

O-384-16

TRADE MARKS ACT 1994

**TRADE MARK APPLICATION NO. 2465468
FOR THE TRADE MARK**

IDEAL HOME SHOW

**IN CLASSES 9, 16, 35, 38, 41 AND 42
BY MEDIA 10 LIMITED**

AND

**THE OPPOSITION THERETO
UNDER NO. 97427
BY TIME INC. (UK) LTD**

Background and pleadings

1. On 29 August 2007, an application was made by DMG World Media Limited to register the mark IDEAL HOME SHOW for goods and services in classes 9, 16, 35, 38, 41 and 42. IPC Media Limited subsequently opposed the application, objecting to registration for all the goods and services. The names of the applicant and the opponent have changed during the course of the proceedings. The applicant is now called Media 10 Limited and the opponent is called Time Inc. (UK) Ltd. I will refer to the applicant as “Show” and to the opponent as “Magazine”.

2. Since the proceedings began in June 2008, the proceedings have been suspended pending the outcome of litigation in the courts. The scope of the opposition has also been greatly narrowed. By the time I heard the matter on 22 June 2016, Magazine only maintained its opposition against *posters, brochures, calendars* and *diaries*, in class 16. Magazine withdrew a large part of its opposition following the result of litigation between the parties in the Intellectual Property Enterprise Court (“IPEC”) and the Court of Appeal. The judgements of both courts are highly relevant to the findings I will make in these proceedings and I refer to them in more detail below.

3. Although Magazine has restricted its opposition to the goods identified above, it maintains all the grounds originally pleaded; that is, sections 3(1)(b) and (c), 3(3)(b), 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). In summary, the claims made are:

(i) Under section 3(1)(b) – that the mark lacks sufficient distinctiveness and had not acquired distinctive character before the date of application. The mark extends beyond the scope of Show’s existing rights.

(ii) Under section 3(1)(c) – that the mark is descriptive in relation to the goods and had not acquired sufficient distinctive character before the date of application. The mark extends beyond the scope of Show’s existing rights.

(iii) Under section 3(3)(b) - that the mark will deceive the public as to the nature of the goods, which are not for shows or directly related to shows.

(iv) Under section 5(2)(b) - that there will be a likelihood of confusion with nine of Magazine's earlier trade marks which all contain or comprise the words IDEAL HOME, for various goods and services, including goods in class 16.

(v) Under section 5(3) – on the basis of Magazine's single earlier right 1260437 for the mark IDEAL HOME, registered for *printed publications and periodicals*, that the public will believe there is an economic link with the owner of the earlier right. Further, if should this not be the case, Show will ride on the coat tails of Magazine's reputation and thereby gain an unfair advantage and/or erode the distinctiveness of the earlier mark. Magazine also claims that if Show's goods are inferior, this will damage the reputation it has in its earlier mark.

(vi) Under section 5(4)(a) – that Magazine has goodwill in the sign IDEAL HOME, used in the UK since 1920, in respect of *printed publications, magazines, stationery, provision of information; provision of product information; advertising materials and services; provision of goods by mail order; merchandise; information services including information provided online from a computer database or from the internet*. Use of the mark covered by the application will cause misrepresentation and damage to Magazine through diversion of sales, tarnishment or erosion of distinctiveness. Magazine claims that use of the mark is liable to be prevented under the law of passing off.

4. Show filed a counterstatement, denying the claims made by Magazine. Two of the earlier rights had been registered for five years or more on the date on which Show's application was published (28 March 2008). Show requests proof of use under section 6A of the Act only for one of these, 2218623 IDEAL HOME in classes 9, 38 and 41, but not for the other earlier right, 1280437 IDEAL HOME in class 16, registered for *printed publications and periodicals*. However, it does require

Magazine to prove that the distinctive character of 1280437 has been enhanced through use.

5. Show claims:

(i) Show has use the trade mark IDEAL HOME SHOW for many years in relation to shows, exhibitions and related goods and services;

(ii) Show's mark is well known to the public;

(iii) The parties' trade marks have peacefully co-existed for many years without confusion.

6. Both parties have been professionally represented throughout the proceedings. Mr Martin Krause, of Haseltine Lake LLP, appeared for Show at the hearing held on 22 June 2016, in Newport. Magazine chose not to attend the hearing and did not file written submissions in lieu of attendance.

The IPEC and Court of Appeal judgments

7. The infringement proceedings in IPEC¹ were brought by Magazine against Show. Magazine owned the mark IDEAL HOME, applied for in 2006 and registered in 2010², for *the bringing together for the benefit of others, of a variety of house wares, domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings, lighting apparatus, enabling customers to conveniently view and purchase those goods from catalogues by mail order or by means of telecommunications including via the Internet and television shopping*, in class 35. Magazine's complaint was that Show's use of IDEAL HOME SHOW in relation to an online shop selling home interest goods infringed Magazine's trade mark. Show counterclaimed that Magazine's trade mark registration was invalid.

¹ *IPC Media Limited v Media 10 Limited* [2013] EWHC 3796 (IPEC).

² Earlier mark 2435081A.

8. The deputy judge, Mr John Baldwin QC, found that both the infringement and invalidity claims failed. I set out below the passages which are key to the issues to be decided in the current proceedings:

“3. [Magazine’s Ideal Home magazine] has been characterised as the first ever mass-market home interest magazine and it has been the market leader for many years. It currently has an average monthly circulation of about 200,000 copies with a readership some 5 times that number. It is supported by an annual promotional spend of about £1 million and currently generates nearly three times that amount in advertising revenue.

...

7. ...I am satisfied on the evidence (indeed, it was not seriously challenged) that, in the context of magazines, the words Ideal Home signify to a substantial number of the relevant public the magazine published by and connected with IPC Media. I am also satisfied that this meaning in this context would be appreciated by the average consumer for the purposes of trade mark law.

8. ... The Ideal Home Exhibition turned into a Show sometime in the 1990s, apparently to reflect a more modern image, and it has become widely known as the Ideal Home Show or, simply and when it was clear from the context that the reference was to an Exhibition or Show, the Ideal Home.

9. Although similar in some respects to other trade or wholesale fairs, from the outset, that is to say, from 1908, one of the main purposes of the Exhibition was the retail sale to the general public of novel and popular home interest commodities. There can be little doubt that the project has been very successful; in 2013 the Spring Show at Earls Court attracted some 265,000 visitors during its 18 day run and their spend during that short period totalled the impressive figure of some £239 million.

...

11. ... I am satisfied on the evidence (indeed, it was not seriously challenged) that, in the context of Exhibitions or Shows, the words Ideal Home signify to a substantial number of the relevant public the Show operated by and connected with Media 10. I am also satisfied that this meaning in this context would be appreciated by the average consumer for the purposes of trade mark law.

12. Thus I have concluded that the words Ideal Home when used as a trade mark in the home interest category may convey a different meaning depending on whether the context is a magazine or an exhibition/show. A real possibility, however, is that a consumer, whilst recognising the different meanings in the different contexts, does not actually perceive them to be different in a material way, i.e. believes that the Ideal Home magazine and the Ideal Home Show are connected to each other in some way. Such is likely to depend on how the respective entities have been marketed over the years.

...

16. Given the very long and widespread usage of Ideal Home as (i) the name of a best selling magazine showcasing home interest products and where to buy them and (ii) the name of a hugely popular show showcasing home interest products with opportunities to buy them, it would, to my mind, not be surprising if many consumers did think the two businesses were connected. In this context it is relevant to take into account the extent to which the parties have attempted to make it clear to consumers that their respective businesses are not connected in a material way.

...

21. There was some suggestion in the cross examination of the witnesses that one side or the other was at fault for what I find is a widespread belief

amongst consumers that the businesses of the Magazine and the Show are connected with each other. I do not think that either party is at fault. It seems to me that for some time the parties have chosen to conduct their businesses without taking any steps or any effective steps to educate consumers about the true position with regard to the ownership or control of the different businesses.

22. In my judgment the average consumer in the home interest goods market would recognise the name Ideal Home when used in connection with home interest products as a trade mark for either a magazine or a show and would or may well think, if they thought about it at all, that it identified the business of a single entity or, more likely, the businesses of connected entities. In my judgment there are a sufficiently large number of such consumers who would think that there is such a connection that they cannot be ignored.

23. The consequence of this is that there is some confusion between the two businesses by reason of their respective uses of the words Ideal Home. It may well be, however, that since the respective businesses of publishing a consumer home interest magazine and running a consumer home interest show are different, then this confusion was of little consequence - it was more in the nature of an administrative inconvenience than anything else.

...

34. In connection with the absolute grounds for refusal of a registration in section 3 of the Act, I accept that the term Ideal Home is an apt descriptor of a nice place to live. But I am satisfied on the evidence that, by reason of the massive user by both IPC Media in connection with Ideal Home Magazine and Media 10 in connection with the Ideal Home Show (and their respective predecessors in title), the sign Ideal Home, when used in connection with a business in home interest goods, has acquired a secondary meaning. I accept that the businesses in which the sign has been used are much wider in scope than the specification of services for which registration was granted. But the

sign has the status of a household name in connection with home interest goods. Moreover, it would in my view be artificial and wrong to limit the analysis to user in relation only to the services in the specification. Ideal Home, in my judgment, is a sign which has trade mark significance when used as a trade mark in connection with home interest goods and services generally and, accordingly, the attack based on absolute grounds fails.

...

43. I do not intend by this conclusion to suggest there would be no passing off if, for example, IPC Media were to launch a home interest show under the name Ideal Home, or if Media 10 were to launch a consumer magazine under the name Ideal Home. Such would depend on the circumstances surrounding that launch. But the sale of home interest goods by either party under the Ideal Home name is, in my judgment, sufficiently in the middle of the spectrum between the respective core businesses for neither party to be able to succeed against the other in a passing off claim.

...

56. In the present case, the names are the same (ignoring the 'show' difference for the moment) and the concurrent use has been in the same general area of business, i.e. home interest goods, but the respective individual uses have been different - one has been in relation to a monthly magazine showcasing and relating to home interest products and the other in relation to an exhibition showcasing and relating to home interest products. Furthermore, and as I have already mentioned, the parties have not marketed their products or services or otherwise conducted themselves in a way which might have educated consumer that the respective businesses were not connected. Indeed, my conclusion is that there has been a tendency to encourage the reverse.

57. To my mind, the key point of similarity between this case and Budweiser is that the name Ideal Home as a trade mark in the field of home interest goods or services has never (or, at least, since about 1920) signified only one business; it has signified either the business of the magazine or that of the show. In circumstances where the context shows the name is a reference to a magazine and not a show (or vice versa), then that context provides a partial answer. It is only a partial answer because it may not tell the consumer that the magazine and the show are the responsibility of unrelated undertakings; in some circumstances it will, but in others it will not.

58. My conclusion from the evidence is that the scenario just outlined was the position in 2006 when IPC Media applied for the trade mark registration in suit. Furthermore, that conclusion is not altered by the fact that the specification of services for which registration is sought is different from that of the core businesses of either party or, in particular, the business of operating a show. In my judgment, the almost total overlap in subject matter of the two businesses (showcasing (in a wide sense) home interest goods to consumers) together with the nature of that subject matter (every day type products) has the consequence that it is not realistic to consider the services within the specification in suit to be so different from those with which the parties are already engaged that the average consumer would be alerted and think that the guarantee of origin provided by the registered mark would be different from that provided by and associated with Ideal Home in the wider field of home interest goods generally.

59. This brings me to Mr Mellor QC's submission to the effect that Media 10's use of Ideal Home Show in connection with its online shopping business does not impair the guarantee of origin provided by IPC Media's Ideal Home trade mark. I accept that submission. The fact of the matter is that by reason of the concurrent use by both parties over many years, the guarantee of origin afforded by the mark and protected by the registration was flawed (or, if flawed is not the appropriate description, was not the same as the guarantee

provided by a trade mark in the normal circumstances of a single user of a mark).

60. My conclusion therefore is that although there may be some confusion caused by use of Ideal Home Show as a trade mark for online retail shopping, that confusion is no more than may be expected by reason of the concurrent trading by the parties in their core businesses using Ideal Home, and is not such as to affect the function of IPC Media's trade mark more adversely than it is already affected by virtue of the long standing uses by these separate businesses.

62. ...Moreover, as soon as the matters spreads out into a reputation in connection with home interest goods and the showcasing thereof, there is a massive overlap between the reputation belonging to IPC Media and that belonging to Media 10. The consequence is that, as I concluded when dealing with the attack on the validity of the registration, Ideal Home as a mark does not "denote the retail services of the proprietor alone", using the language of Mr Abrahams' written submission... .

63. I accept that the consequences of my conclusions open up the possibility of some confusion between the online retail businesses of IPC Media and Media 10. It should be in the interests of both parties for that confusion to be kept to the minimum by appropriate measures such as choice of get up and the like. Furthermore, the conclusions I have reached in this judgment may have little relevance should either party venture into the core business of the other. Although I heard no argument upon the matter, such might give rise to a significant change in the status quo and so might be different in kind from the matters which are the subject of this action."

9. Both Magazine and Show appealed. The Court of Appeal unanimously dismissed the parties' appeals³. Referring to *BudeJovickyý Budvar NP v Anheuser-Busch Inc* [2012] RPC 11, Case C-482/09⁴, Kitchin LJ said:

“46. The Court then explained (at [75]) that it was to be noted that the use by Budvar of the Budweiser mark had not had and was not liable to have an adverse effect on the essential function of the Budweiser mark owned by Anheuser-Busch. It proceeded to point out that the facts of the case were exceptional in five respects:

“77. First, the referring court states that Anheuser-Busch and Budvar have each been marketing their beers in the United Kingdom under the word sign 'Budweiser' or under a trade mark including that sign for almost 30 years prior to the registration of the marks concerned.

78. Second, Anheuser-Busch and Budvar were authorised to register jointly and concurrently their Budweiser trade marks following a judgment delivered by the Court of Appeal (England & Wales) (Civil Division) in February 2000.

79. Third, the order for reference also states that, while Anheuser-Busch submitted an application for registration of the word 'Budweiser' as a trade mark in the United Kingdom earlier than Budvar, both of those companies have from the beginning used their Budweiser trade marks in good faith.

80. Fourth, as was stated in para.10 of this judgment, the referring court found that, although the names are identical, United Kingdom consumers are well aware of the difference between the beers of Budvar and those of Anheuser-Busch, since their tastes, prices and get-ups have always been different.

³ *IPC Media Ltd v Media 10 Ltd* [2014] EWCA Civ 1439

⁴ Court of Justice of the European Union

81. Fifth, it follows from the coexistence of those two trade marks on the United Kingdom market that, even though the trade marks were identical, the beers of Anheuser-Busch and Budvar were clearly identifiable as being produced by different companies.”

47. The Court reiterated (at [82]) that, in circumstances such as these, a long period of honest concurrent use of two identical marks designating identical products neither had nor was liable to have an adverse effect upon the essential function of the mark. It then answered the referred question in these terms:

"84. In the light of the foregoing, the answer to the third question is that Art.4(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark designating identical goods where there has been a long period of honest concurrent use of those two trade marks where, in circumstances such as those in the main proceedings, that use neither has nor is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services."

48. Now it is entirely true to say that the facts of the present case are different from those of *Budweiser*. Moreover, the circumstances of *Budweiser* were clearly exceptional. However, I do not understand the reasoning or guidance of the Court of Justice to be limited to only those cases which share all five characteristics of that case. To the contrary, it seems to me that the Court has made it clear that the fundamental question to be asked and answered in any particular case is whether the impugned use does or does not have an effect upon the functions of the trade mark.

49. Further and importantly in the present context, the Court has not ruled that honest concurrent use cannot avail a trader if the impugned use is liable

to cause some confusion. Indeed, this court was required to consider that very question in deciding the ultimate outcome of that case, for Anheuser-Busch argued that, in the light of the guidance given by the Court, the doctrine could only apply where the level of confusion was *de minimis*. It continued that if there was a level of confusion above that, then the essential function of the trade mark relied upon would be impaired and a case of permissible honest concurrent use would not be made out.

50. This court rejected that submission. Sir Robin Jacob (with whom Ward LJ and Warren J agreed) put it this way ([2013] RPC 12):

"20. I do not accept that. The Court could have said just that but did not. The rather self evident point as to the effect of a long period of honest concurrent use was clearly laid before the Court when I summarised Mr Mellor's submission:

"Mr Mellor suggests that the Court might recognise a further exception in the case of long established honest concurrent use. For in such a case the guarantee of origin of the mark is not impaired by the use of the mark by each party. Once such concurrent use is established the mark does not solely indicate the goods of just one of the users. It means one or the other. Hence there is no impairment of the guarantee and, if impairment is the touchstone of art.4(1), no infraction of it."

21. The Court did not rule that only *de minimis* levels of confusion are acceptable when there is honest concurrent use. Nor did the Court rule that the inevitable confusion in a same mark/same goods case is enough to take a case out of acceptable concurrent use. Yet that is what Mr Bloch's submissions involve.

22. More fundamentally, Mr Bloch's submissions involve the unstated premise that even where there is long established honest concurrent use the mark of one party must provide a guarantee of origin in that

party and not the other. That is quite unrealistic. Here for instance, Budweiser has never denoted AB's beer alone.

23. So I do not think that there is any impairment of the guarantee of origin – of either side's mark. The guarantee is different given a situation of long established honest concurrent use."

51. I respectfully agree that there may well be more than *de minimis* confusion in a case of honest concurrent use. No doubt many consumers will recognise that the marks are used by different businesses, but others will not. In other words, once honest concurrent use is established, the mark does not solely indicate the goods or services of just one of the users. As Sir Robin Jacob explained, in such a case the guarantee given by the mark is different.

52. I turn then to consider the application of these principles in this case and in the light of the findings of fact that the deputy judge has made. The words Ideal Home have been used as or as part of the names of a magazine and a show directed to home interest products since 1920. The deputy judge has found that the reputation and goodwill attaching to each of the businesses is very substantial indeed. It follows that neither can complain about the honest use by the other of the words Ideal Home in relation to their respective core businesses, that is to say, in the case of IPC, publishing a magazine concerned with home interest products, and, in the case of Media 10, operating shows of home interest products at which such products are sold. That is so despite the fact that, as the deputy judge also found, consumers may well think that the two businesses are one and the same or are at least connected.

53. In my judgment the same considerations apply to the provision of home interest retail services online by IPC under the name Ideal Home, and by Media 10 under the name Ideal Home Show. The deputy judge has found that these services are so closely related to the activities the parties have carried on for very many years that the words Ideal Home provide to consumers just the same guarantee that they have always provided, that is to say that the

services are those of the entity responsible for running the show or the magazine or, to many consumers, the entity responsible for both of them. In other words, he has found on the facts that the name Ideal Home, when used in relation to such online retail services, does not denote and has never denoted to average consumers the services of a single entity. Rather, it denotes and has always denoted the services of both IPC and Media 10, that is to say the services of the businesses responsible for publishing Ideal Home magazine and running the Ideal Home show. Sometimes the circumstances of the use may suggest that the services are those of one business rather than the other. But that will not always be so. Further and in any event, many consumers believe the businesses are one and the same or are at least connected.

54. I recognise, as did the deputy judge, that the confusion that occurred whilst the parties limited themselves to running a show and a magazine was more in the nature of an administrative inconvenience. I also accept the finding of the deputy judge that his conclusion opens up the possibility of some confusion between the parties' online retail businesses. But that, it seems to me, is the inevitable consequence of the use by two separate entities of the same or closely similar names in relation to such similar businesses, namely the running of a show of consumer interest products and the publishing of a magazine all about such products. I am satisfied that the provision of online retail services concerning such products was an entirely natural extension of the businesses of each of them. It was not, as Mr Abrahams characterised it, a major departure for Media 10. Indeed, Media 10 referred the deputy judge to mail order marketing carried out by its predecessor in title, the Daily Mail Group, in the early 1990s; to the introduction of a credit card in the mid 1990s; and to the updating of the Ideal Home Show website in 2008 to include an online shop, although it merely enabled the purchase of goods from third parties. Of course Media 10 must not take any steps to increase the level of confusion beyond that which is inevitable and so encroach onto IPC's goodwill. But the deputy judge was

satisfied that it has not done so and in that regard it is notable that it uses for its services the name Ideal Home Show, just as it does in relation to its core business.

...

56. I therefore believe that this is one of those rare cases in which the use of the mark complained is indeed honest and that it has not had and will not have an adverse effect upon the essential function of the registered trade mark, and that is so because the guarantee of origin the mark provides is just the same as it has always been. The deputy judge referred to the trade mark as flawed. I prefer to say (as Sir Robin Jacob did) that the guarantee is different from that which it would have been had the mark only ever been used by a single entity.

57. ... I do not accept that the reasoning of the deputy judge leads directly and inevitably to the conclusion that each party may now start using the name Ideal Home in relation to the core activities of the other. That, it seems to me, would be an expansion of a different nature from that which the parties have undertaken in relation to retail services on the internet, and that is so because it would involve an encroachment into precisely the area of business in relation to which each has generated a goodwill over very many years. As such I believe it would involve the use of the name in a different context and might well result in the actionable deception of a significant number of persons. However, it is not a matter before us and so I prefer to express no final conclusion upon it.

64. ...In 2006 online retail services was an area of business which, as the deputy judge explained, lay in or around the middle of the spectrum between the parties' respective core businesses and, as I have said, I am satisfied it was one into which each party might reasonably wish to expand. Further, neither could complain about the normal and fair use by the other of the mark

Ideal Home in relation to such services. Of course it was possible that one party might use the mark in a context or manner such as to denote a connection with the other and so cause a greater degree of confusion than was the inevitable consequence of their use of the same name for very many years in relation to such closely related businesses. But that would not have been a normal or fair use of the mark.”

Evidence

10. I separated this case from a larger consolidated group at a case management conference on 12 January 2016, because other cases in the group were founded on pending earlier rights which had been suspending pending the outcome of this opposition. Magazine had filed evidence on 24 November 2015, although Show had not, having been set the same date by which to do so. At the case management conference, Mr Krause said that Show had not filed evidence because it wished to rely upon the IPEC and Court of Appeal judgments. He offered to file the Court evidence, but I declined as the date had long gone for Show to file evidence and it had taken the position that it relied upon the Court judgments instead.

11. That said, in reply to the larger consolidated group evidence, for which Magazine had filed a top-up witness statement, Show filed a witness statement from Mr Krause which stated that the top-up evidence was largely a duplicate of the IPEC evidence. In effect, Mr Krause submitted that Show relies upon the IPEC evidence because Magazine’s evidence in these proceedings had already been considered by IPEC (although, strictly, it is Magazine’s top-up evidence, filed for the rest of the consolidated group, which Mr Krause states is largely the same).

12. It being the case that the evidence is essentially the same as that considered by IPEC, I do not propose to give a summary here of the opponent’s evidence. I confirm that I have read it all and that I have also taken into account Magazine’s written submissions filed during the evidence rounds (as a witness statement by Joanna Larkey, Magazine’s trade mark attorney), filed during the evidence rounds. The relevant date in these proceedings is 29 August 2007. Although the date of

application of Magazine's trade mark that was considered in the IPEC proceedings was 10 October 2006, with the trial held in October/November 2013, nothing turns on the difference in dates in view of the highly similar evidence. The deputy judge's findings with regard to Magazine's use of and reputation in IDEAL HOME, and Show's use of and reputation in IDEAL HOME SHOW were:

Magazine

- Ideal Home magazine is the market leader.
- In the context of magazines, IDEAL HOME means the magazine published by Magazine to a substantial number of average consumers.
- Although *prima facie* descriptive, IDEAL HOME has come to mean the magazine, through massive use by Magazine in relation to its business in home interest goods.

Show

- Show's exhibition or show is widely known as the IDEAL HOME SHOW. In the context of shows, it is also known simply as IDEAL HOME. In the context of exhibitions or shows, IDEAL HOME means the show operated by Show to a substantial number of average consumers.
- One of the main purposes of the show is the retail to the general public of novel and popular home interest goods; this has been very successful.
- Although *prima facie* descriptive, IDEAL HOME has come to mean the exhibition/show, through massive use by Show in relation to its business in home interest goods.

Both parties

- The words IDEAL HOME as a trade mark in the home interest category may convey different meanings depending on whether the context of the use is in relation to a magazine or a show.
- The massive use by both parties means that IDEAL HOME, which is *prima facie* descriptive, has acquired a secondary trade mark meaning when used in connection with a business in home interest goods.

- There is a widespread belief amongst consumers that the two are connected in business. There is, therefore, confusion. There is a massive overlap between the parties' reputations in connection with home interest goods. IDEAL HOME as a trade mark in the field of home interest goods has never signified only one business.
- The massive overlap between the parties' reputations in connection with home interest goods means that neither party could succeed against the other in a passing off claim in relation to the sale of home interest goods by either party under IDEAL HOME (but this would not apply if either entered each other's core business of a magazine or a show).

13. Kitchen LJ referred to the natural extension of the parties' reputations in their core businesses as being to online retail services concerning home interest products and that neither could complain of normal and fair use by the other for such services.

Decision

14. Section 3(3)(b) of the Act states:

“3.— (3) A trade mark shall not be registered if it is—

(a) ...

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

15. Magazine's claim is that the mark IDEAL HOME SHOW will deceive the public as to the nature of goods which are not for shows or directly related to shows.

16. In *Elizabeth Florence Emanuel v Continental Shelf 128 Ltd*⁵, the CJEU made it clear that there must exist actual deceit or a sufficiently serious risk that the consumer will be deceived for this ground to bite. The relevant public, which is the general public, is wise enough to understand that for goods which are not for shows

⁵ C-259/04, paragraph 47.

or relate to shows, the mark is not making any direct form of promise. There is not a sufficiently serious risk that the consumer will be deceived. There is no real (as opposed to a purely theoretical) potential for deception of the public. The section 3(3)(b) ground of opposition fails.

17. Sections 3(1)(b) and (c) state:

“3.— (1) The following shall not be registered –

(a)

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d)

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

18. Magazine’s claim under section 3(1)(c) is that the mark is descriptive in relation to the goods applied for and that it had not acquired sufficient distinctive character before the date of application. Further, Magazine claims that the application extends beyond the scope of Show’s existing rights.

19. The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was summarised by

Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch):

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of 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), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration

as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it

may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of

Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

20. I found under section 3(3)(b) that there is not a sufficiently serious risk that the average consumer will be deceived about the nature of posters, brochures, calendars or diaries, which are not for shows, sold under the mark IDEAL HOME SHOW. In relation to such non-show related posters and brochures and in relation to calendars and diaries, there is not enough of a direct connection between the mark as a whole and the goods to cause average consumers (the general public) immediately to perceive the mark as describing a characteristic of the goods. In relation to show-related posters and brochures, these are so closely bound with the provision of the Ideal Home Show, for which Show is so famous, that even if *prima facie* the mark is descriptive, the notoriety of the exhibition/show is so great that consumers will perceive the use of IDEAL HOME SHOW in relation to show-related posters and show-related brochures as denoting Show, rather than a mere description of subject matter⁶. The section 3(1)(c) ground fails.

⁶ *Windsurfing Chiemsee*, Joined cases C-108 & C-109/97.

21. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67).”

22. Magazine’s claim under section 3(1)(b) is that the mark lacks sufficient distinctiveness and that it had not acquired sufficient distinctive character before the date of application. Further, Magazine claims that the application extends beyond the scope of Show’s existing rights. Magazine has not explained why the mark is

devoid of any distinctive character. I cannot see, without any explanation from Magazine, what other reason it has for its section 3(1)(b) ground over and above the section 3(1)(c) ground. Accordingly, the section 3(1)(b) ground fails.

23. Section 5(2)(b) of the Act states:

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

(a)

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

24. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the

chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

25. Magazine relies upon nine earlier rights for section 5(2)(b). I have set these out in the annexe to this decision. Mr Krause submitted that there is one stand-out earlier right which provides Magazine with its best chance of success under section 5(2)(b):

1260437

IDEAL HOME

Class 16: *Printed publications and periodicals.*

Application date: 14 February 1986; date registration procedure completed 8 April 1988.

26. Show has not put Magazine to proof of genuine use for this right (but requires Magazine to prove enhanced distinctive character)⁷.

27. Although, at first sight, this appears to be Magazine's best case because it covers class 16 goods, I also bear in mind two other earlier marks which cover retail services (shown below). If Magazine cannot succeed with these three marks, it will be in no better a position in relation to the other six, which cover goods and services which are less similar to the opposed goods.

(i) 2253401:

IDEAL HOME

⁷ This is also the earlier right upon which the section 5(3) ground is founded.

Class 35: *The bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods by mail order from a magazine.*

Application date: 17 November 2000; date registration procedure completed: 8 October 2004.

(ii) 2435081A
IDEAL HOME

Goods in classes 21, 24 and 27, and also these services in Class 35:

The bringing together for the benefit of others, of a variety of house wares, domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings, lighting apparatus, enabling customers to conveniently view and purchase those goods from catalogues by mail order or by means of telecommunications including via the Internet and television shopping.

Application date: 10 October 2006; date registration procedure completed: 25 June 2010.

Comparison of goods and services

28. The parties' respective goods and services are shown in the table below:

Earlier marks	Application
1260437 <i>Printed publications and periodicals.</i>	<i>Posters; brochures; calendars; diaries</i>
2253401 <i>The bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods by mail order from</i>	

a magazine.

2435081A

The bringing together for the benefit of others, of a variety of house wares, domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings, lighting apparatus, enabling customers to conveniently view and purchase those goods from catalogues by mail order or by means of telecommunications including via the Internet and television shopping.

29. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated, at paragraph 23 of its judgment:

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

30. ‘Complementary’ was defined by the General Court (“GC”) in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-325/06*:

“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...".

31. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited* ("Treat") [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

32. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

"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."

33. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

34. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-33/05, the GC stated that:

“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 trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

35. Show's *brochures* clearly fall within Magazine's term *printed publications*. These goods are identical.

36. Bearing in mind the core meanings of the terms *printed publications and periodicals*, these do not cover Show's other goods. The earlier term is not 'printed matter'. The average consumer would not consider posters, calendars or diaries to be publications simply because they are printed. There is no shared nature, purpose or method of use between *printed publications and periodicals* and *posters*. They are not in competition and are not complementary. Neither do they share obvious channels of trade. They are not similar. *Printed publications, periodicals, calendars and diaries* may be of a similar nature if they consist of bound pages. Whilst both may be found in, for example, a supermarket, or a newsagent/stationer's, this is a high level of generality in terms of trade channels (many disparate goods are sold in such outlets). They are not in competition and are not complementary. Their purposes and methods of use differ entirely: printed publications are read for entertainment or for information, whilst calendars are, to all intents and purposes, blank for the user to complete. The very low level of similarity which may exist owing to nature is overwhelmed by the strong dissimilarities in respect of the other *Canon* criteria. There is no overall similarity.

37. I turn now to a comparison between Show's *posters, calendars and diaries* and Magazine's retail services. Magazine has two registrations in class 35, the oldest dating from 2000 (2253401). This was applied for before the CJEU's judgment in Case C-418/02 (*Praktiker*):

“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 purpose 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 in connection with regard to the goods or types of goods to which those services relate.”

38. In *Chartered Institute of Patent Attorneys v Registrar of Trade Marks*, Case C-307/10, the CJEU held that:

“Directive 2008/95 must be interpreted as meaning that it requires the goods and services for which the protection of the trade mark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection conferred by the trade mark.”

39. In *Advance Magazine Publishers, Inc. v OHIM*, Case T-229/12, the GC held that ‘accessories’ is a vague term. The OHIM Board of Appeal therefore erred in law in comparing it with ‘umbrellas’. It therefore appears that where a term is not sufficiently precise to identify the characteristics of the goods (or services) at issue, that term cannot be the subject of a finding that it covers goods/services which are similar to other goods/services. The specification for 2253401, *the bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods by mail order from a magazine*, which was pre-*Praktiker*, does not enable me to determine with sufficient clarity and precision the extent to which the mark is protected, because it does not identify the goods or type of goods to which the services relate. I cannot, therefore, make a proper comparison between Magazine’s services registered under 2253401 and the opposed goods and will say no more about this earlier mark, as a consequence.

40. The other earlier right in class 35, 2465081A, is registered for *the bringing together for the benefit of others, of a variety of house wares, domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings, lighting apparatus, enabling customers to conveniently view and purchase those goods from catalogues by mail order or by means of telecommunications including via the Internet and television shopping*. Here, the goods or type of goods are identified. However, 'house wares' seems to me to be a vague term, making it difficult to determine with clarity and precision the extent to which the mark is protected, as far as this term is concerned⁸.

41. In *Oakley, Inc v OHIM*, Case T-116/06, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and are therefore similar to a certain degree. In *Major League Baseball Properties, Inc v Giant UK Limited* ("Giant"), BL O/264/14, Ms Anna Carboni, sitting as the Appointed Person, considered *Oakley* in the context of a case involving the comparison of the retailing of bicycles against clothes. She said:

"44. I reject Mr Onslow's suggestion that complementarity can only be found where there is identity of goods with the subject goods of retail services, and only in those circumstances can the relevant goods and retail services be found to be similar. In my view, it must be a question of fact to be assessed in each case, as the Courts have done in countless cases, including the General Court in *Oakley* itself.

...

54. So far as complementarity is concerned, the hearing officer did not find this to exist between clothing and retail services for bicycles and bicycle accessories. So the only feature of similarity that he found was "the potentially common retail environment". Here, I go back to my earlier comments about

⁸ It also does not appear on the TMClass database, which holds a record of classification terms accepted by participating trade mark registries.

the need for care when considering overlaps in distribution channels and sales outlets, due to the possibility of finding all sorts of otherwise quite different products and services being provided in one place. When it is possible to find products and services together, it is worth delving a bit deeper and considering, for example, whether they are usually purchased together or whether one is needed for the use of the other. In this case, as Mr Onslow submitted, the purchase of cycle clothing is not indispensable or important to the purchase of a bicycle; their purchase is optional. While of course clothing is generally necessary to be worn when bicycling, it is not necessary to buy clothes at the same time or through the same outlets as the bicycle, and in any event the same could be said for virtually any other activity. The connection between the two is therefore at a very general level.

55. In my assessment, the fact that cycle clothing covered by the Earlier Mark might be offered through the same outlet as retail services for bicycles and bicycle accessories, whether specialist or more general outlets, cannot be enough to reach an overall finding of similarity in circumstances where the other *Canon* factors point quite strongly in the other direction (in the case of nature, purpose and method of use) or are absent (in the case of competitiveness or complementarity). While the requirement of similarity of goods/services – just like that of similarity of marks – is not a high one, the bar must not be set at an unduly low level.”

42. In *Tony Van Gulck v Wasabi Frog Ltd* (“*Miss Boo*”), BL O/391/14, Mr Geoffrey Hobbs, sitting as the Appointed Person, cautioned that “selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35”. The objective of retail services, as set out in *Oakley*, “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 “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.”

43. I take from these authorities that, in comparing retail services against goods, there may be some similarity based upon complementarity and shared trade channels; the goods do not have to be identical to the subject goods of the retail service; that the level of similarity may be weak depending on the presence or absence of the other Canon factors. Show's goods are posters, brochures, calendars and diaries. These goods are not identical with the retail subjects of domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings or lighting apparatus. There is also no similarity between any of these retail subjects and Show's goods. The only candidate for possible similarity is the retail of a variety of house wares. I have found this to be an indeterminate term. Making the best of it, from the perspective of an average consumer considering the core meaning of house wares, these would not cover any of Show's goods. They would not be similar to posters and brochures. I also do not think there is any similarity between house wares and calendars and diaries, which are items of stationery. If Show's goods and the retail subject goods are not similar, it follows that there is no similarity between retailing of house wares and Show's goods. There is no symbiotic relationship between the subjects of Magazine's retail services and Show's goods, as there may be, for example between retailing of clothing and clothes, where the customer can expect to get advice and assistance in choosing items to buy.

44. This takes Magazine's earlier mark 2435081A out of consideration as where there is no similarity between goods and services, there can be no likelihood of confusion⁹.

45. In summary, the high point of Magazine's case is a comparison with its earlier mark 1260437 IDEAL HOME, for *printed publications and periodicals*. In comparing these goods with Show's, I found that:

- Magazine's *printed publications* are identical to Show's *brochures*
- There is no similarity between Magazine's goods and the remainder of Show's goods: *posters, calendars and diaries*.

⁹ *Waterford Wedgwood plc v OHIM* Case C-398/07.

Average consumer and the purchasing act

46. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

47. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

48. The parties' goods are ordinary, consumer goods, of no great expense, bought by the general public who will pay no more than an average degree of attention to the purchase. Encounters with the marks will be primarily visual.

Comparison of marks

49. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant

components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

50. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

51. IDEAL HOME and IDEAL HOME SHOW are highly similar: visually and aurally. The only difference is the third word in Show’s mark, SHOW. This introduces an element of conceptual difference in that Magazine’s mark signifies an ideal or perfect home, whereas Show’s mark signifies a show about an ideal home. The marks are conceptually similar to a high degree. The dominant element is IDEAL HOME in both marks, because these words give a name to the concept of a show.

Distinctive character of the earlier mark, IDEAL HOME

52. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*¹⁰ the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in *Joined*

¹⁰ Case C-342/97.

Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

53. The findings which I have set out from the IPEC judgment show that IDEAL HOME is factually highly distinctive of Magazine's magazine. In paragraph 34 of that judgment, the deputy judge said of Magazine's mark IDEAL HOME (considered in the context of an attack on the validity of 2435081A, with my emphasis):

"In connection with the absolute grounds for refusal of a registration in section 3 of the Act, I accept that the term Ideal Home is an apt descriptor of a nice place to live. But I am satisfied on the evidence that, by reason of the massive user by both IPC Media in connection with Ideal Home Magazine and Media 10 in connection with the Ideal Home Show (and their respective predecessors in title), the sign Ideal Home, when used in connection with a business in home interest goods, has acquired a secondary meaning. I accept that the businesses in which the sign has been used are much wider in scope than the specification of services for which registration was granted. But the sign has the status of a household name in connection with home interest goods. Moreover, it would in my view be artificial and wrong to limit the analysis to user in relation only to the services in the specification. Ideal Home, in my judgment, is a sign which has trade mark significance when

used as a trade mark in connection with home interest goods and services generally and, accordingly, the attack based on absolute grounds fails.”

54. Kitchen LJ did not refer to home interest goods and services ‘generally’, but to Magazine’s retail of such goods as being a natural extension of its business and that IDEAL HOME would be seen as a trade mark (although not one denoting a single entity) for those services.

55. I consider that the massive user in relation to the magazine will lead to a spill-over in terms of enhanced distinctive character in relation to all of the goods of the earlier mark, so long as they relate to home interest goods and services.

Likelihood of confusion

56. Where there is no similarity between goods or services, there can be no likelihood of confusion (*Canon* and *Waterford Wedgwood*). Consequently, Magazine’s section 5(2)(b) ground fails in relation to *posters, calendars* and *diaries*. However, if I am wrong about that, there is still no likelihood of confusion because show-related posters are a natural part of Show’s business for which it has a reputation. If there is similarity between non-show related posters and calendars and diaries, the level of similarity with printed publications and periodicals is low. They are no more natural extensions of a business trading in magazines than they are a business operating a home interest show. In the context of such goods being offered under the mark IDEAL HOME SHOW, they are more likely to be taken as goods marketed by the organiser of the famous show than the famous IDEAL HOME magazine. Therefore, although they are not home interest goods, they are nevertheless goods in the middle of the spectrum between the applicant’s existing goodwill and the opponent’s existing goodwill. On this basis, the approach taken by the Court of Appeal developing that taken by the CJEU in *Budweiser* holds good. This means that the long standing co-existence of the marks overcomes the likelihood of confusion that might otherwise exist.

57. This leaves *brochures*, which are identical to the earlier goods *printed publications*. IPEC and the Court of Appeal found that both parties were entitled to their respective trade marks in respect of their core businesses (magazines and shows) and for home interest online retail services, by natural extension of trade in their core businesses. Brochures showcasing (in a wide sense, as the deputy judge said in paragraph 58 of his judgement) home interest goods and services are likely to be found as inserts in Magazine’s magazine and as part and parcel of Show’s promotion and operation of its exhibitions/shows. If online retail services of home interest goods is a natural extension of the parties’ core businesses, then I consider home interest goods and services brochures to be an even more natural extension of their core businesses. Consequently, insofar as Show’s brochures relate to home interest goods and services, I would extend the logic of the Courts’ findings. If Show limits *brochures to brochures relating to home interest goods and services*¹¹ (such services covering the show itself as well as home interest services) the marks may co-exist because, per Kitchen LJ:

“...this is one of those rare cases in which the use of the mark complained of is indeed honest and that it has not had and will not have an adverse effect upon the essential function of the registered trade mark, and that is so because the guarantee of origin the mark provides is just the same as it has always been.”

58. However, without a limit to the specification, identical goods would be in play for which there is no overlap of honest and concurrent use in terms of subject matter. Normal priority rules would apply (section 6 of the Act). **Without a specification limit, there is a likelihood of confusion** in relation to brochures at large, bearing in mind the closeness of the marks and the identity of the goods.

59. Section 5(3) of the Act states:

“A trade mark which—

¹¹ This describes a category of brochure, rather than a characteristic, and is therefore compliant with *Koninklijke KPN Nederland NV v Benelux-Merkenbureau*.

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

60. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact on the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a

reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

61. Section 10(3) of the Act (the equivalent of Section 5(3)) was dealt with briefly by the deputy judge in IPEC:

“62. Mr Abrahams also relied upon section 10(3) of the Act and the fact that Ideal Home is a trade mark with a reputation. He submitted that it was established by the evidence that Ideal Home was "known by a significant part of the public concerned by the products or services covered by that trade mark" (cf *General Motors v Yplon* Case C -375/97, [26]), that it was self-evident that the use complained of would give rise to a "link" between the sign and the trade mark in the mind of the average consumer, and that he had established the first type of injury described by the Court of Justice in *L'Oreal v Bellure* Case C -487/07; [2009] ECR I-5185, that is to say 'dilution', 'whittling away' or 'blurring'. He submitted that the use by Media 10 of Ideal Home Show Shop "cannot fail to reduce the ability of [the Ideal Home] mark to denote the retail services of the proprietor alone".

63. The difficulty with the argument is that the reputation in Ideal Home arises primarily from use in connection with the magazine, no separate reputation in connection with the services of the registration having been established. Moreover, as soon as the matters spreads out into a reputation in connection with home interest goods and the showcasing thereof, there is a massive overlap between the reputation belonging to IPC Media and that belonging to Media 10. The consequence is that, as I concluded when dealing with the attack on the validity of the registration, Ideal Home as a mark does not "denote the retail services of the proprietor alone", using the language of Mr Abrahams' written submission. In these circumstances and given the findings that I have made, the case on section 10(3) infringement cannot succeed.”

62. The deputy judge refers here to the 'massive overlap' between the parties' marks in relation to home interest goods and the showcasing of goods. *Calendars*

and *diaries* are no more natural extensions of a business trading in magazines than they are a business operating a home interest show. In the context of such goods being offered under the mark IDEAL HOME SHOW, they are more likely to be linked with the organiser of the famous show than the famous IDEAL HOME magazine. Therefore, there is no relevant link and section 5(3) fails for these goods. Although I found that *posters* are not similar to Magazine's goods, they could, in a wide sense, be classed as home interest goods (where the posters are non-show related, such as a picture). This brings them within the ambit of the parties' overlapping reputations and, *a fortiori*, show-related brochures (there is no need to consider brochures at large because Magazine has succeeded here under section 5(2)(b)). The Courts have found that the IDEAL HOME and IDEAL HOME SHOW fall into the *Budweiser* camp. For the reasons given by the deputy judge, there is no detriment to distinctive character.

63. Magazine claims that if Show's goods were inferior, this would damage Magazine's mark. This claim gets nowhere. Without evidence that Show has already been selling poor quality goods, there is no basis for a detriment to repute claim; otherwise, all claims which surmounted the reputation and link hurdles would succeed by such crystal-ball gazing. I reject the claim of detriment to repute.

64. In *Whirlpool Corp v Kenwood Ltd* [2010] RPC 2 (a case concerning food mixers), Lloyd LJ said, at paragraph 135:

"It seems to me that this case is a very long way away from *L'Oréal v Bellure*. As I have mentioned at paragraph [14] above, Whirlpool did not make any relevant allegation of intention in their pleaded case. Kenwood could not have planned its entry into this sector of the market, of which KitchenAid had until then had a monopoly, without being very well aware at all times of the KitchenAid Artisan. That in itself is not sinister (as the judge said), nor does it amount to anything like what the alleged infringers did in *L'Oréal v Bellure*. Kenwood, after all, had its own established goodwill in small domestic appliances, and kitchen items especially, on which it sought to build and rely, although not in the particular niche of the market to which the KitchenAid

Artisan appealed. It did not need to ride on KitchenAid's coat-tails, so as to save itself from making promotional efforts in relation to its new product. It wished and aimed to use and to develop its own established goodwill and reputation by way of the promotion of its new product. As Mr Purvis submitted, Kenwood would not have wanted to be thought to have produced a "me too" design."

65. Like Kenwood, Show is obviously aware of Magazine's reputation. Like Kenwood, Show does not need to ride on Magazine's coat tails because it has its own substantial reputation for the showcasing of home interest goods. For the claim of unfair advantage to succeed, it is a condition that the unfair advantage must be liable to alter the economic behaviour of consumers of Show's goods. Given the fact that Show has its own massive reputation in relation to showcasing home interest goods, it is difficult to see how this would take place. The claim to unfair advantage fails.

66. The section 5(3) ground fails.

Section 5(4)(a)

67. Section 5(4)(a) states:

"A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

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

(b)...

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

68. Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation."

69. I consider the outcome under section 5(4)(a) to mirror that under section 5(2)(b). The deputy judge found that IDEAL HOME as a trade mark in the field of home interest goods has never signified only one business. Providing Show limits brochures to *brochures relating to home interest goods and services*, there can be no misrepresentation and no damage. Without this specification limit, the ground under section 5(4)(a) succeeds against *brochures*, at large.

Estoppel

70. Show's skeleton argument said this about estoppel:

"21. The parties have been engaged in litigation, which has now concluded, relating to the use of the IDEAL HOME SHOW name by the Applicant. The Opponent sought to prevent the use of the name based upon one of the earlier trade marks in these proceedings, namely UK no. 2435081 A.

22. As a counterclaim, the Applicant also sought to cancel the Opponent's earlier trade mark.

23. The Opponent is estopped from opposing the registration on the grounds that the Intellectual Property Enterprise Court endorsed by the decision of the Court of Appeal found that:

(a) the name IDEAL HOME is distinctive of the businesses of both parties, and

(b) the two parties have co-existed for such a long period of time that neither of them can prevent the use or registration by the other of the IDEAL HOME name outside of their core business areas.

24. The courts made a number of findings of fact in reaching their decisions and, on the basis that those findings arise in proceedings between the same parties and in respect of the same trade marks at issue, the conclusions drawn from those facts must apply equally in this case.

25. While the Opponent has filed evidence in the proceedings, it is apparent that this evidence does not go beyond that considered by the courts in their deliberations.

26. The findings of fact must therefore be accepted and applied to the present case.

...

32. With regard to the issue of estoppel, the Applicant will refer to *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited* [2013] UKSC 46."

71. Mr Krause told me at the hearing that he had mentioned estoppel because he was expecting Magazine to be at the hearing and had anticipated that Magazine would resist Show relying upon the court judgments. Of course, Magazine did not attend and did not file written submissions in lieu of attendance.

72. I take issue with paragraph 23(b) of Show's skeleton argument that the courts said:

“the two parties have co-existed for such a long period of time that neither of them can prevent the use or registration by the other of the IDEAL HOME name outside of their core business areas.”

What the courts said was that neither party can prevent the use or registration by the other of IDEAL HOME in relation to their core businesses and that neither party can venture into the other's core business (this second point was *obiter dicta* in both judgements, paragraph 63 (IPEC) and 57 (Court of Appeal)). There was no mention of use or registration outside of core business areas. The issue was online retail services of home interest goods which were found, for both parties, to be a natural extension of their existing businesses for which each has a huge reputation.

73. I also take issue with the late raising of estoppel, which is a defence and should be properly pleaded. No request to amend Show's pleadings was made in the light of the courts' findings. The first time estoppel has been mentioned was in Show's skeleton argument. Magazine could not respond at the hearing because it did not attend the hearing. As it happens, Mr Krause did not press the point. I have followed the logic of the courts in this case, but that logic does not extend to brochures which do not relate to home interest goods and services. The courts were concerned only with the reputation which the parties had in relation to their respective home interest magazine and show and whether this naturally extended to online retail services of home interest goods (they found that it did). Non-home interest goods were not considered. Consequently, there is no issue estoppel with regard to brochures at large; i.e. brochures which do not relate to home interest goods and services.

Outcome

74. The opposition succeeds under sections 5(2)(b) and 5(4)(a) in relation to 'brochures'. **If Show agrees to the limitation I have proposed within 21 days of the date of this decision, the application may be registered for the following goods and services (including those no longer opposed):**

Class 9: *Credit cards; loyalty cards.*

Class 16: *Show guides; posters; brochures relating to home interest goods and services; calendars; diaries; credit cards; loyalty cards.*

Class 35: *Advertising services and information services relating thereto; all the aforesaid services also provided on-line from a computer database or from the Internet; business information services; all the aforesaid services also provided on-line from a computer database or from the Internet; public relations services; organisation of exhibitions for commercial and advertising purposes; business information services; business information services provided on-line from a computer database or from the Internet.*

Class 38: *Telecommunication of information (including web pages), computer programs and any other data; electronic mail services; provision of telecommunications access and links to computer databases and the Internet; telecommunication services provided in relation to the Internet; telephone rental services; provision and rental of telephone chat lines; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the Internet; provision of web pages.*

Class 41: *Organisation of exhibitions for cultural or educational services; provision of information relating to education and entertainment; the aforesaid also provided on-line from a computer database or from the Internet; organisation of competitions and quizzes; the aforesaid services also provided on-line from a computer database and/or from the Internet.*

Class 42: *Design, drawing and commissioned writing, all for the compilation of web pages on the Internet; syndicated writing concerning the Internet and on-line computer services; none relating to magazines or the publication of magazines on the Internet; information services relating to the Internet; none relating to magazines or the publication of magazines on the Internet.*

Costs

75. Show has been almost wholly successful and is entitled to a contribution to its costs, based upon the published scale¹². Mr Krause referred to the withdrawal of the opposition to class 38 and to 'show guides' in class 16 just two days prior to the hearing, by which time he had already submitted his skeleton arguments. This caused a certain amount of unnecessary preparation. I will offset this against the small portion of the application for which Magazine has been successful (brochures at large). The two cancel each other out. The costs breakdown is:

Considering the opposition and filing a counterstatement	£600
Considering and filing evidence	£700
Preparing for and attending a hearing	£700
Total	£2000

76. I order Time Inc. (UK) Ltd to pay Media 10 Limited the sum of £2000 which, in the absence of an appeal, should be paid within fourteen days of the expiry of the appeal period.

Dated this 10th day of August 2016

Judi Pike
For the Registrar,
the Comptroller-General

¹² Tribunal Practice Notice 4/2007.

Annexe: Magazine's earlier marks pleaded under section 5(2)(b)

(i) 1260437

IDEAL HOME

Class 16: *Printed publications and periodicals.*

Application date: 14 February 1986; date registration procedure completed 8 April 1988.

(ii) 2218623

IDEAL HOME

Class 9: *Computer software; CD-Roms containing information for presentation on a screen in magazine-type format; information stored in or on electronic, magnetic and/or optical media; all being information in magazine-type format.*

Class 38: *Transmission of sound, vision and data by electronic means; services for the transmission, provision and/or display of information on-line from a computer database or from facilities provided on the Internet or other networks (including web sites); all provided in magazine format.*

Class 41: *Information and advisory services relating to homes, home decoration and improvement and lifestyle all provided on-line from a database or from facilities provided on the Internet or other networks (including websites); all provided in magazine format.*

Application date: 5 January 2000; date registration procedure completed 28 July 2000.

(iii) 2253401

IDEAL HOME

Class 35: *The bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods by mail order from a magazine.*

Application date: 17 November 2000; date registration procedure completed 8 October 2004.

(iv & v) 2324854A and B

2324854A: series of 11 marks IDEAL HOME'S COMPLETE GUIDE TO DECORATING, COLOUR, KITCHENS, BATHROOMS, SOFT FURNISHINGS, GARDENING, FOOD AND DRINK, ENTERTAINING, TRAVEL, HOLIDAY DESTINATIONS, COMPLETE CONSUMER GUIDE

2324854B: IDEAL HOME'S COMPLETE GUIDE TO.....

Class 9: *Electronic publications; publications in electronic form supplied on-line from a database or from facilities provided on the Internet or other networks (including web sites); all in magazine format.*

Class 16: *Printed publications; periodicals.*

Class 35: *Advertising services; all provided through a magazine or provided in other media in magazine format.*

Class 41: *Publishing services including electronic publishing.*

Application date: 25 February 2003; date registration procedure completed: 4 June 2004.

(vi – ix) 2435081A-D

2435081A: IDEAL HOME

2435081B: IDEAL HOME DIRECT

2435081C: IDEAL HOME MAIL ORDER

2435081D: IDEAL HOME ON LINE

Class 21: *Household or kitchen utensils and containers; combs and sponges; brushes; articles for cleaning purposes; china, glassware, tableware, dinner services, kitchenware, crockery, porcelain, ceramics and earthenware, cutlery.*

Class 24: *Textiles, textile goods including cushion covers, bedlinen, towels, tablecloths, napkins and serviettes; curtain rails, blinds, Venetian blinds, soft furnishings; bedding; beds, mattresses, duvets, quilts, pillows.*

Class 27: *Wallpapers, wall coverings (not of textile), borders (not of textile); floor coverings; carpets and rugs.*

Class 35: *The bringing together for the benefit of others, of a variety of house wares, domestic electrical goods and appliances, garden equipment, plants and furniture, home furnishings, lighting apparatus, enabling customers to conveniently view and purchase those goods from catalogues by mail order or by means of telecommunications including via the Internet and television shopping.*

Class 43: *Hotel accommodation.*

Application date: 10 October 2006; date registration procedure completed: 25 June 2010.