

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 11858
BY GROUP 4 TOTAL SECURITY LIMITED
FOR A DECLARATION OF INVALIDITY
IN RESPECT OF TRADE MARK No 2107451
IN THE NAME OF H J JACKSON & SON (FENCING) LIMITED**

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**IN THE MATTER OF Application No 11858
by Group 4 Total Security Limited
for a declaration of Invalidity
in respect of Trade Mark No 2107451
in the name of H J Jackson & Son (Fencing) Limited**

BACKGROUND

1. Trade mark number 2107451 is for the mark EURO GUARD and is registered for the following specification of goods in Class 6:- "Fencing; fencing products of metal; fences, gates, gate posts, traffic barriers, boundary rails, guard rails; parts and fittings for all the aforesaid goods." The mark stands registered from the filing date of 12 August 1996.

2. On 31 August 2000 Group 4 Total Security Limited (the applicant) applied for the invalidation of the trade mark registration. In summary, the grounds for invalidation were as follows:-

- (i) The registration is invalid under Section 47(2)(a) of the Act because of the following earlier UK trade mark registrations owned by the applicant's parent company (Group 4 Securitas (International) B.V.):-

TRADE MARK	REG. NO.	REG. DATE	JOURNAL REF.	SERVICES
EUROGUARD	1329569	12/12/1987	No. 5826 Page 3422	Class 42: Store detectives; store surveillance services; monitoring of security alarm systems; all included in Class 42.
EUROGUARD SCOTGUARD	1347838	15/06/1988	No. 5865 Page 1766	Class 42: Store detectives; store surveillance services; monitoring of security alarm systems; all included in Class 42.
EUROGUARD WELSHGUARD	1382959	04/05/1989	No. 5865 Page 1768	Class 42: Store detectives; store surveillance services; monitoring of security alarm systems; all included in Class 42.

In light of the above registrations the applicant contends that the conditions of Section 5(2) (a) of the Act apply in relation to registration nos. 1329569, 1347838 and 1382959, or alternatively Section 5(3) applies if the goods specified in the registered proprietor's trade mark are not considered to be similar to the services for which the applicant's goods are registered.

- (ii) The registration is invalid under Section 47(2)(b) of the Act in that the applicant possesses an earlier right to which the condition set out in Section 5(4) of the Act is satisfied, in particular that its use would be prevented by the law of passing off under Section 5(4)(a).

3. The registered proprietor filed a counterstatement denying the grounds of opposition. Both sides have asked for an award of costs in their favour and have filed evidence. The matter came to be heard on 22 August 2001 when the applicant for invalidation chose not to be represented and the registered proprietor was represented by Mr Blum of Gill Jennings & Every, Trade Mark Attorneys.

Applicant's Evidence

4. This consists of a statutory declaration dated 19 January 2001 by Peter V Black, the Managing Director of Group 4 Total Security Limited (the applicants).

5. Mr Black explains that the applicant for invalidity is the authorised user and licensee in the UK of trade mark registration numbers 1329569, 1347838 and 1382959.

6. Mr Black goes on to state that since the date of first use in 1986, up to the present time, the turnover throughout the United Kingdom in respect of the Trade Marks **EUROGUARD**, **EUROGUARD SCOTGUARD**, and **EUROGUARD WELSHGUARD** amounted to not less than **£135,000,000.00**. He adds that during the years prior to the filing of these proceedings, the approximate turnover figures throughout the United Kingdom have been as follows:-

During the year **1991** not less than **£ 4,159,000.00**
During the year **1992** not less than **£ 6,254,000.00**
During the year **1993** not less than **£ 18,921,000.00**
During the year **1994** not less than **£ 33,214,000.00**
During the year **1995** not less than **£ 31,197,000.00**
During the year **1996** not less than **£ 18,000,000.00**
During the year **1997** not less than **£ 14,000,000.00**
During the year **1998** not less than **£ 19,700,000.00**
During the year **1999** not less than **£ 8,900,000.00**
During the year **2000** not less than **£ 4,200,000.00**

7. Mr Black states that since the date of first use of the **EUROGUARD**, **EUROGUARD SCOTGUARD** and **EUROGUARD WELSHGUARD** Trade Marks in the United Kingdom, the Applicant for Invalidity has spent approximately **£470,000.00** on advertising and other promotional materials such as advertising literature, brochures, bulletins and the like, all of which show usage of these Trade Marks in relation to the security services for which the Applicant for Invalidity has become known. He refers to Exhibits PVB3 - PVB11 to his declaration which show usage of the trade marks in relation to security services e.g. the provision of contract static security guards. Mr Black adds that the applicant has used the Trade Marks **EUROGUARD**, **EUROGUARD SCOTGUARD** and **EUROGUARD**

WELSHGUARD extensively in the United Kingdom in relation to the provision of "store detectives; store surveillance services; monitoring of security alarm systems", and has built up a substantial reputation and goodwill in these marks.

8. In Mr Black's view, the fencing products specified in the registered proprietor's mark can clearly be used for security purposes and the trade mark EURO GUARD, incorporating, as it does, the word GUARD, clearly makes reference to the defensive and security aspects of the products, which, he speculates, are presumably used as a security measure to guard property against interference from third parties. He continues, customers may well assume that the applicant for invalidity has diversified its business activities and was producing a range of security fencing products.

9. In further support of the application, Mr Black draws attention to a recent UK Trade Marks Registry Decision concerning Opposition No. 44120 (not reported) which was filed by the current applicant against the registration of trade mark number 2015812 for the mark EUROGUARD in Class 6. At Exhibit PVB 12 to his declaration is a copy of the official decision. In that case, the applicant successfully opposed the registration of the mark EUROGUARD in Class 6 in respect of "safes, cash boxes, document cabinets; parts and fittings therefore", based on their existing rights in Class 42.

Registered Proprietor's Evidence

10. This consists of a statutory declaration by Ian Jackson dated 21 March 2001. Mr Jackson is the Chairman of H S Jackson & Son (Fencing) Ltd (the registered proprietors).

11. Mr Jackson explains that the registered proprietors came up with the EURO GUARD mark in 1996 because it was thought a suitable trade mark for fencing for keeping intruders out and has a European connotation. He says that he was not aware of the EUROGUARD trade mark of the applicants for invalidity and even if he had been, he would not have considered it of any relevance at all to his business.

12. Mr Jackson states that the Registered Proprietors have been using the Trade Mark EURO GUARD since 1996 and annual sales figures for the product are as follows:-

<u>Year</u>	<u>£</u>
1997/8	48,119
1998/9	59,235
1999/2000	121,854
2000/01 to date	91,226

13. He adds that approximately 50% of the advertising expenditure of the Registered Proprietors is on advertising metal security fencing, and about 4.6% of this expenditure is devoted to his EURO GUARD product. Mr Jackson explains that the Registered Proprietors have promoted and advertised their EURO GUARD product since 1997 and the following table sets out approximately the annual amounts spent on advertising and promoting the EURO GUARD product:-

<u>Year</u>	<u>£</u>
10/1997 - 09/1998	11,730
10/1998 - 09/1999	12,834
10/1999 - 09/2000	13,823
10/2000 - 03/2001	6,578

14. Next, Mr Jackson refers to Exhibit IAJ1 to his declaration which consists of copies of extracts from a leaflet dated December 1997 and copies of three catalogues dated respectively June 1998, April 2000 and October 2000 showing the registered Trade Mark used in respect of the product.

15. In response to the comments submitted in Mr Black's declaration, Mr Jackson states that the applicant's evidence emphasises its provision of a guarding service performed by a uniformed security officer and he sees no reason whatsoever why the applicant should diversify its activities into the fencing business. He adds that, in 2000, the registered proprietor undertook two fencing jobs for the applicant which, if the applicants were involved or interested in the fencing business, they could have done themselves. On the Trade Marks Registry decision under Opposition Number 44120, Mr Jackson accepts that a safe or cash box might be confused with security services, but he does not believe a fence would. He believes fences are made and sold by companies such as his own and the public would know this.

16. This completes my summary of the evidence filed in this case. I now turn to the decision.

DECISION

17. Firstly, I will deal with the ground based on Section 5(2) of the Act which reads:-

"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."

18. An earlier right is defined in Section 6, the relevant parts of which state:

6.-(1)

- (c) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities

claimed in respect of the trade marks,"

19. I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik 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*, paragraph 22;
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG*, paragraph 23, 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.* 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*, paragraph 23;
- (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*, paragraph 23;
- (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*, 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*, 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*, paragraph 26;
- (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*, 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*, paragraph 29.

20. In essence the test under Section 5(2)(b) is whether there are similarities in the marks and goods or services which would combine to create a likelihood of confusion. The likelihood of confusion must be appreciated globally and I need to address the visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements, taking into account the category of goods or services in question and how they are marketed.

21. At the Hearing, Mr Blum conceded that the proprietor's registered mark is similar to the applicant's registration No. 1329569 for the mark EUROGUARD. Indeed, the only difference between the two marks is that the registered proprietor's mark EURO GUARD is presented as two words and while this has a minimal visual impact there will be both oral and conceptual identity. Turning to the applicant's other registrations (numbers 1347838 and 1382959) for the marks EUROGUARD SCOTGUARD and EUROGUARD WELSHGUARD, the addition of the words SCOTGUARD and WELSHGUARD mean that these marks contain different distinctive components. However, in my view the word/words EUROGUARD/EURO GUARD are a dominant distinctive element in the respective marks and this element is likely to be recognised and retained by customers. I have little doubt that a likelihood of confusion could result from both visual and oral use of the marks particularly when imperfect recollection is taken into account, in that many customers could consider the common element in the marks to be an indication that goods and or services may come from the same undertaking or economically linked undertakings. On a conceptual comparison of the marks it, once again seems to me that the word/words EUROGUARD/EURO GUARD will be remembered and retained by customers and notwithstanding the additional elements in the applicant's marks, it may be that customers could believe that the goods and/or services share the same origin.

22. In my view the respective marks are, in themselves, similar. However, I must bear in mind that the common element EUROGUARD/EURO GUARD, while distinctive, consists of the abbreviation EURO (which is readily understood to mean European) and the ordinary word guard, in other words European Guard, which must be considered to have a reference to the nature of the services and goods provided and thus not warrant a particularly wide penumbra of protection.

23. On the other hand the applicants for invalidity claim reputation in their marks and enhanced distinctive character arising from reputation is an element to which importance may be attached in Section 5(2) considerations. The applicant claims use since 1986, with considerable turnover and promotion - see paragraphs 6 and 7 of this decision for details. The Exhibits filed with the evidence only demonstrate use in respect of the provision of security guards; and that, in use, SCOTGUARD and WELSHGUARD are not used with the word EUROGUARD but are used solus.

24. Upon consideration of the evidence filed I feel able to infer that on balance, given the length and extent of use (albeit declining) the applicant has a reputation in the mark

EUROGUARD in relation to static security guard services which would encompass "store surveillance services" and the "monitoring of security alarms". The evidence filed in this case contains numerous examples of the EUROGUARD mark in use in relation to the provision of uniformed security guards but does not demonstrate use in relation to "store detectives". For the purposes of Section 5(2) I will take the enhanced distinctive character of the opponent's mark into account only in relation to "store surveillance services" and "the monitoring of security alarms". Nevertheless, I must still compare the registered proprietor's mark and the applicant's earlier trade mark registrations on a fair and notional basis taking the applicant's full specifications into account.

25. I now go on to take into account the goods and services covered by the specifications of the respective marks. In my determinations on this point I have considered the guidelines formulated by Jacob J in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 (Pages 296, 297) as set out below:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of services;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in particular they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors."

26. Whilst I acknowledge that in view of the *CANON - MGM* judgement by the European Court of Justice the *TREAT* case may no longer be wholly relied upon, the ECJ said the factors identified by the UK government in its submissions (which are listed in *TREAT*) are still relevant in respect of a comparison of goods and services.

27. The goods of the registration in suit cover, inter alia, fences, fencing products, gates, guard rails and traffic barriers, whereas the applicants for invalidity's services cover store detectives; store surveillance services and the monitoring of security alarm systems.

28. The uses or purpose of the respective goods and services can be said to overlap in that they both serve to protect property, albeit by different means in that their nature is different. The services protect property through the use of human resources while the goods protect property through erecting physical barriers to potential trespassers.

29. While the users of the goods and services may well overlap it seems to me that many customers for the goods would not require the services or necessarily expect the services to come from the same undertaking. No evidence is before me as to whether the goods and services are provided together in the market place by economically linked undertakings or on whether the goods and services reach the market through the same trade channels. However, it is apparent that the registered proprietor does not undertake security services and the applicant does not provide fencing.

30. On the information before me I reach the conclusion that similar goods and services are not involved. The applicant has not provided any evidence to show that they are linked in the market place and it seems to me, on balance, that the customer for the goods covered by the specification of the mark in suit e.g. gates and fences, would not expect security services to be provided by the same undertaking and similarly, the customer for store detectives, store surveillance services and the monitoring of security alarms, would not expect gates, fences etc. to come from the same undertaking. Gates, fencing etc require specialised storage and transport facilities of a nature very different to that needed for the provision of security personnel. The goods are not ancillary to such a service. I would add that, as pointed out by Mr Blum at the hearing, the purchaser of the goods or services would be a relatively sophisticated one and although both the opponents and applicants marks are in use, there is no evidence of confusion.

31. On a global appreciation, taking into account the relevant factors, I come to the conclusion that the Section 5(2) ground fails. The respective marks are similar but the degree of dissimilarity between the respective goods and services means that, in my view, there is no likelihood of confusion. The applicants have failed to discharge the onus placed upon them by Section 72 of the Act.

32. I now consider the ground under Section 5(4)(a) of the Act which states:-

"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"

33. The law on this common law tort is clearly set out by Geoffrey Hobbs QC acting as the 'Appointed Person', in *Wild Child* [1998] 14 RPC 455:

"A helpful summary of the elements of an action for passing off can be found in *Halsbury's Laws of England* 4th Edition Vol 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] ACT 731 is (with footnotes omitted) as follows:

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

- i. that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- ii. that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and
- iii. that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation."

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition of 'passing off', and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

34. Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

- (c) the similarity of the mark, name etc used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

35. Thus, to succeed in a passing off action, it is necessary for the applicant for invalidity to establish that at the relevant date 12 August 1996; (i) they had acquired goodwill under their mark, (ii) that use of the mark would amount to a misrepresentation likely to lead to confusion as to the origin of their goods; and (iii) that such confusion is likely to cause real damage to their goodwill.

36. Earlier in this decision I found that the applicants have a reputation and goodwill in the mark EUROGUARD for the provision of static security guards. However, I am uncertain as to the full extent of the reputation as the evidence does not provide details relating to its share of the market or whether it is a market leader. In essence the question I have to address is whether the relevant public seeing the applicants for invalidation mark used on the goods within the registered proprietor's specification would be likely to believe the goods were being offered by the applicant. I have no evidence before me on whether security services and the goods e.g. gates, fencing and barriers, are associated and normally available through the same economically linked undertakings.

37. I have no doubt that the respective marks are closely similar, indeed they are aurally and conceptually identical, but as stated earlier in this decision EUROGUARD or EURO GUARD is not a novel or original mark.

38. Turning to the respective goods and services, earlier in this decision I concluded that there was a considerable degree of dissimilarity between them and it seems to me that, notwithstanding the applicant's reputation, the customer for the applicant's security guards, who will be a relatively careful and sophisticated purchaser would not expect them to also provide gates, barriers and fencing etc. under the mark. In the absence of any evidence on the point I do not consider that the applicant's goodwill will extend to the goods covered by the registration in suit and in my view the registered proprietors use of their mark on these goods does not amount to a misrepresentation.

In the recent case of South Cone Inc. v Jack Bessant, Dominic Greensmith, Kenmy Gary Stringer (a partnership) 16 May 2001, Pumfrey J. in considering an appeal from a decision of the Registrar to reject an opposition under S5(4)(a) said:

"There is one major problem in assessing a passing off claim on paper, as will

normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s 11 of the 1938 Act (see Smith Hayden (OVAX) (1946) 63 RPC 97 As qualified by BALI [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date."

The Section 5(4)(a) ground fails.

39. Finally, I turn to the Section 5(3) ground. Section 5(3) states:-

5.-(3) A trade mark which -

- (a) is identical with or similar to an earlier trade mark, and
- (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

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, 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."

40. In light of my earlier findings in relation to Section 5(2), the goods specified in the registration in suit are dissimilar from the services specified in the applicants for cancellation registrations.

41. In my consideration of the Section 5(3) ground I am guided by the following comments of Pumfrey J. in *Daimler Chrysler AG v Alavi (t/a Merc)* [2001] A11ER (D) 189 at paragraph 88:

11. In my view, the best approach is just to follow the section, remembering Jacobs AG's warning that it is concerned with actual effects, not risks or likelihoods. The enquiry is as follows.(1) Does the proprietor's mark have a reputation? If so (2) is the defendant's sign sufficiently similar to it that the public are either deceived into the belief that the goods are associated with the proprietor so that the use of the sign takes unfair advantage of the mark, or alternatively cause detriment in their minds to either (a) the repute or (b) the distinctive character of the mark, or (3) even if they are not

confused, does the use of the sign nonetheless have this effect and (4) is the use complained of nonetheless with due cause. Detriment can take the form either of making the mark less attractive (tarnishing, to use Neuberger J's word) or less distinctive (blurring). On this analysis, *Visa* is of course a case of tarnishing."

42. Earlier in this decision I found that the applicant's reputation was not sufficient to give it actionable goodwill under Section 5(4)(a) of the Act regarding the registration in suit. While use of a mark does not need to give rise to confusion in order to be actionable under Section 5(3) it is well established that simply being reminded of the same or a similar mark does not necessarily amount to taking an unfair advantage of the repute of that mark.

43. In my view the mark EUROGUARD is not a particularly inventive or original mark and in the absence of any evidence to the contrary I do not believe the applicants and registered proprietor's fields of activity to be closely linked or associated. I am not aware that it is common or normal in trade for the providers of security guard services to offer fencing, gates and barriers etc. or vice versa. On the information before me I do not consider use of the mark in suit upon the goods specified will be parasitic upon the applicant's reputation or reduce the distinctive character of the applicant's mark. The applicant's have not discharged the onus upon them and the case under Section 5(3) fails.

44. As the applicants for invalidity have been unsuccessful, the registered proprietors are entitled to a contribution towards their costs. I order the applicants to pay them the sum of £1,250. 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 4th day of October 2001

**J MACGILLIVRAY
for the Registrar
The Comptroller General**