

O-424-12

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS 255544A & 2552700A
BY IPC MEDIA LIMITED TO REGISTER THE IDENTICAL TRADE MARKS**

LOOK

IN CLASS 25 & CLASS 18 RESPECTIVELY

**AND IN THE MATTER OF CONSOLIDATED OPPOSITIONS
THERE TO UNDER NOS 101172 & 101179
BY KANGOUROU**

BACKGROUND AND PLEADINGS

1) On 10 August 2010 and 12 July 2010, respectively, IPC Media Limited (“the applicant”) applied under the Trade Marks Act 1994 (“the Act”) for registration of the two identical marks LOOK for lists of goods in classes 8, 21, 25 & 26 and 3, 9, 14, 18 & 32 respectively.

2) On the 8 and 9 November 2010, respectively, Kangourou (“the opponent”) filed notices of opposition to both applications. Both oppositions are based on a single ground of opposition, namely, that the applications offend under Section 5(2)(b) of the Act because they are in respect of the same similar mark and identical or similar goods to those of an earlier mark in the name of the opponent. In respect of the first application (2555544), the opposition was limited to its Class 25 specification and in respect of the second application (2552700), the opposition is limited to its Class 18 specification of goods. The relevant details of the opponent’s earlier mark are:

Community Trade Mark (CTM) 6627184

MY LOOK

Filing date: 20 October 2009

Registration date: 9 July 2011

Goods and services relied upon against 2555544

Class 25: *Clothing, not including underwear and night wear; footwear (except orthopedic footwear); headgear; sportswear and sports shoes.*

Class 35: *Retailing of clothing, footwear, headgear.*

Goods and services relied upon against 2552700

Class 18: *Leather and imitations of leather, and goods made of these materials namely: bags, handbags, backpacks, shoulder bags, beach bags, sports bags, holdalls, clutch bags, travelling bags, wallets, purses, briefcases, belt bags, luggage, leatherware.*

Class 35: *Retailing of bags.*

3) This mark qualifies as an “earlier mark” as defined in Section 6 of the Act because its date of application is earlier than that of the contested applications. As the earlier mark did not complete its registration procedure more than five years before the publication of the contested applications, it is not subject to the proof of use provisions set out in Section 6A of the Act. Consequently, it is

entitled to rely on its earlier mark in respect of all the goods and services listed above.

4) The applicant subsequently filed counterstatements in both sets of proceedings denying the opponent's claims. Further, it applied to divide both applications. As a result, the goods not being opposed proceeded to registration under numbers 2555544B and 2552700B respectively. The oppositions are therefore confined to the following applications:

2555544A

Class 25: *Clothing, footwear, headgear.*

2552700A

Class 18: *Leather and imitation of leather, and goods made of these materials and not included in other classes; luggage; bags, handbags, travelling bags, sports bags; purses, wallets; jewellery boxes; key rings; umbrellas and parasols.*

6) Only the applicant filed evidence-in-chief. Both sides ask for an award of costs. The matter came to be heard on 4 October 2012 when the opponent was represented by Mr Alan Fiddes of Urquhart-Dykes & Lord LLP and the applicant was represented by Mr Michael Edenborough QC of Counsel, instructed by Cleveland.

Applicant's Evidence

7) This takes the form of two witness statements. The first of these is by Ms Julie Lavington, Publishing Director for the opponent. Ms Lavington provides very detailed and extensive information regarding the applicant's extensive use, since 2007, of the mark LOOK in respect of a printed weekly "fashion and celebrity" magazine. The evidence also illustrates use of the mark in respect to events, particularly fashion events, that the magazine promotes or co-promotes with other parties. These include the launch of "The Look Shoe" in September 2010, in association with the retailer called *Office*. Ms Lavington discloses that 2,281 pairs of shoes were sold. I note that the launch of the shoe was after the relevant dates in these proceedings, namely the filing dates of the two contested applications. It is not necessary for me to record other information provided by Ms Lavington.

8) The second witness statement is by Dr Adam Kilgarriff, Director of Lexical Computing Ltd. He explains that he has nineteen years' experience of working in the field of dictionaries and dictionary-making and states that he has a good knowledge of the fields of lexicography and lexical computing.

9) Dr Kilgarriff discusses the word *look*, identifying it as “one of the commonest words of English” and can be either a noun or a verb, but is usually used as the latter. He states that whether it is used as a noun or as a verb depends upon its grammatical context. He points out that only nouns are immediately preceded by adjectives or determiners and consequently *my look*, *your look* or *new look* is use where the *look* element is perceived as a noun. In contrast, Dr Kilgarriff states that when the word *look* appears on its own, and there is no grammatical context to specify whether it is a noun or a verb, it is usually perceived as a verb. He states that the word *look*, on its own, is likely to be understood as the exclamation “look!” meaning “look at that”.

Opponent’s Evidence in reply

10) Mr Dominique Bergin, President of the opponent, provided a witness statement attesting to the scope of his company’s activities in the UK. By letter of 6 July 2012, Cleveland requested, on behalf of the applicant, that this evidence should not be admitted into these proceedings. It argued that such evidence is neither in-reply to the applicant’s evidence or of relevance in these proceedings. Having heard submissions at the hearing from both Mr Edenborough and Mr Fiddes, I directed that this evidence should not be permitted into the proceedings. I agree with the comments originally made by Cleveland and reiterated by Mr Edenborough at the hearing.

DECISION

Ownership of the earlier mark

11) At the hearing, Mr Edenborough submitted that because the opponent had been put to proof of ownership of the earlier mark in the applicant’s counterstatement and because the opponent had failed to address this in evidence, then this should terminate the proceedings. Mr Fiddes claimed that the in response to the request in the counterstatement, the opponent provided, as an attachment to a letter, an extract from the CTM register showing the opponent recorded as the proprietor of the earlier mark.

12) It is true that the opponent has not formally introduced this register extract into the proceedings, however, I consider it appropriate to take judicial notice of information provided on the official CTM register and this shows that the proprietor of the earlier mark and the opponent in these proceedings are one and the same. This satisfies the ownership issue in these proceedings and if the applicant believes that there is a further issue, the correct process to challenge ownership is via cancellation proceeding at the OHIM.

Section 5(2)(b)

13) Section 5(2)(b) reads:

“(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.”

14) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law provided by the Court of Justice of the European Union (CJEU) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] FSR. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] ETMR 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P (LIMONCELLO). 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*,

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, 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 Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(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*,

(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*,

(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*,

(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*,

(g) in determining whether similarity between the goods or services covered by two marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(h) 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*,

(i) 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 and Adidas Benelux BV*,

(j) 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*.

(k) 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; 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; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *LIMONCELLO*

Comparison of goods and services

15) In assessing the similarity of goods and services, it is necessary to apply the approach advocated by case law and all relevant factors relating to the respective goods and services should be taken into account in determining this issue. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU stated at paragraph 23:

‘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.'

16) Other factors may also be taken into account such as, for example, the distribution channels of the goods concerned (see, for example, *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281).

17) I also take account of the guidance of the General Court ("the GC") in *Gérard Meric v OHIM*, Case T-133/05, where it held:

"29. ...goods can be considered identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark"

18) Finally, the GC, in Case T-325/06, *Boston Scientific Ltd v OHIM* considered the complementary nature of goods and services, commenting that it is settled case-law that complementarity exists when the goods and services are those which are closely connected in the sense that one is indispensable or important for the use of the other, so that the consumers may think that the same undertaking is responsible for both.

19) For ease of reference the parties' respective relevant goods and services are:

Opponent's goods and services	Applicant's goods
<p>Class 25: <i>Clothing, not including underwear and night wear; footwear (except orthopedic footwear); headgear; sportswear and sports shoes.</i></p> <p>Class 35: <i>Retailing of clothing, footwear, headgear.</i></p>	<p>2555544A</p> <p>Class 25: <i>Clothing, footwear, headgear.</i></p>

<p>Class 18: <i>Leather and imitations of leather, and goods made of these materials namely: bags, handbags, backpacks, shoulder bags, beach bags, sports bags, holdalls, clutch bags, travelling bags, wallets, purses, briefcases, belt bags, luggage, leatherware.</i></p> <p>Class 35: <i>Retailing of bags.</i></p>	<p>2552700A</p> <p>Class 18: <i>Leather and imitation of leather, and goods made of these materials and not included in other classes; luggage; bags, handbags, travelling bags, sports bags; purses, wallets; jewellery boxes; key rings; umbrellas and parasols.</i></p>
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20) In respect to both oppositions, the opponent’s best case appears to rest with the goods (rather than the services) that it relies upon. Consequently, I will restrict my considerations only to a comparison of the respective goods.

21) It is self evident that the applicant’s Class 25 goods, namely *clothing, footwear, headgear* are identical to those of the opponent because the same terms occur in both parties’ specifications. Consequently, I conclude that most of the goods listed in the specification of application 255544A are identical to those of the opponent. I say “most” because the opponent’s specification specifically excludes *underwear, nightwear* and *orthopaedic shoes*, but these same goods are included in the applicant’s broad terms. The effect of this is that, insofar as these goods are covered by the application, the goods are not identical to the opponent’s goods. Nevertheless, the opponent’s specification includes all other clothing and footwear that will include goods that are highly similar to these excluded goods.

22) The applicant’s *leather and imitation of leather, and goods made of these materials and not included in other classes; luggage; bags, handbags, travelling bags, sports bags; purses, wallets*, all listed in Class 18 of its 2552700A application, are also present in the corresponding class list of the opponent’s mark and are therefore identical.

23) The applicant’s *jewellery boxes* are not reproduced in the opponent’s Class 18 specification. At the hearing, Mr Fiddes conceded that he was “a bit more pushed” in making a case for similarity when considering the *jewellery boxes* with the opponent’s goods. *Jewellery boxes* are intended to store jewellery and therefore, have a different purpose and nature to all of the opponent’s goods. These items are commonly sold through jewellery shops, being different outlets compared to all of the opponent’s goods that are sold essentially through fashion and/or sports retailers. Neither are they in competition with, or complementary to, the opponent’s goods. Consequently, I conclude that *jewellery boxes* are not similar to any of the opponent’s goods.

24) At the hearing, Mr Edenborough contended that the applicant’s *key rings* are not identical or similar to any of the opponent’s goods. However, in the sense

that the term appears in Class 18, it is understood to describe *fobs* and these can be made from leather and/or imitation leather. Consequently, they are covered by the broad terms of the opponent's Class 18 specification. These goods are, therefore, identical.

25) Finally, in respect of the applicant's *umbrellas and parasols*, these are not obviously similar in nature or intended purpose to any of the opponent's goods or services. They may be sold in the same retail outlets, but as Mr Edenborough submitted at the hearing, this alone is not enough to make a finding of similarity. Taking all of this into account, I conclude that these goods are not similar to any of the opponent's goods.

The average consumer

26) Matters must be judged through the eyes of the average consumer (*Sabel BV v. Puma AG*, paragraph 23), who is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, paragraph 27). The degree of care and attention the average consumer uses when selecting goods and services can, however, vary depending on what is involved (see, for example, the judgment of the GC in *Inter-Ikea Systems B.V. v. OHIM*, Case T-112/06).

27) In respect of the parties' Class 25 goods, I am mindful of the comments of Mr Simon Thorley, sitting as the Appointed Person, in *React trade mark* [2000] R.P.C. 285:

"There is no evidence to support Ms Clark's submission that, in the absence of any particular reputation, consumers select clothes by eye rather than by placing orders by word of mouth. Nevertheless, my own experience tells me it is true of most casual shopping. I have not overlooked the fact that catalogues and telephone orders play a significant role in this trade, but in my experience the initial selection of goods is still made by eye and subsequent order usually placed primarily by reference to a catalogue number. I am therefore prepared to accept that a majority of the public rely primarily on visual means to identify the trade origin of clothing, although I would not go so far as to say that aural means of identification are not relied upon."

28) The GC has continued to identify the importance of visual comparison when considering the purchasing act in respect of clothing (see for example Joined Cases T-117/03 to T-119/03 and T-171/03 *New Look Ltd v OHIM (NLSPOORT et al)* [2004] ECR II-3471 at [49]-[50] and Case T-414/05 *NHL Enterprises BV v OHIM (LA KINGS)* [2009] ECR II.). There is no evidence in the current case suggesting that I should take a different view to that expressed by Mr Thorley and I apply his comments here. The purchasing act will involve a reasonable degree of care and attention but not the highest degree of attention.

As Mr Thorley noted, the purchasing process is primarily a visual one but I do not ignore the aural considerations that may be involved. The average consumer of the respective goods is likely to be ordinary members of the public.

29) Regarding the parties' respective Class 18 goods, many of these are also fashion items, where the purchasing process will be very similar to that involved with clothing. Other goods such as *jewellery boxes* are likely to be less frequent purchases where the level of care and attention may be slightly higher than for the previously discussed fashion items, but still the level of care and attention will not be of the highest order.

Comparison of marks

30) For ease of reference, the respective marks are:

Opponent's mark	Applicant's mark
MY LOOK	LOOK

31) When assessing the extent of similarity between the respective marks, I must do so with reference to their visual, aural and conceptual similarities bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23). The applicant's mark consists of a single word and, self-evidently, this must be the dominant and distinctive element. The opponent's mark consists of the two word phrase, MY LOOK. The MY element is a possessive determiner acting upon the word LOOK. Consequently, the distinctive character resides in its totality.

32) Turning to the comparison of the marks, from a visual perspective a point of obvious similarity is that both marks feature the word LOOK and both marks are presented in ordinary script. They differ in that the opponent's mark has the two letter word MY preceding the word LOOK. Mr Edenborough pointed out that this increased the length of the mark by at least 50%. However, with the word LOOK consisting of twice as many letters as the word MY, it remains visually prominent within the opponent's mark. Taking account of all the similarities and differences, I conclude that the respective marks share a moderately high level of visual similarity.

33) From an aural perspective, the addition of the word MY in the opponent's mark creates an additional syllable at the start of the mark that is absent in the applicant's mark and creates a two syllable mark compared to the opponent's single syllable mark. Taking this into account, together with the marks sharing the same second syllable, I conclude that the marks share a moderately high level of aural similarity.

34) Conceptually, it has been stated by Dr Kilgarriff that the marks will be perceived as being different, namely that the applicant's mark LOOK will be

perceived either as a verb (meaning to “direct one’s gaze in a specified direction”¹) or as a noun, but that when used alone as in the applicant’s mark it is likely to be perceived as a verb. On the other hand, in the mark MY LOOK, the word LOOK will be perceived as a noun, so that the entirety will be perceived, for example, as meaning a “style or fashion” “associated with the speaker”^{1 & 2}. Whilst an ordinary reading of a dictionary can lead to the same conclusions, there is a further factor to take into account, namely the context in which the consumer will be exposed to the respective marks. A pure linguistic analysis as carried out by Dr Kilgarriff and as provided by a dictionary fails to factor this in.

35) The respective marks are used or intended to be used to identify the parties’ goods, namely various items of clothing and bags etc. These goods are, in the main, fashion items. In respect to such fashion items, there is an increased likelihood that the word LOOK, alone, will be perceived as a reference to “style” or “fashion”. Whilst I recognise and acknowledge Dr Killgariff’s conclusion that generally the word LOOK, when used alone, is more likely to mean “directing one’s gaze”, when being used as a mark to identify a trader’s fashion items, then the meaning of “style” or “fashion” is at least as likely to be perceived as the alternative meaning of “to direct one’s gaze”. Taking this into account, contrary to the submissions from Mr Edenborough at the hearing and the evidence of Dr Killgariff, I conclude that the word LOOK in the respective marks is at least as likely to be perceived as having the same meaning, when considering notional and fair use. In other words, the mark MY LOOK is likely to only be perceived as a reference to a person’s style of fashion, whereas the word LOOK alone, when used in respect of the goods claimed is equally likely to be perceived as either “to direct one’s gaze” or to “style” or “fashion”. Where the applicant’s mark is perceived as a noun, I conclude that the marks share a high level of conceptual similarity. Where it is perceived as a verb, the conceptual similarity does not exist.

36) In conclusion, I have found that the respective marks share a moderately high level of visual and aural similarity and either a high level of conceptual similarity, or no conceptual similarity depending on which of the meanings is perceived.

Distinctive character of the earlier trade mark

37) I must consider the distinctive character of the earlier mark because the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG* [1998] RPC 199). The distinctive character of

¹ "look". Oxford Dictionaries. April 2010. Oxford Dictionaries. April 2010. Oxford University Press. 05 October 2012 <<http://oxforddictionaries.com/definition/english/look>>.

² "my". Oxford Dictionaries. April 2010. Oxford Dictionaries. April 2010. Oxford University Press. 05 October 2012 <<http://oxforddictionaries.com/definition/english/my>>.

the earlier mark must be assessed by reference to the goods for which it is registered and by reference to the way it is perceived by the relevant public (*Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91). Having accepted the conclusions of Dr Kilgarriff, the opponent's mark, when used in respect of clothing and other fashion items (such as bags) is likely to be perceived, by the consumer, as meaning style or fashion associated with the speaker. Such a meaning will result in the mark having an inherently low level of distinctive character in respect of all the goods and services in which the opponent relies.

38) There is no evidence before me that demonstrates that the opponent's mark has been used in the UK, therefore, I conclude that the distinctiveness of its mark has not been enhanced through use.

Likelihood of confusion

39) I must adopt the global approach advocated by case law and take into account that marks are rarely recalled perfectly with the consumer relying instead on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27).

40) Mr Edenborough submitted that because the marks are so short, there is no room for imperfect recollection and he claimed that the consumer can have perfect recollection due to the "simplicity of the marks" involved. I do not accept this argument. It may be true that the simpler the mark, the less error for mis-remembering, however, as the established case law reminds me, imperfect recollection is always a factor that I must keep in mind. The respective marks, in this case, are indeed relatively short, and may reduce the margin for mis-remembering, but nevertheless, they are not of such a nature (and neither is the human mind) that imperfect recollection can be discounted.

38) Mr Edenborough also referred me to Council Regulation 207/2009/EC, 8th recital that reads (in part) as:

"The likelihood of confusion, the appreciation of which depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark and the sign and between the goods or services identified, should constitute the specific conditions for such protection."

39) He developed his submission by stating that this recital identifies numerous relevant factors, but that these are not limited to those listed and in the current case another relevant factor is the context. In this respect, he pointed to what he claimed is a pre-education of the consumer through the applicant's use of its mark in respect of its fashion and celebrity magazine and its use in respect of "the LOOK shoe". I have considered this but I conclude that it fails to advance the

applicant's case. I do not accept that a claimed reputation and wide scale use of a mark in respect of a fashion magazine assists because of the differences in nature, intended purpose, trade channels and also because of the lack of competition or complementarity with the opponent's goods. There is just no similarity and, consequently, such use cannot influence the outcome of these proceedings. Further, even if there was similarity, I am mindful of the GC's guidance in Case T-103/06, *Esotrade SA v OHIM* that use of later filed mark that precedes the filing date of an earlier mark cannot be used as a defence in opposition proceedings in the absence of a claim for invalidation of the earlier mark.

40) The applicant's use of the mark "The LOOK shoe" does not assist either. The use shown in the evidence (amounting to the sale of 2,281 pairs) is tiny when considered in the context of a self-evidently huge market. Further, it occurred after the relevant dates in these proceedings. Whilst not couched in such terms, the applicant's submission amounts to a claim of concurrent use, but taking account of the above points, such use fails to demonstrate that there has been any concurrent use on identical or similar goods and I conclude that such use will not influence the outcome of these proceedings.

41) An influential factor in the global appreciation of the facts of this case is whether the verb/noun distinction, as explained by Dr Gilgariff and as is self-evident from a reading of a dictionary, is one that the consumer will detect and whether, if they do, it will result in it being perceived that the goods sold under the respective marks originate from the same or linked undertaking. I find that this issue is very finely balanced. On the one hand, there is the argument that MY LOOK will describe a style or fashion associated with the speaker (and as a result is endowed only with a low level of distinctive character) whereas the word LOOK alone will be understood as a reference to the verb "to look". On the other hand, it can be argued that use of the word LOOK, when used in respect of fashion items, is merely a reference to a particular "fashion look" and that, consequently, both marks will be perceived as using the word LOOK to convey the same message.

42) I find that, unlike Dr Gilgariff concluded, that it is equally likely that the mark LOOK will be perceived either as a verb to "direct one's gaze" or as a noun describing a "fashion look". My findings diverge from that of Mr Gilgariff because I have factored in the context that the mark will be seen, namely in use in respect of various fashion items.

43) I take this into account together with my finding that there is a moderately high level of visual and aural similarity, that the purchasing act is predominantly visual and that the majority of the respective goods are identical or share a good deal of similarity. I also keep in mind the low level of distinctive character of the earlier mark. In balancing all these factors, I conclude that there is a likelihood of

direct confusion where the consumer is likely, when taking imperfect recollection into account, to confuse one mark with the other.

44) These findings apply to all of the applicant's goods listed in its 2555544A application, where I found the respective goods to be identical or highly similar, and in respect to the following goods (that I have found to be identical to those of the opponent) in its application 2552700A:

Leather and imitation of leather, and goods made of these materials and not included in other classes; luggage; bags, handbags, travelling bags, sports bags; purses, wallets; [...]; key rings; [...]

45) Consequently, opposition 101172 is successful in its entirety. Opposition 101179 fails in respect of *jewellery boxes; umbrellas and parasols* listed in the Class 18 specification of application 2552700A. This is because I found no similarity between these goods and those of the opponent.

COSTS

46) One opposition having been entirely successful and the other having been largely successful, the opponent is entitled to a contribution towards its costs. Mr Fiddes submitted at the hearing that I should take account of the opponent's time spent considering what was largely irrelevant evidence filed by the applicant and requested an uplift in costs, but still within the published scale. I agree with Mr Fiddes' characterisation of the evidence. The evidence illustrating the applicant's use in respect of its magazine had no bearing on the outcome of the proceedings. Dr Kilgariff's evidence, whilst instructive, merely reached a conclusion that I was able to adduce from an ordinary reading of a dictionary. Consequently, it is my view that his evidence did not advance the applicant's case and I enhance the award for the opponent's award by £150 for considering this evidence. Mr Edenborough submitted that I should take account of the fact that the applicant was required to consider and address the opponent's evidence-in-reply that was subsequently not admitted into the proceedings. I do take this into account, but note that this evidence was brief in nature and would not have taken significant time to review and comment upon. I reduce the award by £50.

47) Therefore, I take account of the above issues and the fact that a hearing has taken place. I award costs on the following basis:

Preparing and filing Notice of Oppositions (including official fees) and considering statements in reply	£1000
Considering other side's evidence (including £150 enhancement & £50 reduction)	£500
Preparing for, and attending hearing	£800

TOTAL

£2300

48) I order IPC Media Limited to pay Kangourou the sum of £2300. 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 29th day of October 2012

**Mark Bryant
For the Registrar,
the Comptroller-General**