

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 2150293  
BY NETPOLL LIMITED TO REGISTER A  
TRADE MARK IN CLASS 35**

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**by Netpoll Limited to register a**  
**Trade Mark in Class 35**

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On 8 November 1997, Netpoll Limited of One Hinde Street, London W1M 5RH, applied under the Trade Marks Act 1994 to register the trade mark NETPOLL in respect of:

15 “Business services; business research; market research advertising, promotional and marketing services; compilation and provision of business and commercial information; compilation and provision of product research information; business management and assistance services; advisory services relating to all the aforesaid services; all the aforesaid services when offered by, through or on the Internet.”

20 Objection was taken under paragraphs (b) and (c) of Section 3(1) of the Act on the grounds that the mark is a sign which may serve in trade to designate the kind or quality of the services.

25 At a Hearing at which the applicants were represented by Mr B P Hughes of Brian Hughes & Co, their trade mark agents, the objections under Sections 3(1)(b) and (c) were maintained. Following refusal of the application under Section 37(4) of the Act, I am now asked under Section 76 of the Act and Rule 56(2) of the Trade Mark Rules 1994 to state in writing the grounds of decision and the materials used in arriving at it.

30 No evidence of use has been put before me. I have, therefore, only the prima facie case to consider.

Sections 3(1)(b) and (c) of the Act read as follows:

35 Section 3(1) “The following shall not be registered -

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

40 (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”.

45 The mark consists of the English dictionary words “NET” and “POLL” conjoined. Collins English Dictionary (Millenium Edition) defines “NET” as denoting, among other meanings:

“8. Informal. Short for Internet 9. another word for network (sense 2)”  
and defines “POLL” as denoting, among other meanings:

5 “1. The casting, recording, or counting of votes in an election; a voting. 2. The  
result or quantity of such a voting: a heavy poll. 3. Also called: opinion poll. 3a. a  
canvassing of a representative sample of a large group of people on some question in  
order to determine the general opinion of the group. 3b. the results or record of such  
canvassing. 4. any counting or enumeration”

10 In the context of the services at issue I consider that the words denote a poll conducted by  
means of the Internet and as such describes eg

15 “market research; compiling and providing business and commercial information;  
compilation and provision of product research information; all the aforesaid services  
offered by, through or on the Internet.”

The agent argued in correspondence and at the hearing that one does not conduct a poll of a  
body or group, it is rather the individual constituents of the body or group that is polled.  
Therefore, any poll conducted on the Internet is a poll of websites and not a poll of the net.  
20 He also argued that polls are usually referred to by their subject matter and not the medium by  
which they are conducted. I disagree. “Television polls”, “newspaper polls” or “telephone  
polls” are terms commonly used to describe the method of canvassing opinion or obtaining  
information. It seems to me, therefore, that the combination of words seems entirely apt to  
describe a poll conducted by means of the Internet - a “Net poll” - and would be seen as such  
25 by the general public.

Furthermore, I advised the agent that the combination “net poll” already appeared to be in,  
apparently, descriptive use on the Internet. To illustrate the point I provided the agent with a  
list of “hits” from a search of the Internet, shown at Annex A of this decision. I would stress  
30 that this is only a sample of the hits available. It is not, of course, clear when the term was  
first used on the Internet but I consider it indicates how apt the combination is as a description  
for the services at issue. For these reasons, therefore, I consider that the mark is debarred  
from registration under Section 3(1)(c) because it consists exclusively of an indication which  
may serve in trade to designate the kind or intended purpose of the services being provided.  
35 For the same reasons I consider the mark to be devoid of any distinctive character and  
therefore debarred from registration under Section 3(1)(b).

In this decision I have considered all the documents filed by the applicant and all arguments submitted to me in relation to this application and, for the reasons given, it is refused under the terms of Section 37(4) of the Act because it fails to qualify under paragraphs (b) and (c) of Section 3(1) of the Act.

5

Dated this 8 day of January 1999

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R A JONES  
For the Registrar  
The Comptroller General



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**The Zogby Net Poll**

Checking the Pulse of the Internet On Political, Social and Consumer Issues From time to time, we will be conducting other polls on issues of significance to the global community of ...  
 68% <http://www.zogby.com/poll/home.html> (Size 2.1K) Document date: 5 Nov 1996  
[Grouped results from http://www.zogby.com](#)

**Presidential Debates Will Be Wired For Net Polling**

INTER@CTIVE WEEK October 4, 1996 Go to New Today Go to Main View Go to @ Business Go to Analysis Go to Infrastructure Go to Cybermedia Go to Nettools Go to Columns Go to ...  
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**SURVEY.NET Poll Results**

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Find anything from concert tickets to computers, poodles to personals

**Mental Health Net - Polling Place Index**

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**Mental Health Net - Polling Place Index**

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**Aanmelden voor een abonnement NetPoll - NetHit**

61% <http://www.netpoll.nl/netpoll/faanmelden.htm> (Size 1.0K) Document date: 6 Jan 1998

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**Rock On The Net: Poll**

RockOnTheNet's Poll -- Rock on the Net includes daily news updates, information on your favorite artists, and a weekly compilation of major music charts.

61% <http://www.rockonthenet.com/poll.htm> (Size 10.6K) Document date: 30 Jan 1998

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**Internet Update 10/01/96**

TOKYO, JAPAN, 1996 OCT 1 (NB) -- By Martyn Williams. This is a roundup of new and updated resources and services on the global Internet, including: want to buy an aircraft?; Corel Net ...

54% [http://www.nb-pacifica.com/headline/internetupdate100196\\_732.shtml](http://www.nb-pacifica.com/headline/internetupdate100196_732.shtml) (Size 8.7K) Document date: 28 Apr 1998

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