

O-029-10

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2473616

BY

NICK BOND

TO REGISTER THE TRADE MARK:



IN CLASS 25

AND

THE OPPOSITION THERETO

UNDER NO 96188

BY

REPUBLIC (RETAIL) LTD

Trade Marks Act 1994

**In the matter of application no 2473616
by Nick Bond
to register the trade mark:**



**in class 25
and the opposition thereto
under no 96188
by Republic (Retail) Ltd**

1) On 29 November 2007 Nick Bond applied to register the above trade mark. The application was published for opposition purposes on 25 January 2008 with the following specification:

clothing, footwear, headgear.

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

2) On 26 February 2008 Republic (Retail) Ltd (RRL) filed an opposition to the registration of the trade mark. RRL bases its opposition on sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (the Act). Section 5(2)(b) of the Act states:

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

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

Section 5(3) of the Act states:

“(3) A trade mark which –

(a) 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.”

In relation to section 5(3) of the Act RRL relies upon Community trade mark registration no 2838712. In relation to section 5(2)(b) of the Act it relies on the same Community trade mark and also upon United Kingdom trade mark 2188281. The Community registration is for the trade mark REPUBLIC. It is registered for goods and services in 6 classes. In relation to the objection under section 5(2)(b) RRL relies upon the goods and services in classes 25 and 35, in relation to the objection under section 5(3) it relies upon the services in classes 35. The relevant goods and services are:

articles of clothing; footwear; headgear; belts;

retail services; mail order services; e-tailing services; advisory and consultancy services relating to all the aforesaid.

The United Kingdom registration is for the trade mark REPUBLIC. It is registered for *jeans* in class 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. Both trade marks are earlier trade marks in relation to Mr Bond’s application.

3) In relation to section 5(3) of the Act, RRL claims that it has a reputation for all the services in class 35 for which its Community trade mark is registered. The basis of its claim under section 5(3) of the Act is as follows:

“Consumers would assume a connection and as such the goods of the Applicant would benefit from the reputation for great design and material, or the general success of the Opponent.

The link would also mean that if the Applicant launched clothing bearing the mark BURNTREPUBLIC, consumers might believe any bad designs or quality were those of the Opponent.

Further, the use of the mark would dilute the distinctive force of the mark REPUBLIC.

In relation to clothing, it is common for those producing goods to have boutiques and concessions as well as selling through independent retailers.

Equally, consumers would assume that goods bearing a similar mark to that of the Opponent were connected to the Opponent and were simply another channel of trade.”

4) Mr Bond filed a counterstatement in which he states:

“We the company Burnt Republic find no reason that this trademark should not be excepted.

Our opposition Republic retail, have under no circumstances have any hold or worldwide right to the word Republic.

Listed below are bullet points in our defence:

- Opposition have absolutely no design elements to their trademark
- The word Republic can be found in the English dictionary
- There are no resemblances between the two trademarks what so ever

We find it incredible in today’s society that there are still large organizations manipulating and bullying the smaller man.

We are unaware of any conflict between our opposition and the chain store giant Banana Republic.

We are a new company with a huge amount of design talent, our designer’s spent month’s investigating and looking for similar trademarks to which they found nothing.

A massive amount of energy and time has gone in to this trademark design, only to find it gets opposed by a company that simply write’s the word REPUBLIC in capital letters.”

Mr Bond does not request proof of use of the United Kingdom registration, this registration is potentially subject to the proof of use requirement.

5) Only RRL filed evidence. A hearing was held on 21 January 2010, RRL was represented by Mr Bruce Marsh of Wilson Gunn. Mr Bond did not attend, nor did he file written submissions. Notification of the hearing that was sent to Mr Bond was returned to the office marked “gone away”.

Evidence of RRL

6) This consists of a witness statement by Guy Spencer Daltry. Mr Daltry is the brand manager of RRL.

7) Mr Daltry claims that RRL is the owner of a substantial reputation and goodwill in the trade mark REPUBLIC in relation to distributing, marketing and selling goods, in particular casual wear and jeans. Mr Daltry states that RRL commenced trading in 1986 as an independent fashioner retailer trading from a store in Leeds city centre. He states that since 1991 RRL has traded in the United Kingdom under and by reference to the trade mark REPUBLIC on a substantial scale. He states that as of 8 December 2008 RRL operates in excess of 90 stores throughout the United Kingdom. It also has an on-line store at www.republic.co.uk. Exhibited at REP2 is a page downloaded from RRL's website, there is no indication of the date that the page was downloaded. The page shows several jackets for men. These jackets appear to be sold by reference to the trade marks Henleys, SoulCal and Crafted. Also included in the exhibit are copies of 4 swing tags which bear the name republic. There is no indication as to from when they emanate and upon which goods they were used. The quality of the representations of all the exhibits at REP2 is poor.

8) Mr Daltry states that in 1996 RRL received the award of "Casual Retailer of the Year" from the magazine *FHM*. He states that in 1998 RRL received a second award from *FHM*, he does not state what the award was for.

9) Mr Daltry states that the turnover of RRL, including VAT, since 1997 is as follows:

1997	in excess of £21 million
1998	in excess of £24 million
1999	in excess of £25 million
2000	in excess of £25 million
2001	in excess of £33 million
2002	in excess of £42 million
2003	in excess of £57 million
2004	in excess of £78 million
2005	in excess of £108 million
2006	in excess of £128 million
2007	in excess of £144 million

Mr Daltry gives the following figures in relation to expenditure on promotion and advertising the REPUBLIC brand:

1997	in excess of £275 thousand
1998	in excess of £340 thousand
1999	in excess of £325 thousand

2000	in excess of £340 thousand
2001	approximately £350 thousand
2002	approximately £400 thousand
2003	in excess of £445 thousand
2004	in excess of £600 thousand
2005	in excess of £1.12 million
2006	in excess of £1.05 million
2007	in excess of £1.44 million

10) Mr Daltry states that the advertising and promotion has largely taken the form of promotional shoots and advertisements in the print media, no examples of this are exhibited. He states that the REPUBLIC brand can also be found on social networking websites such as Facebook. Exhibited at REP3 are printouts for the pages from the REPUBLIC brand from the website Facebook. The quality of the reproduction is so poor that I can discern little other than the presence of REPUBLIC on the pages. There is no indication as to when the pages were downloaded. From what little that I can discern from the prints there appear to be references to clothing sold under the trade mark G-Star. In the context of the pages there appear to be references to other clothing brands, however the quality of the printouts does not allow identification of the brands or certainty that they are such.

Findings of fact

11) To benefit from the provisions of section 5(3) of the Act the trade mark must be known by a significant part of the public concerned by the services coveredⁱ, which for the services will be the public at large. Use in one member of the state of a Community trade mark may be enough to establish the requisite reputationⁱⁱ. The European Court of Justice (ECJ) in *General Motors Corporation v Yplon SA* stated how a party would establish this reputation:

“27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.”

12) The exhibits supporting the statement of Mr Daltry are few in number, there is no indication that they emanate from before the date of the application for registration of Mr Bond’s application and they are very poor copies of the original documents, and so it is difficult to ascertain the exact nature of some of them. Mr Daltry does not identify to what goods and/or service the turnover figures he adduces relate. In his statement he claims that the REPUBLIC trade mark has a substantial goodwill and reputation in relation to “distributing, marketing and selling goods, in particular casual wear and jeans”. These are three separate activities which can all generate income. Distribution includes services outside

the class 35 services upon which RRL relies, ie where that distribution is in the nature of transportation. At the date of Mr Daltry's witness statement, 8 December 2008, Mr Daltry advises that RRL owns in excess of 90 stores. He does not indicate if all of these stores use the trade mark REPUBLIC. There is no material relating to the signage used in relation to these stores. The evidence tends towards indicating that RRL is a retailer of other brands but this is not clear. Exhibited are copies of swing labels, such labels are normally used to indicate the brand of an item clothing. In its statement of case RRL claims that it has used the REPUBLIC trade mark continually for jeans ie goods rather than services. In his submissions Mr Marsh described RRL as a manufacturer as well as a retailer. In its grounds of opposition RRL claims a reputation in relation to all of the class 35 services, including advisory and consultancy services in relation to retail, mail order and e-tailing services. There is no mention of the advisory and consultancy services in the statement of Mr Daltry. There has been no abandonment of the claim in relation to such services. The absence of this abandonment combined with the lack of clarity of the evidence of Mr Daltry leaves a question as to how much of the turnover figures relate to these services. The *FHM* awards related to the years 1996 and 1998, many years before the date of the filing of the application. There is nothing to indicate how significant such awards are in terms of the market, the demographic basis of the award, the demographic make-up of the readers of *FHM* or the circulation of the publication. Mr Bond refers to the "chain store giant" but describes it as Banana Republic, which presumably relates to another undertaking and so can hardly assist RRL as an admission against interest. Mr Daltry does identify the figures spent on promotion by direct reference to the trade mark REPUBLIC, however, there is no indication as to the nature of the publications in which advertisements have appeared or the frequency with which the advertisements appeared. The bald promotional figures cannot be extrapolated into an indicator of the effect on the perception and knowledge of the relevant public for the services for which a reputation is claimed. RRL's turnover figures are significant and the number of stores that it operates is significant. It might be considered that owing to the clear reference to the promotion of the REPUBLIC trade mark that it can be inferred that the stores all carry the REPUBLIC trade mark but in the absence of evidence of the nature of the use it is not possible to ascertain how that trade mark is used, if it is used with other matter, if it is a secondary trade mark. The nature of the evidence also does not allow for the consideration of the nature of any reputation that the REPUBLIC might have, without this knowledge it is not possible to ascertain if the use of Mr Bond's trade mark would take unfair advantage of the repute of the earlier trade mark. To take unfair advantage of the repute of an earlier trade mark the nature of the reputation must be such that it is capable of giving advantage. The grounds of opposition claim that Mr Bond would benefit from the reputation of RRL for great design and material, this indicates a relationship to clothing but there is no claim to a reputation for clothing. Again the issue arises as to how much of the turnover relates to goods for which there is no claim to a reputation. RRL also claims that Mr Bond would benefit from its "general success"; this is vague to the extreme. There is nothing

in the nature of the goods of the international registration that suggests that use of the trade mark would lead to tarnishing of RRL's trade markⁱⁱⁱ. The evidence does not tackle the issue of whether use of the registration would change the economic behaviour of the average consumer of RRL's goods^{iv}. Consequently, there is nothing to support the claim that the use of Mr Bond's trade mark would be detrimental to the distinctive character of RRL's trade mark ie give rise to dilution.

13) In this case there is no indication of market share, there is no clear indication as to the geographical spread of use within the United Kingdom, there is no clear indication as to exactly what goods and services the turnover figures relate, there is no clear indication as to how the trade mark was used prior to the material date, there are figures for promotion but nothing that shows where and how the trade mark was promoted prior to the material date. There is nothing to indicate the profile of the shops, whether, for instance, they are in the main shopping areas of urban conurbations. There is nothing to indicate the footfall in the shops and the size of the shops.

14) RRL has not established a reputation for the claimed services as per *General Motors Corporation v Yplon SA*. RRL's case also fails as the nature of the goods of the application militate against tarnishing, there is no evidence to support the claim for dilution and the evidence does not show that there is a reputation of a nature that could give rise to third parties taking advantage of it. The claim under section 5(3) of the Act fails.

15) The inadequacies in the evidence mean that it cannot be found that the RRL's case under section 5(2)(b) of the Act can be improved owing to the use it has made of the trade mark REPUBLIC.

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

16) Consequent upon the above findings RRL's best case must rest with the class 25 specification of its Community trade mark, which is for identical goods to those of the application.

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

17) The goods are bought by the public at large. They can be of low cost and high cost. The clothing trade is very much concerned with brand and brand image, hence, the common practice for trade marks to be placed on the exterior of garments. The consumer will look at garments for colour and style, will often try them on; consequently, there will be a reasonably long exposure to the trade mark in most circumstances prior to purchase. These factors mean that the effects of imperfect recollection are likely to be limited. However, the purchasing of clothes will not involve the sort of educated and careful decision that the

purchasing of a product such as a computer would entail. The average consumer “is deemed to be reasonably well informed and reasonably circumspect and observant”^v. In relation to clothing it is the visual impression of the trade mark that is most important^{vi}. The goods are likely to be primarily purchased by reference to labels rather than by oral communication.

Comparison of trade marks

18) The trade marks to be compared are:

REPUBLIC



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

20) The largest element of Mr Bond’s trade mark is the device above the words. Mr Marsh submitted that the device element is a fanciful graphic device, with which I concur. Taking into account the nature of the goods, the nature of the purchasing process and the nature of Mr Bond’s trade mark, it is the device element that is the dominant component and is also a highly distinctive component. The burntrepUBLIC element is neither descriptive nor allusive of the goods and so is a distinctive component of the trade mark; although it is not the dominant part of the trade mark it cannot be considered to be de minimis. RRL’s trade mark, being a commonly used word, does not lend itself to division into distinctive and dominant components.

21) The word element of Mr Bond’s trade mark, consisting of two well-known words, will be seen as consisting of these two words. The joining of the two

words does not create an entity in which the republic element is lost. Burnt is an adjective which describes the republic element and so the former word is subservient to the latter word, as is the norm between adjective and noun. Republic is longer than burnt and has three syllables to the one syllable of the first word. Consequently, within burnt republic, republic is the more dominant element, despite burnt coming at the beginning. The rule of thumb that the beginnings of words are more important than the ends is just that, a rule of thumb and each case must be considered on its merits^{xi}. Mr Marsh submitted that the burnt element could be seen as a descriptor, indicating goods that are distressed. I am aware that certain jeans are sold torn or faded but I am not aware of any that are sold to imitate having been burned. I am not convinced that the burnt element will be seen as a descriptor of a particular type of clothing.

22) The similarities between the trade marks rests with the presence of republic in Mr Bond's trade mark.

23) Owing to the size and prominence of the device element, the degree of visual similarity between the respective trade marks is very limited but there is a degree of visual similarity. In oral use Mr Bond's trade mark will be referred to as burnt republic. The presence of the three syllables of republic in Mr Bond's trade mark gives rise to a reasonable degree of phonetic similarity. The device element of Mr Bond's trade mark will for the most part give rise to no conceptual association. Two stars are present in the trade mark but I doubt that in the mind of the average consumer these will give rise to a conceptual association. Burnt and republic each have clear meanings as a whole they do not create a new conceptual association as, for instance, the joining of life and raft would. Consequently, the respective trade marks have a degree of conceptual similarity owing to the presence of republic^{xii}. The burnt element of Mr Bond's trade mark is completely alien to the RRL's trade mark.

24) Overall there is a limited degree of similarity between the respective trade marks.

Conclusion

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

26) It is necessary to consider the distinctive character of the earlier trade mark; the more distinctive the earlier trade mark (either by nature or nurture) the greater the likelihood of confusion^{xiv}. The distinctive character of a trade mark can be appraised only, first, by reference to the goods or services in respect of which registration is sought and, secondly, by reference to the way it is perceived

by the relevant public^{xv}. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the mark to identify the goods for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods from those of other undertakings^{xvi}. REPUBLIC is an ordinary word of the English language. It is not descriptive or allusive of the characteristic of the goods for which it is registered. REPUBLIC is not an invented word but in relation to class 25 goods it has a high capacity to distinguish the goods of RRL from those of other undertakings, it enjoys a good deal of inherent distinctiveness. (Above I rejected any claim to enhanced distinctiveness through use.)

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

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

In this case visual similarity is more important than phonetic and conceptual similarity.

28) The ECJ in *Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) v Shaker di L Laudato & C Sas* Case C-334/05 P stated:

“41 It is important to note that, according to the case-law of the Court, in the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its

components (see order in *Matratzen Concord v OHIM*, paragraph 32; *Medion*, paragraph 29).

42 As the Advocate General pointed out in point 21 of her Opinion, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element.”

The burntrepUBLIC element of Mr Bond’s trade mark is not negligible. It will play an important part in recalling the trade mark, as it will act as a conceptual hook for the memory. It is easier to recall the words than an abstract, if highly distinctive, device.

29) In *Medion AG v Thomson multimedia Sales Germany & Austria GmbH* Case C-120/04 the ECJ stated:

“30 However, beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may be dominated by one or more components of a composite mark, it is quite possible that in a particular case an earlier mark used by a third party in a composite sign including the name of the company of the third party still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.

31 In such a case the overall impression produced by the composite sign may lead the public to believe that the goods or services at issue derive, at the very least, from companies which are linked economically, in which case the likelihood of confusion must be held to be established.

32 The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.

33 If such a condition were imposed, the owner of the earlier mark would be deprived of the exclusive right conferred by Article 5(1) of the directive even where the mark retained an independent distinctive role in the composite sign but that role was not dominant.”

30) The republic element of Mr Bond’s trade mark does have a distinctive and independent rôle. Owing to the differences between the respective trade marks there will not be direct confusion with the trade mark of RRL. However, the presence of republic in Mr Bond’s trade mark will lead the average consumer to believe that goods sold under his trade mark come from RRL or that they come from economically linked undertakings. **Consequently there is a likelihood of confusion and the application for registration is to be refused.**

Costs

31) RRL, having been successful, is entitled to a contribution towards its costs. I award costs on the following basis:

Opposition fee	£200
Preparing a statement and considering the statement of Mr Bond	£200
Preparation and attendance at the hearing:	£200
Total	£600

Owing to both the nature and effect of the evidence of RRL, I do not consider it appropriate to award any costs in relation to it.

32) I order Nick Bond to pay Republic (Retail) Ltd the sum of £600. 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 day of January 2010

David Landau
For the Registrar
the Comptroller-General

ⁱ *General Motors Corporation v Yplon SA* Case C-375/97 [2000] RPC 572.

ⁱⁱ Mr Geoffrey Hobbs QC, sitting as a deputy high court judge, in *Whirlpool Corporations and others v Kenwood Limited* [2008] EWHC 1930 (Ch):

“76.....I think that the aim should generally be to prevent conflict occurring in any substantial part of the Community and that the United Kingdom can for that purpose be regarded as a substantial part of the Community, with or without the addition of France and Germany.”

PAGO International GmbH v Tirol Milch registrierte Genossenschaft mbH Case C-302/07:

“27 Territorially, the condition as to reputation must be considered to be fulfilled when the Community trade mark has a reputation in a substantial part of the territory of the Community (see, by way of analogy, *General Motors*, paragraph 28).

28 It should be noted that the Court has already ruled that, with regard to a Benelux trade mark, it is sufficient, for the purposes of Article 5(2) of the directive, that it has a reputation in a substantial part of the Benelux territory, which part may consist of a part of one of the Benelux countries (*General Motors*, paragraph 29).

29 As the present case concerns a Community trade mark with a reputation throughout the territory of a Member State, namely Austria, the view may be taken, regard being had to the circumstances of the main proceedings, that the territorial requirement imposed by Article 9(1)(c) of the regulation is satisfied.”

ⁱⁱⁱ In *L’Oreal SA and others v Bellure NV and others* Case C-487/07 the European Court of Justice commented on tarnishing in the following manner:

“40 As regards detriment to the repute of the mark, also referred to as ‘tarnishment’ or ‘degradation’, such detriment is caused when the goods or services for which the identical or similar sign is used by the third party may be perceived by the public in such a way that the trade mark’s power of attraction is reduced. The likelihood of such detriment may arise in particular from the fact that the goods or services offered by the third party possess a characteristic or a quality which is liable to have a negative impact on the image of the mark.”

This confirms the opinion of Advocate General Jacobs in *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd* C-408/01:

“38. In contrast, the concept of detriment to the repute of a trade mark, often referred to as degradation or tarnishment of the mark, describes the situation where - as it was put in the well-known *Claeryn / Klarein* decision of the Benelux Court of Justice - the goods for which the infringing sign is used appeal to the public’s senses in such a way that the trade mark’s power of attraction is affected. That case concerned the identically pronounced marks *Claeryn*’ for a Dutch gin and *Klarein*’ for a liquid detergent. Since it was found that the similarity between the two marks might cause consumers to think of detergent when drinking *Claeryn*’ gin, the *Klarein*’ mark was held to infringe the *Claeryn*’ mark.”

^{iv} In *Intel Corporation Inc v CPM United Kingdom Ltd* Case C-252/07 the ECJ stated:

“77 It follows that proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future.”

Even though this case is effectively a quia timet action DB needs some form of evidence of me to conclude that there would be a change in the economic behaviour of the purchasers of its goods. There is nothing in the evidence that would allow me to reach such a conclusion.

^v *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* [2000] FSR 77.

^{vi} See *Société provençale d’achat and de gestion (SPAG) SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-57/03 and *React Trade Mark* [2000] RPC 285.

^{vii} *Sabel BV v Puma AG* [1998] RPC 199.

^{viii} *Sabel BV v Puma AG* [1998] RPC 199.

^{ix} *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* [2000] FSR 77.

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

^{xi} See: *Spa Monopole, compagnie fermière de Spa SA/NV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-438/07:

“23 Admittedly, the consumer normally attaches more importance to the first part of words (Joined Cases T-183/02 and T-184/02 *El Corte Inglés v OHIM – González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II-965, paragraph 81). However, that argument cannot hold in all cases (see judgment of 16 May 2007 in Case T-158/05 *Trek Bicycle v OHIM – Audi (ALL TREK)*, not published in the ECR, paragraph 70 and the case-law cited) and does not, in any event, cast doubt on the principle that the assessment of the similarity of marks must take account of the overall impression created by them.”

^{xii} The meanings of the words is clear and obvious as is required, as per the judgment of the CFI in, inter alia, *GfK AG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-135/04:

“78. The Court cannot uphold the applicant’s argument that the earlier mark refers to the concept of an autobus, and there is no need to take a view on OHIM’s argument that a like reference characterises both signs. It is common ground that the services concerned have no link whatsoever with public transport. Even if it is indeed the case that the conceptual analysis of a sign is not invalidated by the fact that the meaning of that sign bears no relation to the services concerned, the fact remains that that meaning must be clear, so that the relevant public are capable of grasping it immediately (see, to that effect, Case T-292/01 *Phillips-Van Heusen v OHIM – Pash Textilvertrieb und Einzelhandel(BASS)* [2003] ECR II-4335, paragraph 54). In the circumstances, in view of the nature of the services in question, the relevant public will not spontaneously associate the word ‘bus’ with a means of public transport.”

^{xiii} *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117.

^{xiv} *Sabel BV v Puma AG* [1998] RPC 199.

^{xv} *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

^{xvi} *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.