 35 and 42 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

2) Major League Baseball Properties, Inc (Major League) filed notices of opposition to the registration of the applications. It relies upon section 5(2)(b) of the Trade Marks Act 1994 (the Act), which states:

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

The opposition is based upon Community trade mark registration no 4085891 of the trade mark:



The application for registration was filed on 25 October 2004 and the registration procedure was completed on 17 January 2006. The trade mark is registered for:

paper goods and printed matter, namely, trading cards, posters, stickers, decals, temporary tattoos, bumper stickers, score books, scorecards, printed baseball game programs, magazines and books featuring baseball, newsletters, brochures and pamphlets featuring baseball, writing pads, note paper, notebooks, binders, stationery-type portfolios, stationery folders; stationery sets, namely, writing paper, cards, and envelopes; paper activity sets, namely,

booklets containing children's games and activities, coloring pages, stories and craft ideas; flip books, preprinted agenda organizers, memo boards, scrapbooks, autograph books, baseball card albums, book covers, bookmarks, bookends, calendars, greeting cards, postcards, printed bank checkbooks, checkbook covers; credit cards without magnetic coding; collectible stamps, rubber stamps, ink stamps, commemorative stamps; paper pennants, gift wrapping paper, paper gift and party bags, paper party decorations; paper coasters, paper flags, paper napkins, facial tissues, paper tablecloths, mounted and unmounted photographs, photograph albums, lithographs, printed paper signs, printed paper door signs; plastic baseball card holders and collectors cases; bulletin boards, paperweights, letter openers, pens, pencils, pencil top ornaments, crayons, markers, desk stands and holder for pens, pencils and ink, non-electric erasers, pencil sharpeners, pencil cases, ungraduated rulers, ticket holders and lanyards for paper ticket holders; art pictures, art prints and picture frames;

clothing, namely, caps, hats, visors, knitted headwear, headbands, bandannas, shirts, T-shirts, tank tops, blouses, sweaters, turtlenecks, pullovers, vests, shorts, pants, slacks, dresses, skirts, overalls, bodysuits, baseball uniforms, jerseys, warm-up suits, jogging suits, sweatshirts, sweatpants, underwear, boxer shorts, robes, sleepwear, thermal loungewear, nightshirts, nightgowns, swimwear, clothing wraps, coats, jackets, ponchos, raincoats, cloth bibs, infant wear, infant diaper covers, cloth diaper sets with undershirt and diaper cover, jumpers, rompers, coveralls, creepers, baby booties, toddler anklets, ties, suspenders, belts, money belts, mittens, gloves, wristbands, earmuffs, scarves, handkerchiefs, footwear, socks, hosiery, slippers, aprons, sliding girdles and Halloween and masquerade costumes;

toys and sporting goods, namely stuffed toys, plush toys, bean bag toys, foam toys, puppets, balloons, marbles, dice, checker sets, chess sets, board games, card games, playing cards, dart boards and dart board accessories, namely, darts, dart shafts and dart flights, toy cars and trucks, toy mobiles, jigsaw and manipulative puzzles, yo-yo's, toy banks, toy figures, toy vehicles, toy airplanes, dolls and doll accessories, bobbing head dolls, inflatable baseball bats, decorative wind socks, flying discs, miniature baseball bats, mini batting helmet replicas, toy necklaces, miniature toy baseballs, coin-operated pinball machines, baseballs, holders for baseballs, autographed baseballs, basketballs, footballs, softballs, playground balls, rubber action balls, golf balls, golf club head covers, golf club bags, golf putters, billiard accessories, namely, cues, billiard balls and cue cases, bowling balls, bowling bags, baseball bases, pitcher's plates, baseball bats, catcher's masks, grip tape for baseball bats, baseball batting tees, pine tar bags for baseball, rosin bags for baseball, baseball glove oil, batting gloves, baseball gloves, baseball mitts, umpire's protective equipment, chest protectors for sports, athletic supporters, baseball pitching machines, basketball backboards, basketball hoops, inflatable toys, swim floats for recreational use, party favors in the nature of noise makers, costume masks, and Christmas tree ornaments, excluding confectionery and illumination articles.

The above goods are in classes 16, 25 and 28 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

3) Major League claims that the respective trade marks are visually, aurally and conceptually very similar. It claims that the respective goods and services are similar. Consequently, there is a likelihood of confusion.

4) UK filed counterstatements. It claims that the plural form used by Major League is a significant feature and refers to a baseball team. UK claims that it is inconceivable that Major League's trade mark would be used in a singular form given that the baseball team has used the name for over a century or that it would use its trade marks in the plural form and that, therefore, in the perception of a consumer when hearing the trade marks there would be a natural distinction. UK denies that there is a high degree of aural similarity. UK claims that the presence of the "baseball image" in the trade mark of Major League gives the impression that the trade mark relates to the sport of baseball. UK claims that no aspects of its trade marks give the same impression, preventing there being a high degree of conceptual similarity. UK claims that the presence of the device of baseball in the trade mark of Major League prevents there being a high degree of visual similarity between the respective trade marks. It claims that this difference is increased by the device element in 2517172.

5) UK claims that the respective goods and services are wholly different as demonstrated by the different classes in which they are placed but that each specification also includes references to either baseball, for Major League, or to bicycles for UK. It claims that "[t]his lack of overlap between the goods of each mark, couple with the express reference to each proprietor's field of activity, prevents there from being any confusion, including any likelihood of association, in respect of goods."

6) UK claims that Major League has failed to substantiate that there is any risk of confusion or association. UK claims that this is reinforced by the reputation that it enjoys within the United Kingdom. It claims that there are 460 outlets stocking goods bearing its trade marks and that turnover for 2008, 2009 and 2010 was £23 million, £25 million and £29 million respectively. UK claims that as both parties own well established brands that there is no risk of confusion and that confusion has not arisen in the past.

7) UK claims that the dissimilarity of goods can further be seen by reference to trade mark no 2192784, which is for the same trade mark as 2517172, which is owned by the Taiwanese parent of UK. The trade mark was registered in 1997 for *bicycles, electric bicycles; parts and fittings for all the aforesaid goods*. UK claims that since the registration of the trade mark no confusion has arisen between the trade mark of UK and that of Major League. UK feels that the

association of its brand with bicycles and bicycle retail serves to distance the respective trade marks.

8) Witness statements for both parties were filed. The witness statements include submissions and critiques of the evidence/submissions of the other. The summary of the evidence will only deal with evidence of fact. UK also filed written submissions. All of the submissions of the parties are taken into account, including those within witness statements. Neither party requested a hearing.

9) Keith F Gymer made two witness statements on behalf of Major League. Mr Gymer is a trade mark agent representing Major League.

First witness statement of Mr Gymer of 18 November 2011

10) Mr Gymer's witness statement contains no evidence of fact. It consists of submissions and exhibits three decisions. The reasoning of the decisions has been considered, however, this case must turn upon its own facts.

Witness statement of Aaron Bargewell of 16 May 2012

11) Mr Bargewell is head of finance and operations of Giant. The parts of his evidence which are submission will be taken into account in coming to a decision. Mr Bargewell has also referred to various decisions. The reasoning of these decisions has been considered, however, this case must turn upon its own facts.

12) Mr Bargewell states that the three main routes for the sales of bicycles, bicycle parts and bicycle related clothing and accessories in the United Kingdom are mass market retailers (such as Halfords, Decathlon, Argos and Evans Cycles), independent retailers and online sales. Mr Bargewell states that UK has sold bicycles under the GIANT brand since 1987. He refers to the description of GIANT given on the online sports shop wiggles.co.uk:

"Giant manufactures of high quality mountain bike, road bike and pavement bicycles. Across seven continents and fifty-odd countries, underneath thirty-two of the world's brightest professional cyclists, in over ten thousand retail outlets, and throughout the streets of the world's most populous nations, you'll find bicycles designed and built by Giant, 'The Global Bicycle Company'. For nearly three decades, Giant Bikes has devoted itself to the growth of both cycling and cycling culture. Giant Bikes has actively participated in the development of cycling, from that of simple transportation to its current popularity as a recreational and sport activity. Giant Bikes believes the bicycle brings quality to life, and it takes personal responsibility for improving the cycling experience. The ability to bring new and healthier lifestyles to customers around the globe makes Giant proud. The Giant name is synonymous with technological innovation and the state-of-the-art throughout the global bicycle industry. It represents a

dedication to providing the best quality and most innovative bicycles to its customers. Behind the Giant Bikes name is a unique Global Giant, Local Touch and Total Best Value approach in designing, manufacturing and selling bicycles, and a commitment to not only recreational and competitive cycling, but also the bicycle industry and the environment. Not satisfied with being the world's most widely known bicycle brand, Giant is in constant pursuit of its vision of becoming 'The Best Bicycle Company in the World'."

13) Mr Bargewell states that, with the exception of wiggles.co.uk, UK does not supply mass market retailers but sells to independent retailers. The goods sold online sales to customers in the United Kingdom are all collected from one the independent retailers supplied by UK. This service was launched in November 2011. UK has been a supplier to the Association of Cycle Traders for many years. It is also a member of the Bicycle Association of Great Britain; the members of which are manufacturers of bicycles, bicycle accessories and components and distributors and wholesalers. Mr Bargewell states that UK sales in the United Kingdom of bicycles, bicycle accessories and components for 2008, 2009 and 2010 were £23 million, £25 million and £29 million respectively. The accounts for 2008, 2009 and 2010 are exhibited (AB13 – AB15). These show that part of these figures are for sales in Europe. The United Kingdom turnover was £21,131,013, £23,258,113 and £25,567,610 for 2008, 2009 and 2010 respectively. 460 independent retailers are authorised dealers of UK. Since 2010 UK has opened 11 stores branded under the GIANT name, which sell GIANT bicycle products. All but one of these stores are run by independent retailers under licence from UK. Material downloaded on 11 May 2012 from giant-stores.co.uk is exhibited at AB17. Exhibited at AB19 is a selection of images of the stores of licensees.

14) Mr Bargewell states that Major League's trade mark is not widely recognised in the United Kingdom. Mr Bargewell states that Major League baseball has not been broadcast free to air in the United Kingdom since 2009. He goes on to give evidence about the availability of Major League merchandise in the United Kingdom in general and in relation to the San Francisco Giants baseball team in particular.

Second witness statement of Mr Gymer of 17 August 2012

15) A large part of Mr Gymer's second witness statement consists of submission and /or a critique of the witness statement of Mr Bargewell; not being evidence of fact these parts of the statement are not summarised here but are borne in mind in reaching a decision. Mr Gymer again refers to a number of decisions in other cases. Again, it is stated that this case must turn upon its particular facts.

16) Mr Gymer exhibits a dictionary definition of giant at KFG4.

17) Mr Gymer exhibits pages from the website of Sports Direct which he states has over 470 stores and offers baseball and cycling goods. Exhibited at KFG8 are pages downloaded from the Sports Direct website on 15 August 2012. These show that equipment and clothing is offered for a variety of sports and pastimes, including baseball and cycling. Exhibited at KFG9 is a page downloaded from amazon.co.uk on 14 August 2012, on the side menu, under "Sports & Outdoors", a number of sports and pastimes appear, including baseball and cycling.

18) Mr Gymer, in relation to Mr Bargewell's comments upon the use of Major League's trade mark, states that Major League's trade mark is not subject to proof of use nor has it sought to pursue any claims to enhanced reputation or fame in these proceedings. Mr Gymer then goes on to exhibit material from the BBC website, downloaded on 14 August 2012, relating to San Francisco Giants (KFG11). Exhibited at KFG12 is a list of games broadcast on ESPN in the United Kingdom from 31 March 2011 to 31 August 2012 involving the San Francisco Giants. Exhibited at KFG13 is a page downloaded from Baseball GB giving details of a game between the Giants and the Cardinals on 6 August 2012. Exhibited at KFG14 is a list of licensees for Major League trade marks in Europe and the United Kingdom; the licences do not specifically relate to the trade mark upon which Major League relies in these proceedings. Exhibit KFG15 consists of pages downloaded from the Internet on 15 August 2012 showing items of clothing bearing the word GIANTS, with prices in pounds sterling. Exhibited at KFG16 are pages downloaded from the Internet on 15 August 2012, which show, inter alia, cycling shorts bearing the trade mark upon which Major League relies. The prices are in pounds sterling. On page 4 of the exhibit, amongst the cycling shorts bearing the trade mark of Major League, are cycling gloves bearing the word and device trade mark of UK.

Decision

19) Mr Bargewell submits that the word GIANTS when used on the goods within the classes of the registration of Major League will be perceived by reasonably circumspect customers as a reference to a sports team. He submits that when used alone GIANTS will be perceived as referring to one of the following: New York Giants American football team, San Francisco Giants baseball team, Huddersfield Giants rugby league team or the Belfast Giants ice hockey team. This is pure conjecture, no evidence is submitted in support of this submission. There is no evidence that the average consumer for goods of the earlier registration will even know of these sporting teams. The trade mark of Major League does include a device of what may be seen as a ball and so this element may give rise to an association with sport. However, this does not mean that the word element will also have the same association. Mr Bargewell submits that the team to which GIANTS will be seen to refer will depend upon the geographical location and the different sports that they represent. He then, in apparent contradiction, goes on to submit that:

“In the absence of this clarification, a reference to “Giants” would not immediately be associated with any one of these teams as none of them have established a sufficiently distinctive connection with the generic term “Giants” to be immediately associated by the reasonably circumspect consumer with any of these teams.”

20) Mr Bargewell submits that the image of a baseball represents the sport of the same name. This is predicated on the basis that the average consumer for the goods and services will see it as a baseball. It may be seen as a ball but, outside goods which relate to baseball, there is no reason that it will be seen as a baseball.

21) Mr Bargewell submits that the trade mark of Major League will only ever be used in the plural. The trade mark has to be considered as it is represented with an s. Visually it will be seen as a plural. Aurally the s could represent a plural or a possessive form of giant.

22) Mr Bargewell submits that when used in the context of sporting teams, Major League’s trade mark will be used in conjunction with San Francisco. The trade mark of Major League has to be considered as it is registered, not in some other form. The registration does not include the words San Francisco.

23) Mr Bargewell submits that UK’s trade mark would not be referred to in the plural. He considers that the singular/plural distinction is of importance. If used in the possessive an s sound would be added. The public are used to plurals and possessives. People commonly use trade marks in the plural or the possessive form. Mr Bargewell brings in a large amount of extraneous matter in relation to the concept of the trade mark of Major League. He refers to Google searches in relation to GIANT bicycles and GIANTS. He makes submissions with no evidential base, although making them as if they were born of evidence.

24) The trade marks have to be considered upon the basis of notional, fair and normal use; in terms of both specification and the trade marks. The arguments of UK are predicated on its current use and its perception of the use, or non-use, of Major League. The current marketing undertaken by the parties is not relevant to the issues to be determined. In *Oakley, Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-116/06* the General Court (GC) stated:

“76 Consideration of the objective circumstances in which the goods and services covered by the marks in dispute are marketed is fully justified. The examination of the likelihood of confusion which the OHIM authorities are called on to carry out is prospective. Since the particular circumstances in which the goods covered by the marks are marketed may vary in time, and depending on the wishes of the proprietors of the

trade marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, that is, 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, whether carried out or not – and which are naturally subjective – of the trade mark proprietors (*QUANTUM*, paragraph 75 above, paragraph 104, and *T.I.M.E. ART/Devinlec v OHIM*, paragraph 75 above, paragraph 59).”

25) UK refers to an absence of evidence of confusion. There is a tranche of case law to the effect that lack of confusion in the market place is indicative of very little: *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283, *Rousselon Freres et Cie v Horwood Homewares Limited* [2008] EWHC 881 (Ch), *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 and *Aceites del Sur-Coosur SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case C-498/07 P*. In *The European Limited v The Economist Newspaper Ltd* Millet LJ stated:

“Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff’s registered trade mark.”

In *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 Laddie J stated:

“22. It is frequently said by trade mark lawyers that when the proprietor’s mark and the defendant’s sign have been used in the market place but no confusion has been caused, then there cannot exist a likelihood of confusion under Article 9.1(b) or the equivalent provision in the Trade Marks Act 1994 (“the 1994 Act”), that is to say s. 10(2). So, no confusion in the market place means no infringement of the registered trade mark. This is, however, no more than a rule of thumb. It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer’s use may be very limited also. In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.”

UK is at pains to distinguish between its pattern of trade and that of Major League and how in use Major League's trade mark is associated with a baseball team. There is nothing to suggest that Major League has used the trade mark on the full panoply of goods of its registration. These factors give rise to the conclusion that an absence of evidence of confusion in the marketplace is not significant. Again it is necessary to return to the fact that the trade marks and their specifications must be compared as they are, not as they may or may not have used.

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

26) The average consumer "is deemed to be reasonably well informed and reasonably circumspect and observant"ⁱ. The class 42 services are all designed for professionals, specialists or businesses; the long list of items all limit *design services and technical consultancy and advising in the establishment of retail stores. Business management, business administration, office functions, provision of business information and business management consultancy* in class 35 are all business to business services. Owing to the nature of the services referred to above and the users of these services, the purchasing decision is likely to be careful and educated; consequently, lessening the potential effects of imperfect recollection. *Advertising* covers a wide spectrum of activities; from the work of major advertising agencies to the selling space in a local newspaper or magazine to advertise, for instance, a jumble sale or an amateur dramatic performance. Taking into account the full gamut of potential services, the purchasers of advertising services will include the public at large as well as businesses. The user of the services, when even a member of the public at large, will make enquiries as to price and the advertising copy will be approved, if for the print or some other media. These factors lessen the potential effects of imperfect recollection. In relation to the retailing services in class 35 the average consumer is more likely to be interested in the product than the retailer, who is a conduit. So if purchasing expensive products the consumer will be more interested in the supplier of the product rather than the retailer of the product. Many retailers are small businesses, possibly with only one shop, which militates against there being careful research in relation to the retailer. Using the retailer, with a physical presence, can be literally just a matter of walking in off the street; so exacerbating the potential effects of imperfect recollection. The potential customer may also only be made aware of the trade mark of the retailer from the signage outside a shop; which gives a potentially fleeting perception of the trade mark. The nature of the retail services increases the possible effects of imperfect recollection.

27) All of the goods of the earlier registration will be purchased by the public at large. The class 16 and 25 goods could all be bought on impulse or with little consideration; although the class 25 goods encompass clothing that may be very

expensive, it also encompasses clothing that could be very cheap. The majority of the class 28 goods will also be bought by the public at large and a large part of them could be of low cost and purchased casually or on impulse; so potentially increasing the possible effects of imperfect recollection. However, there are a few exceptions to this. *Golf putters* will not be bought without some care as to the quality and nature of the product. *Umpire's protective equipment, chest protectors for sports, athletic supporters* are all products for the protection of the body. They will be purchased with regard to their protective capabilities and care will be taken in relation to this. *Pitching machines* are likely to be purchased by those running baseball teams rather than the public at large. They will be items that are expensive and purchased with a good deal of care and as the result of a researched and educated decision. The nature of the goods in class 28 rehearsed above is such that the effects of imperfect recollection are likely to be lessened.

28) The goods of the earlier registration and the services of the applications are likely to be mainly purchased through the Internet, retail outlets, catalogues or reading prospecti and publicity material. Visual similarity will, therefore, be of greater importance than aural similarityⁱⁱ.

Comparison of goods and services

29) Mr Bargewell submits that the registration of Major League is “broadly speaking” registered for the merchandising for an American baseball team. That may be the case, however, the comparison of the goods and services must be made upon the basis of what is covered by the specifications; they cannot be considered through the prism of the perceived intentions as to use of the terms in the specifications. Mr Bargewell submits that the services of the applications have been limited specifically to the retailing of bicycles, bicycle parts and bicycle accessories and that none of the goods of the earlier registration would be sold by a bicycle retail outlet. Neither submission can be accepted. The class 35 services of the applications include advertising, business management, business administration, office functions and provision of business information at large. The class 42 specifications of the applications include industrial analysis and research services at large. The class 25 specification of the earlier registration includes, inter alia, caps, hats, visors, headbands, shirts, vests, shorts, underwear, jackets, ponchos, gloves, belts, footwear and socks without qualification. All of these terms encompass goods that could be specifically designed for cycling.

30) 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 tradeⁱⁱⁱ”. Words should be given their natural meaning within the context in which they are used, they cannot be given an unnaturally narrow meaning^{iv}. Consideration should be given as to how the average consumer would view the goods^v. The class of the goods in which they are placed may be relevant in

determining the nature of the goods^{vi}. However, the classification system is for administrative purposes; because goods and services are in different classes does not mean that they are not similar. In assessing the similarity of goods 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^{vii}. In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, Jacob J also gave guidance as to how similarity should be assessed^{viii}.

31) In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T- 325/06 the General Court (GC) explained when goods are 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).”

32) In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* Case C-39/97 the CJEU stated:

“22. It is, however, important to stress that, for the purposes of applying Article 4(1)(b), even where a mark is identical to another with a highly distinctive character, it is still necessary to adduce evidence of similarity between the goods or services covered. In contrast to Article 4(4)(a), which expressly refers to the situation in which the goods or services are not similar, Article 4(1)(b) provides that the likelihood of confusion presupposes that the goods or services covered are identical or similar.”

The court required evidence of similarity to be adduced. This finding has been reiterated by the CJEU and the GC; eg in *Commercy AG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-316/07:

“43 Consequently, for the purposes of applying Article 8(1)(b) of Regulation No 40/94, it is still necessary, even where the two marks are identical, to adduce evidence of similarity between the goods or services covered by them (see, to that effect, order of 9 March 2007 in Case C-196/06 P *Alecansan v OHIM*, not published in the ECR, paragraph 24; and Case T-150/04 *Mülhens v OHIM – Minoronzoni(TOSCA BLU)* [2007] ECR II-2353, paragraph 27).”

The above part of the *Canon* judgment has been more recognised in the breach than in the observance in this jurisdiction. It may not always be practical to adduce evidence of similarity; it may be that the nature of the goods and/or services is so well-known that it would be a waste of effort and resources to do so.

33) Major League's submissions in relation to the similarity of the goods and services rest on the retail services of UK (Gymer 2 paragraph 12 et seq). In those submissions it also refers to the class 42 services of the application. The class 42 services are not retail services; although certain of the services are used in relation to the establishment of retail stores. Certain of the services are not even related to retail services eg industrial analysis. Within the parameters of the case law there are no meaningful conjunctions between the class 42 services of the application or *advertising; business management; business administration; office functions; provision of business information; business management consultancy namely giving assistance and advice in the establishment of retail stores in the field of the aforesaid goods* in the class 35 services and the goods of the earlier registration. Indeed it is difficult to see any conjunctions in the terms of the case law. Major League has neither put forward submission nor evidence to establish any conjunctions between the services herein identified and the goods of the earlier registration. **The class 42 services and the class 35 services identified above are not similar to the goods of the earlier registration. Likelihood of confusion requires similarity or identity of goods/services; consequently, in relation to the services herein identified there is not a likelihood of confusion.**

34) The remaining class 35 services are all retail services. Most of the goods to which the retail services relate are goods for cyclists. However, the specification includes: *the bringing together for the benefit of others of a variety of goods including the aforesaid products; enabling customers to conveniently view and purchase these goods*. This description of the services refers to *including* and so the description includes all retail services not just the retail of the specific goods listed^{ix}.

35) In *Oakley, Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-116/06 the GC considered the similarity between retail services and the goods that are sold by the retailer:

"42 According to settled case-law, in assessing the similarity between goods or services, all the relevant factors which characterise the relationship which may exist between them should be taken into account. Those factors include their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary (*Canon*, paragraph 23; Case C-416/04 P *Sunrider v OHIM* [2006] ECR I-4237, paragraph 85; Case T-99/01 *Mystery Drinks v OHIM* –

Karlsberg Brauerei (MYSTERY) [2003] ECR II-43, paragraph 39, and case-law cited; and Case T-31/04 *Eurodrive Services and Distribution v OHIM – Gómez Frías (euroMASTER)*, not published in the ECR, paragraph 31).

43 With regard, in particular, to the registration of a trade mark covering retail services, the Court held, in paragraph 34 of the judgment in *Praktiker Bau- und Heimwerkermärkte*, that the objective of retail trade is the sale of goods to consumers, which includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction, and that that activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor. The Court stated, in paragraph 35 of that judgment, that no overriding reason based on First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) or on general principles of Community law precludes those services from being covered by the concept of „services’ within the meaning of the directive or, therefore, the trader from having the right to obtain, through the registration of his trade mark, protection of that mark as an indication of the origin of the services provided by him.

44 The Court stated furthermore in *Praktiker Bau- und Heimwerkermärkte*, paragraph 17 above (paragraphs 49 and 50), that, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. However, the applicant must be required to specify the goods or types of goods to which those services relate.

45 In the first place, with regard to the assessment of the similarity of services consisting of „retail and wholesale of clothing, headwear, footwear, athletic bags, backpacks and knapsacks and wallets’ covered by the contested Community trade mark, on the one hand, and goods covered by the earlier trade mark, that is „clothing, headwear, footwear, rucksacks, all-purpose sports bags, travelling bags, wallets’, on the other, the Board of Appeal found, in paragraphs 18 to 23 of the contested decision, that there was a strong similarity between those services and goods on account of their nature, their purpose, their method of use, their distribution channels and their complementary nature.

46 With regard, first, to the nature, purpose and method of use of the services and products in question, it cannot be held that those services and products are similar.

47 Indeed – as also pointed out by the Cancellation Division in paragraphs 21 and 22 of the decision of 18 June 2004 – the nature of the goods and services in question is different, because the former are fungible and the latter are not. Their purpose is also different, since the retail service precedes the purpose served by the product and concerns the activity carried out by the trader for the purpose of encouraging the conclusion of the sales transaction for the product in question. So, for example, an item of clothing is intended in particular to clothe the person who purchases it, whereas a service linked to the sale of clothes is intended, inter alia, to offer assistance to the person interested in the purchase of that clothing. The same applies to their method of use, which for clothes means the fact of wearing them, whereas the use of a service linked to the sale of the clothes consists, inter alia, in obtaining information about the clothes before proceeding to buy them.

48 With regard, second, to the distribution channels of the services and the goods in question, it is correct, as rightly pointed out by the Board of Appeal in paragraph 22 of the contested decision, that retail services can be offered in the same places as those in which the goods in question are sold, as the applicant has also recognised. The Board of Appeal's finding that retail services are rarely offered in places other than those where the goods are retailed and that consumers need not go to different places to obtain the retail service and the product they buy, must therefore be upheld.

49 Contrary to what is claimed by the applicant, the fact that the retail services are provided at the same sales points as the goods is a relevant criterion for the purposes of the examination of the similarity between the services and goods concerned. In that regard, it should be pointed out that the Court has held, in paragraph 23 of *Canon*, paragraph 16 above, that, in assessing the similarity of the goods and services in question, all the relevant factors characterising the relationship between the goods or services should be taken into account. It stated that those factors include their nature, purpose, method of use, and whether they are in competition with each other or are complementary, meaning that it did not in any way regard those factors are the only ones which may be taken into account, their enumeration being merely illustrative. The Court of First Instance therefore concluded from this that other factors relevant to the characterisation of the relationship which may exist between the goods or services in question may also be taken into account, such as the channels of distribution of the goods concerned (*Case T-443/05 El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR II-0000, paragraph 37; see also, to that effect, *Case T-169/03 Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 65, upheld on appeal in *Case C-214/05 P Rossi v OHIM* [2006] ECR

I-7057; and Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 95).

50 Furthermore, contrary to the applicant's assertion, which is moreover unsubstantiated, that, as the majority of the goods are sold in supermarkets, consumers do not attach too much importance to the point of sale when making up their mind whether goods share a common origin, it must be held that, as contended by OHIM, the manufacturers of the goods in question often have their own sales outlets for their goods or resort to distribution agreements which authorise the provider of the retail services to use the same mark as that affixed to the goods sold.

51 It was therefore correct, in paragraph 22 of the contested decision, to take into account, when comparing the goods and the services covered by the trade marks in dispute, the fact that those goods and services are generally sold in the same sales outlets (see, in that regard, *SISSI ROSSI*, paragraph 49 above, paragraph 68, and *PiraÑAM diseño original Juan Bolaños*, paragraph 49 above, paragraph 37).

52 Regarding, third, the complementary nature of the services and goods in question, found to exist by the Board of Appeal in paragraph 23 of the contested decision, it should be pointed out that, according to settled case-law, complementary goods are those which are closely connected in the sense that one is indispensable or important for the use of the other, so that consumers may think that the same undertaking is responsible for both (see, to that effect, *SISSI ROSSI*, paragraph 49 above, paragraph 60; *PAM PLUVIAL*, paragraph 49 above, paragraph 94; and *PiraÑAM diseño original Juan Bolaños*, paragraph 49 above, paragraph 48).

53 In that regard, it must be pointed out that the goods covered by the earlier mark, that is, clothing, headwear, footwear, rucksacks, all-purpose sports bags, travelling bags and wallets, are identical to those to which the applicant's services relate.

54 Clearly, in the present case, the relationship between the retail services and the goods covered by the earlier trade mark is close in the sense that the goods are indispensable to or at the very least, important for the provision of those services, which are specifically provided when those goods are sold. As the Court held in paragraph 34 of *Praktiker Bau- und Heimwerkermärkte*, paragraph 17 above, the objective of retail trade is the sale of goods to consumers, the Court having also pointed out that that trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. Such services, which are provided with the aim of selling certain specific goods, would make no sense without the goods.

55 Furthermore, the relationship between the goods covered by the earlier trade mark and the services provided in connection with retail trade in respect of goods identical to those covered by the earlier trade mark is also characterised by the fact that those services play, from the point of view of the relevant consumer, an important role when he comes to buy the goods offered for sale.

56 It follows that, because the services provided in connection with retail trade, which concern, as in the present case, goods identical to those covered by the earlier mark, are closely connected to those goods, the relationship between those services and those goods is complementary within the meaning of paragraphs 54 and 55 above. Those services cannot therefore be regarded, as the applicant claims, as being auxiliary or ancillary to the goods in question.

57 Thus, notwithstanding the incorrect finding of the Board of Appeal to the effect that the services and goods in question have the same nature, purpose and method of use, it is indisputable that those services and goods display similarities, having regard to the fact that they are complementary and that those services are generally offered in the same places as those where the goods are offered for sale.

58 It therefore follows from all of the foregoing that the goods and services in question resemble each other to a certain degree, with the result that the finding in paragraph 24 of the contested decision that such a similarity exists must be upheld.

As per paragraph 51, similarity does not arise simply where the goods and services are complementary through specific goods being retailed. (In relation to the issue of complementarity, *cycling clothing* and *cycling shoes* will include or be encompassed by the terms such a *footwear, vests, shorts, underwear, coats, jackets* and *ponchos* of the earlier registration. *Body armour* and *pads for cyclists* will include *chest protectors for sports* and *athletic supporters* of the earlier registration.) The evidence of UK shows that there are a large number of specialist bicycle retailers and that these retailers sell all sorts of products for cyclists (see for instance pages 230, 231, 248, 251, 258, 263 of Bargewell re the goods that are displayed in UK's licensees' premises). Indeed this is the norm for specialist sporting retailers; so that running retailers will sell shoes, clothing, bags, nutriments, body supports, wrist watch computers and the like. As the class 25 goods of the earlier registration will encompass clothing for cycling and cyclists these goods could be sold in the same retail environments for which UK seeks registration. The end users of the retail services and certain of the class 25 goods of the earlier registration could also be the same ie cyclists. Consequently, the retail service are similar to the class 25 goods of the earlier registration. In relation to the retail services for which there is complementarity there is a high degree of similarity. (The unqualified retail services must also fall

into this category. In relation to the other retail services there is a limited degree of similarity owing to the potentially common retail environment.)

Comparison of trade marks

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

37) The first trade mark of UK to be considered is:



The trade mark of Major League is:



The word component stands out in each trade mark. The word components are neither descriptive nor allusive of the goods generally. The device element of UK's trade mark is much smaller than the word element. It is an abstract shape and, as such, will have a limited ability to act as a hook for the memory of the average consumer. The device element of Major League's trade mark is literally in the background, it is swamped by the word element. For baseball related goods the device element may be perceived as a baseball, and so lack distinctiveness. Baseball is not a traditional sport of the United Kingdom, it is not seen on free to view television at the moment and generally is not played in schools or in public parks. Consequently, for the non-baseball related goods,

there is no reason that the average consumer would see the device as being a baseball, even if he or she sees it as a ball. The device might just be seen as an abstract device. The word components of both trade marks are overwhelmingly the dominant and distinctive components.

38) Aurally the only difference between the word elements of the trade marks is the letter s. This is a sibilant coming at the end of Major League's trade mark. The respective trade marks are aurally highly similar. Both trade marks relate to the common English word giant (there is no reason that the average consumer for non-baseball related goods would identified Major League's trade mark with a San Francisco baseball team or, in relation to the other goods, any of the other sporting teams to which UK refers). They are conceptually effectively identical; the pluralisation will have little effect upon the perception of the average consumer. The respective device elements are alien. Visually the primary impression upon the average consumer will arise from the word elements, which are not in particularly stylised script. Despite the device elements, the respective trade marks are visually very similar.

39) The respective trade marks are similar to a high degree.

40) Owing to the absence of a device element in 2517165, that trade mark is even more similar to the trade mark of Major League.

Conclusion

41) In considering whether there is a likelihood of confusion various factors have to be taken into account. There is the interdependency principle – a lesser degree of similarity between trade marks may be offset by a greater degree of similarity between goods, and vice versa^{xiv}. In this case the respective trade marks are similar to a high degree, 2517165 to a higher degree than 2517172.

42) 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^{xv}. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public^{xvi}. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the mark to identify the goods for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods from those of other undertakings^{xvii}. The trade mark of Major League is neither descriptive of nor allusive of the goods for the average consumer in the United Kingdom, who will not identify it with a baseball team. As the overwhelmingly dominant and distinctive component of the earlier trade mark is an ordinary English word, it comes with a hook for the memory. The earlier trade mark as a whole enjoys a good deal of inherent distinctive character. (As

Mr Gymer states, there has been no claim to increased distinctive character through use.)

43) Owing to the high degree of similarity between the respective trade marks and the nature of the purchasing processes, there is a likelihood of confusion in relation even to those retail services which have a more limited degree of similarity ie where there is no complementarity. The average consumer, for instance, would believe that cycling shoes, cycling jackets, cycling shorts and cycling socks bearing the trade mark of Major League emanated from the same undertaking that was retailing bicycles or bicycle pumps under the trade marks of UK; especially taking into account imperfect recollection. In relation to likelihood of confusion, the issue relates simply to confusion; it does not matter if the average consumer believes that UK is responsible for goods sold under Major League's trade mark or vice versa.

44) UK refers to a registration by its parent company in the United Kingdom in relation to bicycles, electric bicycles and parts and fittings therefor. As the GC has held in *PepsiCo, Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) T-269/02* and *Portela & Companhia SA c Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) (OHMI) Case T-10/06*, the earlier registration of a trade mark cannot effect the consideration of the validity of an opposition. It is also to be noted that that registration is not in the name of the applicant and is not for the services the subject of the application.

45) The opposition in relation to the class 42 services is dismissed, owing to the lack of similarity between the respective goods and services. In relation to the class 35 services the applications may proceed for the following services as they are not similar to the goods of the earlier registration:

advertising; business management; business administration; office functions; provision of business information; business management consultancy namely giving assistance and advice in the establishment of retail stores in the field of bicycles, cycling clothing and cycling accessories namely, complete bicycles, cycle clothing, bicycle components and parts, bicycle helmets, cycling shoes, body armour and pads for cyclists, eye wear for cyclists, namely glasses and goggles, bicycle pumps, bicycle bags, car racks and accessories for the transportation of bicycles, bicycle and frame protectors, lights for bicycles, mirrors for bicycles, locks, chains and cables for the security of bicycles, mud guards for bicycles, kits and parts for puncture repairs and prevention in bicycle tyres, bicycle saddles and bicycle saddle covers, goods for the cleaning and maintenance of bicycles, bicycle trailers, water bottles and cages for bicycles, bells and horns for bicycles, map holders for bicycles, books,

maps, DVDs, digital maps for cyclists, pollution masks for cyclists, cycling computers, GPS systems for bicycles, heart rate monitors for cyclists.

Costs

46) Each party has had a measure of success, so each party will bear its own costs.

Dated this 10th day of January 2013

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

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

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

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

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

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

^v *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”

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

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

^{viii} 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.”

^{ix} It is noted that this part of the specification is outwith the judgment of the Court of Justice of the European Union (CJEU) in *Praktiker Bau- und Heimwerkermärkte AG v Deutsches Patent- und Markenamt* Case C-418/02:

“1. The concept of ‘services’ referred to by First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, in particular in Article 2, covers services provided in connection with retail trade in goods.

2. For the purposes of registration of a trade mark for such services, it is not necessary to specify in detail the service(s) in question. However, details must be provided with regard to the goods or types of goods to which those services relate.”

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

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

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

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

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

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

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

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