

O-290-07

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 2395718  
BY FRANCISCO TOJU DA'SILVA  
TO REGISTER THE TRADE MARK:**

**TRAVELOCITY INTERNATIONAL MAGAZINE**

**IN CLASSES 16, 35 AND 41**

**AND**

**THE OPPOSITION THERETO  
UNDER NO 93975  
BY  
TRAVELOCITY.COM LP**

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### **INTRODUCTION**

1) On 30 June 2005 Mr Francisco Toju Da'Silva applied to register the trade mark **TRAVELCITY INTERNATIONAL MAGAZINE** (the trade mark). The application was published for opposition purposes in the *Trade Marks Journal* on 9 September 2005. The specification of the application reads:

*magazines;*

*advertising;*

*magazine publishing; providing on-line electronic publication (not-downloadable).*

The above goods and services are in classes 16, 35 and 41 respectively 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 9 December 2005 Travelocity.com LP, which I will refer to as TCL, filed a notice of opposition to the application. TCL is the owner of Community trade mark registration no 163642. The registration is for the trade mark **TRAVELCITY**. The application for registration was made on 1 April 1996 and the registration process was completed on 14 September 2001. The trade mark is registered for the following goods and services:

*computer software product providing travel information and reservation services; such software not being intended for navigation systems or for mobile telephone systems;*

*communication services, namely, providing computerized travel data and reservations services;*

*transportation services, namely, providing computerized travel data and reservations services.*

The above goods and services are in classes 9, 38 and 39 respectively 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.

3) TCL alleges that at the date of application Mr Da'Silva was aware that it had a substantial goodwill and reputation, through extensive use and promotion in the United Kingdom and elsewhere, in the "invented and coined mark TRAVELOCITY" and that he sought to dishonestly misappropriate that goodwill and reputation for his benefit. Consequently, the application was made in bad faith and registration of the trade mark would be contrary to section 3(6) of the Act.

4) TCL claims that the respective trade marks are identical, or, in the alternative, similar. It claims that the respective goods and services are similar. Consequently, there is a likelihood of confusion and registration of the application would be contrary to section 5(2)(a) of the Trade Marks Act 1994 (the Act), or, in the alternative, section 5(2)(b) of the Act.

5) In the alternative to the grounds under section 5(2) of the Act, TCL claims that the respective trade marks are identical or similar and registration of Mr Da'Silva's trade mark is sought in respect of goods and services which are not similar to those of TCL's registration would be contrary to section 5(3) of the Act. TCL claims that it has a reputation in relation to all of the goods and services of its trade mark in the United Kingdom and use of Mr Da'Silva's trade mark would take unfair advantage of, or be detrimental to, the distinctive character of its trade mark.

6) TCL states that it is a leading provider of "online travel solutions" and had been trading continuously in the United Kingdom under the trade mark TRAVELOCITY through [www.travelocity.com](http://www.travelocity.com) since 1996 and through [www.travelocity.co.uk](http://www.travelocity.co.uk) since 1998. TCL claims that it has acquired substantial goodwill and reputation in the trade mark TRAVELOCITY in relation to goods and services in the field of travel and that use or intended use by Mr Da'Silva would be actionable under the law of passing-off. Consequently, registration of the trade mark would be contrary to section 5(4)(a) of the Act.

7) TCL requests that the application is refused in its entirety and seeks an award of costs. It states that it informed Mr Da'Silva on 11 November 2005 of its intention to bring opposition proceedings based upon its earlier rights and requested that the application be withdrawn. It request that this should be taken into account when assessing costs.

8) Mr Da'Silva filed a counterstatement. Mr Da'Silva states that he made the application in good faith. He states that the fact that the respective goods and services are in different classes underlines the differences in the goods and services. Mr Da'Silva states that *Travelocity International Magazine* started production in 2001/2002, the idea for the magazine was born in 2000/2001. Mr Da'Silva states that if the trade marks were identical then the Registry would not have accepted his application. He states that at the time that TCL alleges that it was building a reputation *Travelocity International Magazine* was doing the same thing. Mr Da'Silva states that TCL's reputation couldn't have been affected *Travelocity International Magazine's* reputation as the magazine was published in Africa. Mr Da'Silva cannot see how section 5(4)(a) of the Act comes into

play as his commercial activities took place in Africa. He states that he has an International Standard Serial Number for his publication.

9) Both TCL and Mr Da'Silva filed evidence.

10) The sides were advised that they had a right to a hearing and that if neither side requested a hearing a decision would be made from the papers and any written submissions that were received. Neither side requested a hearing; both sides filed written submissions.

11) TCL objected to the written submissions of Mr Da'Silva being considered as they were received on 12 September 2007 and the sides had been set a date of 13 August 2007, in the official letter of 2 July 2007, to file written submissions. The dates set for the filing of written submissions are for administrative purpose; it is only after this date that the hearing officer will write the decision. A side could suffer if it did not comply with the date, as a decision could be issued prior the filing of the written submissions; so it is in the interest of the sides to file their written submissions timeously. (In this case Mr Da'Silva had telephoned the hearings clerk after 13 August 2007 to request to put in written submissions. I told the hearings clerk that Mr Da'Silva could have two weeks to file his submissions, in fact they were filed later than this.) Rule 54 of the Trade Marks Rules 2000 (as amended) gives an absolute right to request a hearing in relation to any decision that may adversely affect a side in proceedings. The letter that the registrar sends out when the evidence rounds are completed also sets a date for when a hearing should be requested. I cannot see that this date can override the effects of rule 54. Again, it is in the interests of the sides to comply with the date as a decision might be issued in the absence of a timeous response. As a hearing could be demanded at any time up to the issuing of a decision, it would give rise to an anomalous position to shut out late submissions; or force a side to request a hearing as an alternative. I consider that it would be outwith natural justice to shut out written submissions because they did not comply with an administrative date; if the period for filing submissions was governed by legislation it would be a different matter. I will take into account the written submissions of Mr Da'Silva. I note that Mr Da'Silva does not have legal representation, although this has not affected my decision in relation to this matter. TCL also complains that Mr Da'Silva includes evidence in his submissions. Parts of his submissions can be categorised as evidence, I cannot and will not take it into account as it is neither in proper evidential form nor has there been a request to file additional evidence.

## **EVIDENCE**

### **Main evidence of TCL**

12) This consists of a witness statement by Robert Booth. Mr Booth is managing director of LM Travel Services Limited, which I will refer to as LMT. LMT is a wholly owned subsidiary of Sabre Holdings Corporation, which I will refer to as Sabre, and the company through which the business of Travelocity Holdings Inc group is conducted in the United Kingdom.

13) Mr Booth states that TCL is “a leading provider of consumer-direct travel services for the leisure and business traveller”. The website located at [www.travelocity.com](http://www.travelocity.com) was launched on 12 March 1996 by Sabre Interactive, a division of Sabre Interactive, a division of AMR Corporation, which at the time owned the Sabre Reservations System and American Airlines. The current registrant of the domain name is TCL, as shown at RB4.

14) Mr Booth states that TCL also published a United States based magazine called *Travelocity*. The magazine was first published in spring 2000. It was distributed to selected TCL members based on, amongst other things, frequency of bookings made through the [Travelocity.com](http://Travelocity.com) website. It was possible for visitors to the website to request a copy. Exhibited at RB5 is a copy of the front cover of the issue for May/June 2001. Mr Booth states that the magazine provided information on travel destinations to customers of TCL mainly in the United States. He states that United Kingdom citizens assessing the website would have been aware of it. The last issue of the magazine was published in the winter of 2001.

15) Mr Booth states that TCL has conducted its business in the United Kingdom through LMT since it acquired this company in 2001. At the time of the acquisition LMT was called Air Tickets Direct Limited; the name of the company changed to [Travelocity.co.uk](http://Travelocity.co.uk) Limited on 3 October 2001, it then changed its name to LMT on 28 November 2005.

16) Mr Booth states that as a result of the launch of [www.travelocity.com](http://www.travelocity.com) in March 1996 and the associated PR, 20% of hits on the website came from visitors outside of the United States. The first United Kingdom citizen joined the website as a member on 13 March 1996. In order to become a member of the website a user had to either sign up to receive an e-mail newsletter and/or make a purchase on the website. At that time people from outside the United States could not purchase services. In 1997 TCL altered its infrastructure to support global pricing and taxation by the use of Sabre’s back-end systems. This move led TCL to begin offering booking functions in other countries, including in the United Kingdom. The first booking in pounds sterling was made on the website on 29 July 1997.

17) Mr Booth states that in 1998 the website located at [www.travelocity.co.uk](http://www.travelocity.co.uk) was launched, this offered travel service specifically tailored to the United Kingdom consumer. Articles featuring the launch of the United Kingdom specific website appeared in the United Kingdom press in 1998. Copies of the four articles are exhibited at RB7.

18) Mr Booth states that in the summer of 1998 TCL established a customer service centre in Cardiff to support its United Kingdom customers. TCL’s first major advertising in the United Kingdom was launched in 2000. This included London Underground advertising and radio advertising, as well as a London taxi campaign; a copy of a photograph of the taxis is exhibited at RB8.

19) Mr Booth states that in 2002/2003 a major advertising campaign took place in order to further increase the awareness of the TRAVELOCITY brand in the United Kingdom. An advertisement entitled *Camp Flight Attendant* was shown in London cinemas in 2003, the cinema advertisement uses Travelocity.co.uk and logo. Examples of advertising are exhibited at RB9. The exhibit shows use of Travelocity.co.uk and logo as well as TRAVELOCITY, although the latter appear less often. Advertisements were placed in the *Guardian*, the *Observer*, the *Sunday Times*, *Metro* and *Marie Claire*. There were also radio advertisements.

20) Mr Booth states that at the end of 2003 TCL increased the advertising of the TRAVELOCITY brand in the United Kingdom. It launched a more aggressive media strategy to increase TRAVELOCITY brand awareness, featuring the television travel show presenter Alan Whicker. At RB10 there is a CD with recordings of two visual media advertisements and two radio advertisements featuring Mr Whicker. The visual media advertisements show use of a device and Travelocity.co.uk; all of the advertisements refer to TRAVELOCITY on its own. Copies of a variety of advertisements and references in the press to travel related services are also included in the exhibit. Copies of press articles referring to TRAVELOCITY are exhibited at RB11; there is a large amount of material. The material exhibited at RB10 and RB11 emanates from prior to the date of application. Advertisements and press articles from the first half of 2005 are exhibited at RB12. A summary of the Alan Whicker campaign and its effectiveness, prepared by TCL's advertising agency – Miles Calcraft Briginshaw Duffy – is exhibited at RB13. The material exhibited at RB13 shows that the campaign was launched on 4 January 2004. In 2004 £3.7 million was spent on the campaign, in January and February 2005 £2.7 million was spent on the campaign. At exhibit RB15 there is a copy of a certificate awarded by National Business Awards. The awards were given for media campaigns that took place between 1 January 2003 and 31 May 2004. The nomination for the campaign states the following:

“Travelocity is an online travel agency with over 100 employees. At the outset, the company was No. 5 in a market place with room for only three players. The resulting advertising campaign needed to make the company ‘famous’. The Alan Whicker campaign has been successful in transforming the company from a relatively little known online travel company to an iconic brand. Cost restraints meant that the TV campaign was restricted to London and Scotland, but wrapped around this was a fully integrated campaign covering all channels. The result has been a 46 per cent increase in brand awareness, sales up by 67 per cent and unique web visitors increased by 249 per cent.”

21) Mr Booth estimates that approximately \$100,000 was spent on launching the United Kingdom website prior to 1 January 2000. From 1 January 2000 to 31 December 2004 \$17.5 million was spent on advertising the TRAVELOCITY brand in the United Kingdom. The majority of this expenditure in this period was from 2002 onwards as during 2000 and 2001 the maximum budget allocated to promoting the brand TRAVELOCITY in the United Kingdom was \$500,000 per year. A further \$3 million was paid to search engines such as Google in order for consumers to be directed to the

TCL's United Kingdom website when they were searching on the Internet (paid search spend). The total expenditure for advertising TRAVELOCITY in the United Kingdom during the 2005 calendar year was \$9 million and the total paid search spend during the same period was \$5.2 million. Mr Booth estimates that half of the paid search spend was allocated to the first half of 2005.

22) TCL collaborated with the following United Kingdom companies between 1998 and 2001:

British Telecom;  
Excite;  
Financial Times;  
Netscape;  
EMAP.

The following travel related companies were provided marketing opportunities with TCL's United Kingdom website between 2002 and April 2005:

British Airways;  
Air France;  
Virgin Atlantic;  
American Airlines;  
Delta Air Lines;  
United Airlines;  
Northwest Airlines;  
Emirates;  
Cathay Pacific;  
Qantas;  
KLM;  
BMI;  
Alitalia;  
Swiss;  
SAS;  
Iberia;  
Over 60,000 hotel properties;  
Over 50 car hire companies.

The marketing opportunities included co-branded advertising and promotion pages on the website. Advertising space on the website was sold to companies which wished to promote their services or products.

23) The total value of TCL travel transactions processed through the United Kingdom website are as follows:

Year ending 31 December 2002	£27,665,464
Year ending 31 December 2003	£36,084,509

Year ending 31 December 2004	£56,722,347
Year ending 31 December 2005	£67,002,803

The total revenue generated from the business conducted through Travelcity.co.uk Limited in the United Kingdom is as follows:

Year ending 31 December 2002	£7,069,108
Year ending 31 December 2003	£9,873,132
Year ending 31 December 2004	£19,579,426
Year ending 31 December 2005	£23,583,454

(The annual accounts are exhibited at RB17.)

24) TCL conducted a survey in March 2005 to establish awareness of the TRAVELOCITY brand in the United Kingdom. A copy of a presentation explaining the results of the survey are exhibited at RD18. The presentation shows that in London there was a 74% awareness of the brand amongst target consumers.

25) Mr Booth states that Travelocity Communications Limited was incorporated in England and Wales on 24 August 2004. He states that Mr Da’Silva is the sole shareholder of the company. The domain name travelocity-magazine.com was registered by Mr Da’Silva on 29 November 2004. Mr Booth states that Mr Da’Silva advertised during November 2005 through the website located at www.travelocity-magazine.com a quarterly magazine, published by Travelocity Communications Limited, which according to the website promotes the marketing of travel. At RB20 pages from the website downloaded on 15 September 2005 are exhibited. On the first page of the exhibit the following is written:

“Travelocity International Magazine is a quarterly magazine, published by Travelocity Communications Limited. It provides a window into destination promotions and marketing. We provide a spread of opportunities for global destination marketing of travel, trade and resources for corporate and public establishments globally.”

Mr Booth states that he has not seen a copy of the magazine.

26) On 11 November 2005 Bird & Bird, solicitors, wrote to Mr Da’Silva requiring him to cease using the trade mark TRAVELOCITY, a copy of the letter is exhibited at RB19. Mr Booth states that shortly afterwards the website was taken down and can no longer be accessed. Mr Booth states that Travelocity Communications Limited was dissolved on 18 July 2006.

**Evidence of Mr Da’Silva**

27) Mr Da’Silva states that Travelocity International Magazine was first published in 2003 with the ISSN registration no 1596-8405, which was also received in 2003. He



states that Travelocity Communications was incorporated in Africa in 2002 and has been doing business since. Mr Da'Silva exhibits the front covers of TRAVELOCITY International Magazine for 10 May 2003 and August 2004. The covers indicate that the contents are travel related. The prices of the magazine in numerous countries are listed on the covers. On the 10 May 2003 cover the price in the United Kingdom is given as \$3.00 (sic), there is no price for the United States. The August 2004 magazine gives the United Kingdom price as £1.60 and the United States price as \$3.00. He states that the business decided to expand its operations and set up a branch office in the United Kingdom. Mr Da'Silva states that the website has been taken down to rebuild whilst awaiting the outcome of this trade mark application. Travelocity Communications Limited UK was dissolved as it could not carry on its business. Mr Da'Silva goes on to comment on the different specifications that the respective trade marks have.

### **Evidence in reply of TCL**

28) This consists of a witness statement by James Andrew Fish who is a trade mark attorney and solicitor. Most of Mr Fish's statement can be categorised as being a commentary of the evidence of Mr Da'Silva rather than evidence of fact. I will only record the evidence of fact; although I take into account the points that Mr Fish marks when coming to my decision. Exhibited at JAF1 are pages downloaded from the Internet, they emanate from 26 May 2000. The pages relate to the launch of *Travelocity Magazine*. The article states that the magazine is a result of a partnership between Travelocity.com and American Airlines; of course, at one time the two undertakings were in the same ownership (see paragraphs 12 and 13). Mr Fish states that having checked the official ISSN records he can find no record of no 1596-8405 having been assigned. Exhibited at JAF2 is a page downloaded from the ISSN website on 22 May 2007 which states that this number has not been assigned and is a "free" ISSN.

### **DECISION**

#### **Material dates**

29) The material date in relation to the grounds of opposition under sections 3(6), 5(2) and 5(3) of the Act is the date of the application for registration, 30 June 2005. It is well established that the material date in relation to passing-off is the date of the behaviour complained of; in relation to section 5(4)(a) this date cannot be later than the date of application for registration<sup>1</sup>. Mr Da'Silva makes reference to use of his trade mark in Africa. The law of passing-off relates to the position in the relevant jurisdiction, in this case the United Kingdom; what has happened in Africa is not relevant to the passing-off issue. There is no evidence of the use of Mr Da'Silva's trade mark in the United Kingdom prior to the date of the filing of the application. Consequently, the date of the behaviour complained of is the date of the filing of the application. Consequently, the material date in respect of all grounds of opposition is the date of the application of the registration, 30 June 2005.

## **Findings of fact**

30) There is no doubt that at the material date TCL has established that it had a protectable goodwill in a business in relation to the use of the sign TRAVELOCITY. The primary business in relation to the use of this business relates to travel services; for which there is an extensive goodwill. The unchallenged evidence of Mr Booth also establishes that the goodwill includes advertising services (see paragraph 22). There was brief use of TRAVELOCITY in relation to a magazine, which ended in 2001. This use was in the United States; there is no evidence that there was any business in relation to this magazine in the United Kingdom. That someone visiting the TCL website from the United Kingdom might have seen a reference to the magazine does not establish a goodwill in the United Kingdom; so I do not consider that TCL's goodwill encompasses magazines or magazine publishing. **TCL has the requisite goodwill for the purposes of the law of passing-off.**

31) TCL's claim under section 5(3) of the Act is based upon a Community trade mark. In order for this ground of opposition to get off the ground it must establish a reputation in the European Union, a reputation in one member state is not enough<sup>ii</sup>. **There is no evidence in relation to a reputation outside of the United Kingdom and so the grounds of opposition under section 5(3) of the Act must fail.**

32) TCL made a clear and definite claim, up front, that Mr Da'Silva was aware of its substantial goodwill and reputation in its earlier and invented and coined trade mark TRAVELOCITY. Mr Da'Silva in his evidence does not deny this; he does not comment upon how he decided upon his trade mark; although he does state that he was using it in Africa. **In the absence of any evidential rebuttal to the claim of TCL, I find that at the date of the filing of his application Mr Da'Silva knew of the substantial goodwill and reputation of TCL in relation to travel services.**

## **Bad faith – section 3(6) of the Act**

33) Section 3(6) of the Act states that “a trade mark shall not be registered if or to the extent that the application was made in bad faith”.

34) Bad faith includes dishonesty and “some dealings which fall short of the standard of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined<sup>iii</sup>”. Certain behaviour might have become prevalent but this does not mean that it can be deemed to be acceptable<sup>iv</sup>. It is necessary to apply what is referred to as the “combined test”. This requires me to decide what Mr Da'Silva knew at the time of making the application and then, in the light of that knowledge, whether the behaviour fell short of acceptable commercial behaviour<sup>v</sup>. Bad faith impugns the character of an individual or collective character of a business, as such it is a serious allegation<sup>vi</sup>. The more serious the allegation the more cogent must be the evidence to support it<sup>vii</sup>. However, the matter still has to be decided upon the balance of probabilities.

35) The evidence shows that Mr Da'Silva is specifically interested in travel related goods and services. The goods and services of the application could all relate to travel related goods and services. At the date of the filing of the application Mr Da'Silva knew of the substantial reputation that TCL had in the United Kingdom in relation to travel services. Mr Da'Silva gives no explanation of how he chose the trade mark; TRAVELOCITY is an invented word, it cleverly combines the concepts of travel, velocity and city. Mr Da'Silva states that he has been using his trade mark in Africa before the United Kingdom application. This use emanates from well after the commencement of use by TCL. Use in another jurisdiction prior to the filing of an application cannot of itself be a defence to a claim of bad faith; it would depend on the circumstances of the case. I cannot see that taking TCL's trade mark and using it in Africa can give a justification for applying to register it in the United Kingdom. I would also note that the evidence of use in Africa is very scant and vague.

36) Taking into account the nature of the services for which TCL has an enormous reputation, the specific nature of the goods and services for which Mr Da'Silva has used or intends to use his trade mark and Mr Da'Silva's knowledge of the trade mark of TCL, I consider that to have applied to register the trade mark TRAVELOCITY INTERNATIONAL MAGAZINE for the goods and services of the application was behaviour that fell short of the standard of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined. **The application was made in bad faith in respect of all of the goods and services and so registration of the application would be contrary to section 3(6) of the Act. The application is to be refused in its entirety.**

## **CONCLUDING COMMENTS**

37) Owing to the strength of the finding under section 3(6) of the Act I do not consider it necessary to consider the other grounds of opposition.

38) Mr Da'Silva has commented on "bigger companies trying to bully smaller companies". Large undertakings have the right to defend their intellectual property rights as much as small undertakings. TCL has been put to considerable trouble and expense to defend its rights. I can see nothing untoward in the behaviour of TCL in this case. Mr Da'Silva comments upon the "overwhelming box of papers" which formed the evidence of TCL. TCL has to support its case, it needs to put forward good evidence. In this case I would say that TCL has put forward top drawer evidence to establish the nature of its reputation; there is nothing, in my view, to be faulted in its evidence in chief. The amount of evidence furnished is certainly not excessive; it is very thorough.

## **COSTS**

39) Travelocity.com LP having been successful is entitled to a contribution towards its costs. I award costs upon the following basis (based upon the scale):

Opposition fee:	£200
Statement of grounds:	£300
Considering statement of case in reply:	£200
Evidence:	£1,500
Written submissions:	£500

Total £2,700

**40) I order Mr Francisco Toju Da'Silva to pay Travelocity.com LP the sum of £2,700. 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 2nd day of October 2007**

**David Landau**  
**For the Registrar**  
**the Comptroller-General**

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<sup>i</sup> See *Cadbury Schweppes Pty Ltd v Pub Squash Co Pty Ltd* [1981] RPC 429 and *Inter Lotto (UK) Ltd v Camelot Group PLC* [2004] RPC 8 and 9. Section 5(4)(a) is derived from article 4(4)(b) of First Council Directive 89/104 of December 21, 1998 which states:

“rights to a non-registered trade mark or to another sign used in the course of trade were acquired prior to the date of application for registration of the subsequent trade mark”.

<sup>ii</sup> See the decision of Richard Arnold QC, sitting as the appointed person, in *Mobis Trade Mark* BL O/020/07:

“30. The opponent contends that, where an opponent relies upon a Community trade mark, it is sufficient for the purposes of section 5(3) to show that it has a reputation in the United Kingdom and that the hearing officer was wrong in law to hold that it was required to show a reputation in the Community.

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31. I am unable to accept this argument. Section 5(3) on its face expressly distinguishes between what is required in the case of an earlier national mark, namely “a reputation in the United Kingdom”, and what is required in the case of an earlier Community trade mark, namely “a reputation ... in the European Community”. This distinction reflects the difference between Article 4(4)(a) of the Directive, which requires that “the earlier [national] trade mark has a reputation in the Member State concerned”, and Article 4(3), which requires that “the earlier Community trade mark has a reputation in the Community”. The same distinction is also to be found in Article 5(5) of Council Regulation 30/94 of 20 December 1993 on the Community trade mark. I cannot see any basis on which the Act, the Directive and the Regulation can be interpreted as merely requiring that the Community trade mark relied upon should have a reputation in the Member State in question. Nor did the opponent’s attorney cite any authority or commentary to support such an interpretation. Furthermore, as the applicant’s attorney pointed out, the judgment of the ECJ in Case C-375/97 *General Motors Corp v Yplon SA* [1999] ECR I-5421 at [25]-[29], while not directly on point, tends to support the opposite interpretation.

32. It follows that the hearing officer did not make the error of law alleged.”

<sup>iii</sup> *Gromax Plasticulture Limited v. Don and Low Nonwovens Ltd* [1999] RPC 367.

<sup>iv</sup> *Harrison v Teton Valley Trading Co* [2005] FSR 10.

<sup>v</sup> (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* Privy Council Appeal No. 38 of 2004 and *Ajit Weekly Trade Mark* [20006] RPC 25.

<sup>vi</sup> See *Royal Enfield Trade Marks* [2002] RPC 24.

<sup>vii</sup> *Re H (minors)* [1996] AC 563.