TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION No 2134492
BY CASIO KEISANKI KABUSHIKI KAISHA

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER No 47884
BY ACCURIST WATCHES LIMITED

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BACKGROUND

1. On 30 May 1997 Casio Keisanki Kabushiki Kaisha applied under the Trade Marks Act 1994 to register the trade mark FUTURIST for a specification which reads:

> **Class 14**
>
> Watches and clocks; electronic watches and clocks; horological and chronometric instruments; parts and fittings for all the aforesaid goods.

2. The application is numbered 2134492.

3. The application was accepted and published and on 3 December 1997 Accurist Watches Limited filed notice of opposition to the application. The grounds of opposition as set out in the accompanying statement of grounds ran to some twelve paragraphs, however, shortly before the hearing on 5 January 2001, the opponents filed an amended statement of grounds. This was accepted into the proceedings. The grounds as set out in the amended document can be summarised as:

    a. under section 5(2)(b) in that the opponents are the registered proprietors of the trade mark ACCURIST under registration nos. 617719 and 1489757 and that they are the applicants for a Community Trade Mark Application No. 71159 for the trade mark ACCURIST. That these trade marks are similar to the trade mark the subject of the application and are registered for goods which are identical or similar to those for which the earlier trade marks are registered and that as a result of the similarity of the trade mark and the identicality/similarity of the goods, there exists a likelihood of confusion; and

    b. under section 5(4) in that the opponents have acquired a substantial goodwill in the trade mark ACCURIST through use in the United Kingdom since 1942 and that the trade mark the subject of the application is liable to be prevented by virtue of the law of passing off.

4 The applicants filed a counterstatement denying the grounds of opposition. Both sides seek an award

of costs.

5. The matter came to be heard on 18 January 2001. The applicants were represented by Mr Graham of Counsel, instructed by Marks & Clerk. The opponents were not represented but filed written submissions under cover of a letter dated 17 January 2001. In coming to my decision I have taken full account of the written submissions made by the opponent.

Opponents' Evidence

6. The opponents' evidence consists of two statutory declarations. The first by Peter Armstrong is dated 25 August 1998. Mr Armstrong states that he is the Company Secretary of Accurist Watches Limited and that he has been involved in the watch trade for the past nine years.

7. Mr Armstrong states that his company is the registered proprietor of inter alia United Kingdom Trade Mark 617719 in Class 14 dated 2 February 1942 and United Kingdom Trade Mark No. 1489757 in Class 14 dated 3 February 1992. He also states that they are the proprietors of Community Trade Mark registration No. 71159 in Class 14 dated 1 April 1996. He states that these are all for the trade mark ACCURIST. At PA1 he exhibits copies of the advertisements of these registrations.

8. Mr Armstrong states that his company has used the trade mark ACCURIST throughout the whole of the United Kingdom continuously since 1942 in relation to watches and clocks. He says that the approximate annual wholesale figures in pounds sterling for goods sold in the United Kingdom under the trade mark since 1987 was £15 million per year rising to £19 million in 1997.

9. Mr Armstrong states that his company advertises the trade mark ACCURIST extensively throughout the United Kingdom and the approximate amount spent on advertising in the period 1987 to 1997 is between £1 to £1.5 million. He says that the mark is advertised in various ways including major national television advertising, national newspaper advertising, in magazines, by point of sale displays and through catalogues. At PA2 he exhibits an Accurist brochure produced to commemorate Accurist Watches' 50th Anniversary. He says this brochure provides details of the extensive advertising of the mark that has occurred since 1942. The brochure has on its outer cover the number 50 with the word Accurist written through it, on the opening page there is a letter from Andrew Loftus the Managing Director of Accurist Watches Limited. He refers to the origin of the Accurist name in 1946 and states:

> "When my parents first established the business they were looking for a new, innovative brand name. It was Accurist that came immediately to mind..... "It's accurate and you wear it on your wrist"."

The rest of the brochure sets out the history of the Accurist brand and various modes of advertising, these are set out with relation to the decade in which they occurred, there is a page for the 50's a page each for the 60's, 70's, 80's and 90's. Examples of advertisements that occurred throughout these periods are shown in the brochure. On the page relating to the 1990's reference is also made to Accurist's agreement to provide the official Millennium countdown clock at the observatory at Greenwich. It states that the clock is to be sited on the meridian line itself at the exact point where the world will officially enter the new Millennium.

10. At PA3 Mr Armstrong exhibits two videos consisting of examples of advertisements for the mark ACCURIST. He states that in addition to the extensive advertising that his company undertakes it also promotes the trade mark ACCURIST via sponsorship. He states that the company has sponsored the British Telecom speaking clock service since 1986. He says that this means that every time any call is made to the speaking clock service the caller hears the following phrase "the time sponsored by Accurist will be .....". He says that the speaking clock service receives an average call rate of 120,000 per year.

11. Mr Armstrong says that since 1993 his company has sponsored the Greenwich meantime clock at the old Royal Observatory in Greenwich. At PA4 he exhibits a brochure outlining the connection between the Greenwich Observatory and Accurist Watches Limited. This brochure relates to the Greenwich commemorative range of watches by Accurist. He goes on to say that his company has designed the millennium count-down clock situated at the Royal Observatory in Greenwich. This clock provides details of the number of days, hours and minutes left before entering the new millennium. He says the trade mark ACCURIST is prominently displayed on the count-down clock and at PA5 he exhibits a video outlining the television coverage during April 1997 surrounding the launch of this clock. The video contains excerpts from Tomorrow's World, BBC Breakfast News, News Room South East, Newsround, London Tonight, Sky News, Channel 5 Early News, The Break Breakfast, ITN News, London Today and CNN World View. All of these refer to the millennium clock being launched at Greenwich. The trade mark ACCURIST can been seen on the face of the clock in these excerpts.

12. Mr Armstrong states that by virtue of this information he believes that his company has substantial goodwill and reputation in the trade mark ACCURIST which has become synonymous with the goods emanating from his company. He states that the trade mark ACCURIST has been extensively used on the goods for the past fifty years and there is no one in the United Kingdom who on hearing the trade mark ACCURIST would not immediately relate it to the goods of his company. He says that he was concerned to note that the trade mark FUTURIST had been accepted by the Trade Marks Registry in respect of goods in Class 14. The application covers identical goods for which his company already holds registrations and he believes that the trade mark ACCURIST and FUTURIST are conceptually and linguistically so similar that use of FUTURIST on watches and clocks will lead people to believe that these goods are associated with, or emanate, from his company. He says that the word FUTURIST implies a connection with or a design for the future. He notes that the millennium countdown clock designed and sponsored by his company provided the countdown to the future and he therefore believes that it is likely that people will make a connection between the mark FUTURIST and the goods of his company. As a result of this confusion he believes his company will suffer damage to its reputation and business and dilution of its valuable trade mark.

13. The opponent's second statutory declaration is by Gloria Parmesan and is dated 25 August 1998. Ms Parmesan states that she is an Assistant employed by Wildbore Gibbons, the opponent' representatives in this matter, and that Accurist Watches Limited requested that they carry out a survey to support this opposition. At GP1 she exhibits a questionnaire devised for the survey and at GP2 a list of jewellers to whom the questionnaire was sent on 30 July 1998 together with an example of the covering letter. At GP3 she exhibits a further list of jewellers to whom the questionnaire was sent on 3 August 1998. The same covering letter was used. Ms Parmesan states that on 14 August 1998 she started telephoning the jewellers who had not returned the questionnaire. In many cases the relevant person was not available and due to work pressures only four telephone calls were made. As a result

of these telephone calls she says that a repeat questionnaire was sent to Mayfair Jewellery and the Gold Centre. At GP4 she exhibits an example of the covering letter sent with the questionnaire.

14. Ms Parmesan states that a total of thirty questionnaires were sent out and eight have been returned. At GP5 these eight questionnaires are exhibited. She notes that five of the returned questionnaires indicate that the word FUTURIST signified a connection with something modern or futuristic. She believes that this is relevant in view of the Accurist watches connection with the millennium countdown clock at the Royal Observatory in Greenwich. She notes that four of the people completing the questionnaire mentioned the trade mark ACCURIST in connection with question 4. She states that at no time were any of the people completing the questionnaire advised about its background or the names of the parties involved.

Applicants' Evidence

15. The applicants' evidence consists of a single statutory declaration by David Robert Thompson, dated 24 August 1999. Mr Thompson confirms that he is a trainee trade mark Attorney employed by Marks & Clerk, the applicants representative in this matter.

16. Mr Armstrong states that he has read the evidence of Ms Parmesan filed by the opponents. He states that he visited a number of jewellers on Oxford Street in central London and as a cover story explained that he had been in the shop concerned some time ago and had seen a watch that he had liked but had decided not to buy at the time. In returning to the shop he was hoping now to purchase the watch but unfortunately he could not recall the name. He states that he said that he was sure that the name ended in the suffix RIST. But he says if pressed he would explain that the name definitely was not Accurist but sounded a little like it with the suffix RIST the suffix would be emphasised to address the alleged similarity of the marks as claimed in the opponent's evidence.

17. He says he went to the following jewellers, Selfridges, Mappin & Webb, Leslie Davis, and H Samuels. He says that none of the assistants he spoke to could recall any such make of watch as described sounding a little like Accurist with a RIST suffix but not Accurist.

18. He says that the final shop he went into was H Samuel and he noticed in the window that this shop stocked both ACCURIST and also the CASIO FUTURIST watch. He says he again used his story and the assistant was very helpful and even spent time scanning the shop window for a watch which fitted his description, he even told him that the watch he had seen was a digital watch like the actual CASIO FUTURIST watch in the window. He did not recall the FUTURIST name even though he must have seen the watch in the window. Mr Thompson states that he believes that this confirms that there is no likelihood of confusion between the two trade marks. Even when the trade marks are used side-by-side in a shop window, the mention of ACCURIST does not bring to mind FUTURIST even when the fact that the two trade marks share the suffix RIST is brought to the attention of an experienced shop assistant. He says it would appear that the different prefixes are enough to distinguish the two marks.

19. That concludes my review of the evidence.

DECISION

20. As stated above, shortly before the hearing, the opponents in this matter filed an amended statement of grounds. As such the only remaining grounds of opposition related to Section 5(2) and Section 5(4) of the Trade Marks Act 1994. These Sections read as follows:

> "5.-(2) A trade mark shall not be registered if because -
>
> (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
>
> (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."
>
> "5.-(4) 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) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.
>
> 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."

21. I will consider first the opponents' ground of opposition under section 5(2)(b). In so doing, I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schufabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG* [2000] E.T.M.R. 723. It is clear from these cases that:-

> (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v. Puma AG* page 224;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG* page 224, 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; *Lloyd Schufabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* page 84, paragraph 27.
>
> (c) the average consumer normally perceives a mark as a whole and does not proceed to

analyse its various details; *Sabel BV v. Puma AG* page 224;

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v. Puma AG* page 224;

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* page 7, paragraph 17;

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG* page 8, paragraph 24;

(g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG* page 224;

(h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG* page 732, paragraph 41;

(i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* page 9 paragraph 29.

22. The opponents refer to various registrations for the trade mark ACCURIST. All those referred to in the statement of grounds are "earlier trade marks" as defined in section 6 of the Act. These registrations cover various goods in Class 14. It seems to me that the opponents can be in no better position than in respect of their trade mark registration number 1489757. The opponents' and the applicants' trade marks are reproduced below:

Opponents' trade mark	Applicants' trade mark
ACCURIST	FUTURIST
Class 14 Watches, clocks, watch bracelets and watch straps; jewellery; horological and chronometric instruments; parts and fittings for all the aforesaid goods; all included in Class 14.	**Class 14** Watches and clocks; electronic watches and clocks; horological and chronometric instruments; parts and fittings for all the aforesaid goods.

23. In my view, the goods covered by the applicants' specification are either identical or very similar to those covered by the opponents' earlier trade mark. I did not understand Mr Graham to argue otherwise. Therefore, the matter falls to be determined on a comparison of the trade marks. This is a global test, taking into account the factors outlined above including the guidance that a lesser degree of similarity between the marks may be offset by the degree of similarity (or identicality) between the goods.

24. The opponents' written submissions invited me to take account of the substantial goodwill acquired in the trade mark ACCURIST and also the inherent distinctiveness of the mark. Mr Graham sought to argue that the opponents' evidence was insufficient to support their claim to have a reputation in the trade mark ACCURIST. The turnover figures provided in the opponents' evidence could not, of themselves, he argued provide the evidence necessary to show a reputation. Further, he argued that the mark whilst being an invented word was not inherently distinctive. The mark was, in his submission, made up of two descriptive elements namely ACCU from accurate and RIST from wrist. As the two elements were descriptive when used in relation to an accurate wrist watch the trade mark was not inherently distinctive. The status of the mark would have been improved by the use that had been made of it but it was his view that ACCURIST was some way short of being a household name.

25. I will deal first with the issue of inherent distinctiveness. In my view the opponents' trade mark possess some inherent distinctiveness and I reminded Mr Graham that in *Accutron Trade Mark* [1966] RPC 152 it was held that the trade mark ACCURIST was inherently distinctive. To counter this, Mr Graham suggested that there were various levels of distinctiveness. Be that as it may, any inherent distinctiveness that the trade mark ACCURIST possesses will, in my view, have been enhanced by the use that has been made of it. Whilst I accept Mr Graham's submission that turnover figures alone do not necessarily result in a trade mark having acquired distinctiveness or a reputation, when the turnover figures are, as is the case here, in the region of £15,000,000 per annum this, coupled with consistent advertising and sponsorship throughout the period, does in my view entitle me to find that the trade mark ACCURIST has acquired a reputation and a highly distinctive character, not only per se but because of the use that has been made of it.

26. Therefore in considering the question of the likelihood of confusion I take into account the reputation and distinctiveness of the opponents' trade mark and the fact that the goods covered by the specifications are identical or very similar. That said, I note that I must find a likelihood of confusion, mere association is not sufficient. Further, the fact that I have found that the opponents' trade mark has a reputation does not give me grounds for presuming a likelihood of confusion, it is only a factor that I should take into account.

27. Mr Graham submitted that the average consumer of the goods in questions would be ordinary members of the public, a watch is an article many members of the public wear everyday. I agree. He also submitted that the purchase of a watch was not a hasty purchase but one that the consumer would take time over. I do not think that one can make general statements such as that made by Mr Graham. In my view the amount of time and care taken by a consumer in purchasing a watch would be in direct proportion to its price. If a consumer was purchasing a cheap watch he might be expected to take less care than if he was purchasing a more expensive watch, such as a ROLEX. That said, I agree with Mr Graham that the average consumer might be expected to take some care at least over such a purchase. This would lean against the line of argument put forward by the opponents that the trade mark would appear in small print on a watch face, be obscured by one or both hands of the watch and thus increase the likelihood of confusion.

28. In considering the visual, aural and conceptual similarities of the two trade marks, the opponents seek to draw attention to various elements of the two marks. In coming to a view on these questions I must take into account the fact that the average consumer rarely has chance to make a direct comparison between the two trade marks but instead must rely upon the imperfect picture of them he has kept in this mind. So called imperfect recollection.

29. In their written submissions, the opponents point out that both trade marks carry the ending URIST. They argue that any trade mark with the ending URIST for the goods in question would imply a link with the opponents. As Mr Graham points out, this would require the average member of the public to split the ACCURIST mark into ACC and URIST and to spilt the applicants' trade mark into the elements FUT and URIST. I would agree that this is not the most natural way to split the marks and the advertisements referred to in the opponents' written submissions do not displace my view. These are said to have been broadcast in the 1970s and featured John Cleese. The suffix of the opponents' trade mark was replaced with various body parts, the "Accur-ankle, Accu-wrist" advertisements; see page 5 paragraph 3 of Exhibit PA2. The trade mark ACCURIST would, in my view, be split into ACCU and RIST and in my view the advertisements referred to by the opponents emphasise the ACCU element of their mark and not the suffix. The applicants' trade mark would, if split at all, fall into the components FUTUR and IST. However, the case law tells us that the average consumer perceives a mark as a whole and does not proceed to analyse its various details. Taken as a whole the two trade marks are visually very different. That difference is in my view made even greater by the fact that the applicants' mark is made up of a dictionary word:

> futurism n. an artistic movement that arose in Italy in 1909 to replace traditional aesthetic values with the characteristics of the machine age. -futurist n., adj.

29 That said, I doubt that the reasonably well informed and reasonably circumspect consumer would be aware of this meaning and it seems to me that the average consumer would view the trade mark FUTURIST as simply having some connection with the future.

30. Aurally the trade marks are also very different, Mr Graham pointed out that the similarity between the two marks occurred in the ending of the two words. It was well established under the Trade Marks Act 1938, that the first element of a mark tends to be the most important with the endings of words tending to become slurred; *London Lubricants Limited's Application (TRIPCASTROID)* 42 1925 R.P.C. 264 at page 279. There is no reasons to suppose that this is any less true under the Trade Marks Act 1994. The first element of the two marks are visually and aurally very different ACCUR and FUTUR

31. The opponents sought to argue that through the use that has been made of the trade mark ACCURIST, in sponsoring the millennium countdown clock, the public would make a connection between ACCURIST, the millennium clock, the future and therefore the trade mark FUTURIST. The opponents' in their written arguments state:

> "The first part of the mark applied for "FUTUR" would be seen as having a meaning in relation to the future and taking the goods concerned into account, would be seen as alluding to the concept of predicting the future. Predicting the future is a fictional concept but one which is associated with accuracy and precision. A watch bearing the mark FUTURIST would therefore be seen as an extension of the opponent's line of watches and one which could be seen as attempting to accurately measure the future. It would be taken by the public to mean an ACCURIST watch of modern design and one that was suitable for the future.
>
> In this context, the Hearing Officer's attention is drawn to paragraphs 9 of the Statutory Declaration of Peter Armstrong and to the connection between the opponent and the Millennium Countdown Clock at the Royal Observatory in Greenwich. This clock was used to

count down the time before the new millennium commenced and is therefore associated with accurately predicting a future event. In view of the vast numbers of people who visited the Royal Observatory...and who will therefore have been aware of the opponents' involvement with the Millennium Countdown Clock, it is extremely likely that the public would make a conceptual link between FUTURIST and ACCURIST ie watches bearing the mark FUTURIST are associated with the opponent who was involved in accurately predicting a future event".

32. Mr Graham described this line of argument as very contorted and twisted logic and highly unlikely to happen. Whilst I have stated that the average consumer would make a connection between the applicants' trade mark and the future, I would agree with Mr Graham's submissions on this point. It is in my view highly improbable that the average consumer would make such a series of leaps of thinking to arrive at a connection between ACCURIST and FUTURIST.

33. Visually, aurally and conceptually, I find that the two trade marks are very different. Further, both marks are in my view inherently distinctive for the goods covered by the specifications. They would in my view make a strong impact on the mind of the consumer and this would lean against a likelihood of confusion brought about by imperfect recollection of the trade marks.

34. Mr Graham drew attention to the fact that the opponents had not filed any evidence of confusion in the market place. I place no weight on that submission. Apart from a statement in the evidence of Mr Thompson I have no evidence that the applicants' mark is even in the market place. The evidence of Mr Thompson suggests that the use of the trade mark FUTURIST, such as it is, may be with the manufacturer's house mark CASIO. This would weigh against any likelihood of confusion but I have not given any weight to this as I have no evidence to the point. In the absence of any evidence of use of the applicants' trade mark I have approached the test under section 5(2) on the basis of notional and fair use of the mark applied for in relation to the goods covered in the application.

35. Mr Graham took me to the survey evidence submitted by the opponents. He subjected it to close analysis and criticised the way in which it had been conducted, the target respondents, the questions posed, and the dangers of trying to extrapolate from a statistically insignificant base of eight responses. I should say that I have placed little if any weight on the survey. I agree with Mr Graham that eight respondents, from a sample of thirty two and all from the jewellery trade is not a statistically acceptable sample to try to extrapolate figures for the rest of the population or even the rest of the jewellery trade. Mr Graham also pointed out that Question 4 on the Questionnaire asked the respondent to speculate as to the manufacturer of the product. Question 4 is worded as follows:

> 4. If you saw the Trade Mark FUTURIST upon watches and clocks would you connect the product with a particular manufacturer?

36. Four of the respondents stated: 'Accurist', 'possibly Accurist', 'maybe Accurist' and 'probably Accurist'. The remaining four all replied 'No' to that question. Mr Graham pointed out that this speculation as to the origin is just the sort of non origin association, or calling to mind that the case law of the ECJ warns us against. I would agree with his submissions on this point. I should also mention that I place no weight on the evidence of Mr Thompson concerning his visit to Oxford Street. The survey and Mr Thomson's statutory declaration do not assist me in determining whether there is a likelihood of confusion in the strict sense.

37. Therefore, taking all these factors into account and for the reasons stated above, I am of the view that there is no likelihood of confusion between the trade mark ACCURIST and the trade mark FUTURIST within the terms of section 5(2)(b) of the Trade Marks Act 1994 and the ground of opposition is dismissed.

38. I turn to consider the opponents' ground of opposition under section 5(4)(a). At the hearing Mr Graham stated that he could not see where the opponents would be in a better position under section 5(4)(a) than they were under section 5(2)(b). The opponents' earlier trade marks cover goods which are identical or very similar to those for which the applicants seek registration. In considering the question of the likelihood of confusion under section 5(2), I have taken into account the reputation of the opponents' in the trade mark ACCURIST. As I have found against them under section 5(2), can they be in any better position under section 5(4)(a)?

39. The test for determining whether the opponents have succeeded under this section has been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] RPC 455. Adapted to opposition proceedings, the three elements that must be present can be summarised as follows:

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

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

    (3) that the opponents have suffered or are likely to suffer damage as a result of the erroneous belief engendered by the applicants' misrepresentation.

40. As stated in relation to section 5(2)(b) I found that the opponents' evidence shows a reputation in the trade mark ACCURIST. However, for the same reasons given above in relation to section 5(2)(b), I am not satisfied that the two trade marks are sufficiently close such that use of the applicants' trade mark would amount to misrepresentation. In their written submissions on 5(4), the opponents draw attention to their sponsorship of the Millennium Clock and the connection with the future; again I reject that line of argument. Further, the opponents state that they ran a series of adverts in the 1970's with John Cleese emphasising the suffix. The "Accur-ankle, Accu-wrist"adverts referred to at paragraph 3 of Exhibit PA2. This in their view would have educated the public to associate the suffix "urist" in relation to watches with the opponents. The evidence in my view does not support that contention, if anything it is the ACCU part of their trade mark that is emphasised in such advertisements. The evidence does not go any way to support a contention that the public associated the suffix "urist" with the opponents. In these circumstances, the question of a likelihood of confusion under section 5(4)(a) is no different to that under section 5(2); per Mr Thorley Q.C., sitting as the Appointed Peron in *Boehringer Ingelheim KG v. Dallas Burston Healthcare Limited* (unreported 0-048-01 at paragraphs 26-31), the opponents' ground of opposition under section 5(4)(a) is therefore dismissed.

41. The applicants have been successful and are therefore entitled to a contribution towards their costs. I order the opponents pay the applicants the sum of £935. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 20th day of March 2001

S ROWAN
For the Registrar
the Comptroller-General.