

O-504-13

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2635130
IN THE NAME OF FRAUD MUSIC COMPANY
OF THE TRADE MARK**



IN CLASS 25

**AND
THE OPPOSITION THERETO
UNDER NO 104242
BY
FORD MOTOR COMPANY**

Background and the pleadings

1. Ford Motor Company (“Ford”) opposes the application¹ by Fraud Music Company (“Fraud”) to register, under number 2635130, the trade mark shown below for “Clothing, Headwear and footwear”:



2. Ford opposes on the basis that registration of the mark would be contrary to sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Section 5(2)(b) states that:

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

....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Section 5(3) states:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –



¹ The application was published in the *Trade Marks Journal*, for opposition purposes, on 19 October 2012.

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

3. To support its grounds under sections 5(2)(b) of the Act, Ford relies upon three earlier Community Trade Marks (“CTM”). I have set out the full details of the earlier marks in the annex to this decision, but a summary of the registrations, with the classes relied upon for this ground, is as follows:

Mark	Number	Reg date ²	Classes
FORD	4670618	1.4.2008	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 20, 21, 22, 24, 25, 27, 28, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 & 43
	1533025	17.2.2004	14, 16, 18, 24, 25 & 28
	336636	10.2.1999	25 & 28

Ford claims that there is a likelihood of confusion because there is a visual and phonetic similarity in respect of its plain word mark. In respect of its oval marks, it claims that Fraud has designed its mark to replicate the world famous Ford logo, adopting the shape, colour scheme and letter style, and incorporating a word which is phonetically extremely close to the Ford mark. Ford claims that there is a likelihood of confusion, which is inevitable and clearly intended by Fraud.

4. For its section 5(3) claim, the above trade marks are relied upon but in respect of all the classes they cover. The difference this makes is that, in relation to CTM 1533025, the opponent also relies upon goods and services registered in classes 1,

² The date of completion of the registration procedure.

2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 17, 20, 21, 22, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42. In relation to CTM336636, the opponent also relies upon goods registered in class 6. An additional CTM is relied upon under section 5(3):

CTM 8430704:



“Indication of colour: Dark blue, light blue, white”.

Date filed: 16 July 2009

Date registration procedure completed: 27 May 2010

Class 12: Motor land vehicles and parts and fittings therefor included in Class 12; vehicle axle assemblies; vehicle bodies; brake calipers; braking installations; draw bars; bumper bars; clutches; differential gears; drive gears; drive shafts; engines; motors; fans; gear change selectors; transmissions; transmission shafts; radiators; radiator caps; exhausts; exhaust cowls; hydraulic cylinders and motors; couplings; bearings; motor vehicle chassis; manual and power steering apparatus; personal safety restraints seats; seat covers; sliding roofs; vehicle steering columns; vehicle wheels hubs; vehicle wheels; parts for all the aforementioned goods; wheel trims; deflectors; direction indicators; doors; hatches; upholstery; handles for door; horns; mirrors (retrovisors); mud-flaps; roof-racks; ski-racks; shock absorbers; springs; stabiliser bars; starter motors; steering wheels; steering linkages; suspensions; suspension lowering outfits; torsion bars; tow bars; windows; window winding mechanisms; windscreen wipers; arm rests; balance weights for wheels; brake pads and brake linings for vehicles; cabs; caps for vehicle fuel tanks; engine mountings; tanks; engine noise shields; protective covers; radiator grilles; break fluid reservoirs for motor vehicles; engine coolant reservoirs for motor vehicles; windscreen washer fluid reservoirs for motor vehicles; stowage boxes; stowage compartments; wheel carriers; cab tilt mechanisms; trim panel; spoilers, side skirts; anti-theft devices; vehicle window blinds; luggage restraints for vehicles; luggage nets; snow chains; pet screens; stone screens; safety seats for children; safety cushions; sun shades; mobile telephone mounting equipment; bicycles.

Class 35: Business management advisory services, (all relating to the design, development, manufacture, sale, repair or maintenance of motor vehicles, agricultural or earthworking equipment or of parts and fitting of the aforesaid) organisation of promotional goods programmes.

Class 37: Repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning, painting and polishing services; all in respect of motor land vehicles, agricultural or earthworking equipment, engines or parts and fittings of the aforesaid; inspection as part of review for repair, restoration, maintenance, reconditioning,

diagnostic tuning, cleaning, painting and polishing surfaces all in respect of motor land vehicles, agricultural or earth working equipment, engines or parts and fittings of the aforesaid.

5. Ford claims that Fraud will benefit from Ford's investment in advertising, leading to advantage, without any investment, to Fraud. Ford claims that Fraud will ride on its coat tails and will benefit from the power of attraction, reputation and prestige of Ford's marks. It also claims that Fraud's mark will be endorsed by association with Ford's marks. Ford claims that Fraud's use will be out of Ford's control and that poor quality or offensive goods will cause detriment to Ford's valuable reputation and business. It also claims that Ford's famous mark will be associated and linked in the minds of the public with a mark conveying deception and dishonesty, leading to loss of trade or reputation. Ford claims that use of Fraud's mark will dilute the fame and reputation of its marks and that the negative connotations of the word FRAUD will change the economic behaviour of the public. Any failure of Fraud's goods will rub off on Ford, damaging its distinctive caché. Ford claims that there is no due cause for adoption of the opposed mark:

"The mark is designed to be confused with the Opponent's earlier mark and will be linked in the minds of the public and confused with the Opponent's earlier mark."

6. For its section 5(4)(a) ground, Ford relies upon use of its signs, which are the plain word FORD, the black and white Ford logo, and the blue and white Ford logo since 1909 and 1930 (plain word Ford from 1909). It states it has used the signs throughout the UK and provides a list of goods and services, which I have reproduced in the annex to this decision. The goods and services are in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 20, 21, 22, 24, 25, 27, 28, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43. Ford claims that:

"The FORD trade mark is well known throughout Europe and the world. The opposed mark has been designed to look closely similar to the FORD mark and it is inevitable that use of the opposed mark will pass off goods sold under that mark as the goods of the Opponent. There will be damage to the Opponent's famous mark and to its reputation and goodwill in its mark. Furthermore the marks are so similar that the public will mistake one for the other leading to a loss of sales to the Opponent and resulting damage to the Opponent's business."

7. The applicant also claims that its trade marks are entitled to protection as well-known trade marks under the provisions of section 56 of the Act:

"The FORD word trade mark and the Ford Oval Logo registered under Community trade mark registration number 4670618 and Community trade mark registration number 1533025 are well known marks as defined in Section 56(1), and are entitled to protection under the Paris Convention under Section 56(1) of the Act as they are marks which are well known in the United Kingdom as being the marks of a national of a convention country. The proprietor of such a trade mark is entitled to restrain by injunction the use in the United Kingdom of a trade mark which, or the essential part of which, is

identical or similar to his mark in relation to identical or similar goods and services where the used is likely to cause confusion; it is submitted that use of the opposed mark is likely to cause confusion.”

8. Fraud filed a counterstatement in which it stated³:

“I have owned the copyright to the image of the logo that I am applying to be trademarked since 2007 and it was renewed in 2012 until 2022.

My business is solely music industry business promotions and my role as a DJ. This is in no way associated with the motor industry.

I dispute the claim of the opponent that I would dilute their brand name and promote poor quality goods leading to loss of sales of their motor vehicles.

I also dispute their claim that the opponent’s famous mark will be associated and linked in the minds of the public with a mark conveying deception and dishonesty leading to loss of trade or reputation amongst the public. The use of the word “Fraud” in my business is purely a word I use and no fraudulent activities take place at my events.”

In relation to whether Fraud required Ford to prove genuine use of its earlier marks, Fraud replied “no”⁴. The relevance of this is that Ford is not required to prove that it has used the marks it relies upon, which means that the earlier marks can be considered across the full range of goods and service for which they are registered.

9. Ford is represented by a firm of trade mark attorneys, whilst Fraud is self-represented. Ford filed evidence and written submissions in lieu of a hearing, after the parties were advised that they had a choice as to whether to be heard or for a decision to be made on the basis of the papers (without a hearing). Fraud’s evidence was not admitted to the proceedings as it was not filed in evidential format. Fraud was given an opportunity to amend its evidence to an admissible format, but it did not do so. No submissions were received from Fraud in lieu of a hearing. I make this decision on the basis of the papers before me.

Decision

10. I consider that Ford’s strongest ground of opposition is its claim under section 5(3) of the Act. For the benefit of Fraud, the conditions of section 5(3) are cumulative. Firstly, Ford must satisfy me that its earlier mark(s) has achieved a level of knowledge/reputation amongst a significant part of the public. Secondly, it must establish that the level of reputation and the alleged similarities between the marks will cause the public to make a link between Ford’s mark and Fraud’s mark, in the sense of the earlier mark being brought to mind by the later mark. Thirdly, assuming that the first and second conditions have been met, section 5(3) requires that one or more of three types of damage will occur. These are, within the context of Ford’s claims:

³ The counterstatement was written by Mr Paul Smithson.

⁴ In answer to question 7 on statutory form TM8 (notice of defence and counterstatement).

(i) that Fraud's mark will erode or 'dilute' the distinctiveness of Ford's mark so that the latter's capacity to act as a sign of trade origin will be diminished (detriment to the distinctive character of the earlier mark);

(ii) that Ford will lose custom because its mark will be 'tarnished', because Fraud's mark will give rise to negative associations in the mind of the public owing to the meaning of the word 'Fraud'. There will be a negative impact on the image of Ford's mark (detriment to the repute of the earlier mark); alternatively, if Fraud's goods are of poor quality, this will impact negatively on the image of Ford's mark;

(iii) that Fraud will find it easier to sell its goods because of the link made with Ford's mark, thereby riding on the coat tails of Ford's promotional efforts and the power, reputation and prestige of Ford's mark (the later mark will take unfair advantage of the distinctive character or repute of the earlier mark.)

If any one of these three types of damage is proven by Ford, the section 5(3) ground of opposition will be successful unless, notwithstanding the damage, Fraud shows that it has "due cause", which is a compelling business reason to use its mark.

Ford's reputation

11. The level of reputation necessary for a section 5(3) ground was described by the Court of Justice of the European Communities ("CJEU") in *General Motors Corporation v Yplon SA* [1999] E.T.M.R. 950:

"23. ... In so far as Article 5(2) of the Directive, unlike Article 5(1), protects trade marks registered for non-similar products or services, its first condition implies a certain degree of knowledge of the earlier trade mark among the public. It is only where there is a sufficient degree of knowledge of that mark that the public, when confronted by the later trade mark, may possibly make an association between the two trade marks, even when used for non-similar products or services, and that the earlier trade mark may consequently be damaged.

24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector.

25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

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

12. In relation to Ford’s class 12 goods, it is a notorious fact that the Ford oval mark, in blue and white as represented by CTM 8430704, is a very famous mark for cars and vans. Ford’s evidence⁵ indicates that, in the five years leading up to the date of Fraud’s application it sold, in each of those five years, approximately 400,000 new vehicles. Ford’s Fiesta model of car was the top selling car in the UK in 2012, with a near 15% share of the ‘super-mini’ vehicle market. The Ford Focus was the third top selling car in the UK in 2012, with 16% share of the ‘lower-medium’ sized vehicle market. The Ford Mondeo was the fourth largest selling ‘upper-medium’ class of car with about a 9% share of that market. Ford’s MPVs (C-Max, S-Max and Galaxy had around 28% of the market share. The vehicles all bear the Ford oval mark. Although substantiated in the evidence, it is a matter of general knowledge that the Ford badge on cars is in the blue and white colours represented by CTM 8430704. Ford has sponsored the UEFA⁶ Champions League for twenty-one years, the 2012 final of which attracted 6 million UK viewers, and 14.6 million viewers when Manchester United played Chelsea in the 2006 final. The Ford oval mark is displayed on perimeter boards at football stadia, with Ford advertisements shown on the television during commercial breaks.⁷

13. It is clear from the market share that a very large proportion of the UK public knows of the Ford oval mark from the perspective of buying new vehicles. When the knowledge gained from seeing Ford’s used vehicles travelling on UK roads is also considered, the public’s exposure to the mark is enormous. The distinctiveness and reputation of Ford’s oval mark in the UK is of the highest level. In *PAGO International GmbH v Tirolmilch registrierte Genossenschaft mbH*, case C-301/07, the CJEU stated:

“Article 9(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that, in order to benefit from the protection afforded in that provision, a Community trade mark must be known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the European Community, and that, in view of the facts of the main proceedings, the territory of the Member State in question may be considered to constitute a substantial part of the territory of the Community.”

Given what I have said above about the reputation in the UK of the ford oval mark, it is clear that the mark is well-known in a substantial part of the UK territory. (I note

⁵ Provided by Ford’s Trademark Counsel, Mr Mark Sparschu.

⁶ UEFA stands for Union of European Football Associations.

⁷ Ford’s UK turnover in each of the five years between 2007 and 2012 was (on average) \$5 billion, and in the EU was about \$35 billion per year; these figures are not broken down by class of goods or services.

from the evidence that, in the EU, an average of 1.5 million new vehicles were sold each year between 2007 and 2012.)

14. I will base my assessment under the section 5(3) ground on the basis of the vast public knowledge of Ford's blue and white oval mark, as represented by CTM 8430704, for cars.

15. The next consideration is whether the public will make a link between the marks. The relevant public is the public at large for both parties' goods, and is deemed to be reasonably well informed and reasonably observant and circumspect⁸.

16. In *Adidas-Salomon AG, Adidas Benelux BV v Fitnessworld Trading Ltd* [2004] E.T.M.R. 10, the CJEU stated:

"29 The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23).



30 The existence of such a link must, just like a likelihood of confusion in the context of Article 5(1)(b) of the Directive, be appreciated globally, taking into account all factors relevant to the circumstances of the case (see, in respect of the likelihood of confusion, *SABEL*, paragraph 22, and *Marca Mode*, paragraph 40)."

17. For there to be a link between the marks, there is, therefore, no requirement that the marks will be confused. *Adidas* states that I must consider the matter globally, taking into account all relevant factors; the General Court later described the assessment in the following way, in *Ella Valley Vineyards (Adulam) Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-32/10:

"38. The global assessment seeking to establish the existence of a link between the marks at issue must, in so far as the visual, phonetic or conceptual similarity of the signs at issue is concerned, be based on the overall impression given by the signs, account being taken, inter alia, of their distinctive and dominant elements (judgment of 16 May 2007 in Case T-137/05 *La Perla v OHIM Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)*, not published in the ECR, paragraph 35, and judgment of 25 March 2009 in Case T-21/07 *L'Oréal v OHIM – Spa Monopole (SPALINE)*, not published in the ECR, paragraph 18)."

⁸ *Intel Corporation Inc v CPM (UK) Ltd* (C-252-07), paragraphs 35 and 36.

18. The marks are:

Ford's mark	Fraud's mark
	

19. Both marks contain white words on dark ovals. The proportion of the space within the ovals which is taken up by the words is the same in both marks. The CTM claims the colours blue and white; Fraud's application was filed in the colours shown above. The distinctive and dominant component of each mark is the word. Both words are relatively short, begin with F and end with D. They are written in an identical slanting script. The F in each mark is particularly visually pronounced and, apart from the slight flourish on Ford's cross-bar, they are identical. The Ds are identical. The visual differences are that Ford's word is four letters compared to Fraud's five; although both contain an R, the R is in a different position; Fraud's mark contains an A and a U, whereas Ford's mark contains an O; and there is a white border in Ford's oval. However, on a matter of overall impression, the visual similarities between the marks far outweigh the differences. Visually, they are strikingly similar. They are also highly similar phonetically, notwithstanding the r in Fraud. The 'o' and 'au' sounds (as pronounced in the common word 'fraud') are identical. Conceptually, the marks are not similar. Ford means a shallow area in a river which can be crossed and it is a surname. I suspect that the word ford is now so distinctive of Ford (the opponent) that it may also signify the opponent to the relevant public, as a concept. *Collins English Dictionary* (2000 Edition) defines the word fraud as:

1. deliberate deception, trickery, or cheating intended to gain an advantage.
2. an act or instance of such deception.
3. something false or spurious: his explanation was a fraud.
4. informal a person who acts in a false or deceitful way.

20. In summary, whilst not conceptually similar, the marks are phonetically highly similar and are strikingly similar visually, for goods which are, most commonly, purchased by sight. This aspect of the purchasing process elevates the importance of the visual level of similarity when considering whether members of the public will call to mind Ford's mark when they see Fraud's mark. The CJEU said, in *Intel Corporation Inc v CPM (UK) Ltd* (C-252-07), that if the later mark would call the earlier mark to mind, this is tantamount to the existence of a link. The other factors considered by the CJEU are as follows, from the same judgment:

“31 In the absence of such a link in the mind of the public, the use of the alter mark is not likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.

...

41 The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case...

42 Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark’s reputation;
- the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;
- the existence of the likelihood of confusion on the part of the public.

44 As regards the degree of similarity between the conflicting marks, the more similar they are, the more likely it is that the later mark will bring the earlier mark with a reputation to the mind of the relevant public. That is particularly the case where those marks are identical.

45 However, the fact that the conflicting marks are identical, and even more so if they are merely similar, is not sufficient for it to be concluded that there is a link between those marks.

46 It is possible that the conflicting marks are registered for goods or services in respect of which the relevant sections of the public do not overlap.

47 The reputation of a trade mark must be assessed in relation to the relevant section of the public as regards the goods or services for which that mark was registered. That may be either the public at large or a more specialised public (see *General Motors*, paragraph 24).

48 It is therefore conceivable that the relevant section of the public as regards the goods or services for which the earlier mark was registered is completely distinct from the relevant section of the public as regards the goods or services for which the later mark was registered and that the earlier mark, although it has a reputation, is not known to the public targeted by the later mark. In such a case, the public targeted by each of the two marks may never be confronted with the other mark, so that it will not establish any link between those marks.

49 Furthermore, even if the relevant section of the public as regards the goods or services for which the conflicting marks are registered is the same or overlaps to some extent, those goods or services may be so dissimilar that the later mark is unlikely to bring the earlier mark to the mind of the relevant public.

50 Accordingly, the nature of the goods or services for which the conflicting marks are registered must be taken into consideration for the purposes of assessing whether there is a link between those marks.

51 It must also be pointed out that certain marks may have acquired such a reputation that it goes beyond the relevant public as regards the goods or services for which those marks were registered.

52 In such a case, it is possible that the relevant section of the public as regards the goods or services for which the later mark is registered will make a connection between the conflicting marks, even though that public is wholly distinct from the relevant section of the public as regards goods or services for which the earlier mark was registered.

53 For the purposes of assessing where there is a link between the conflicting marks, it may therefore be necessary to take into account the strength of the earlier mark's reputation in order to determine whether that reputation extends beyond the public targeted by that mark.

54 Likewise, the stronger the distinctive character of the earlier mark, whether inherent or acquired through the use which has been made of it, the more likely it is that, confronted with a later identical or similar mark, the relevant public will call that earlier mark to mind.

55 Accordingly, for the purposes of assessing whether there is a link between the conflicting marks, the degree of the earlier mark's distinctive character must be taken into consideration.

56 In that regard, in so far as the ability of a trade mark to identify the goods or services for which it is registered and used as coming from the proprietor of that mark and, therefore, its distinctive character are all the stronger if that mark is unique – that is to say, as regards a word mark such as INTEL, if the word of which it consists has not been used by anyone for any goods or services other than by the proprietor of the mark for the goods and services it markets – it must be ascertained whether the earlier mark is unique or essentially unique.

57 Finally, a link between the conflicting marks is necessarily established when there is a likelihood of confusion, that is to say, when the relevant public believes or might believe that the goods or services marketed under the earlier mark and those marketed under the later mark come from the same undertaking or from economically-linked undertakings (see to that effect, *inter alia*, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 17, and Case C-533/06 *O2 Holdings and O2 (UK)* [2008] ECR I-0000, paragraph 59).

58 However, as is apparent from paragraphs 27 to 31 of the judgment in *Adidas-Salomon and Adidas Benelux*, implementation of the protection introduced by Article 4(4)(a) of the Directive does not require the existence of a likelihood of confusion.

59 The national court asks, in particular, whether the circumstances set out in points (a) to (d) of Question 1 referred for a preliminary ruling are sufficient to establish a link between the conflicting marks.

60 As regards the circumstance referred to in point (d) of that question, the fact that, for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark would call the earlier mark to mind is tantamount to the existence of such a link.

61 As regards the circumstances referred to in paragraphs (a) to (c) of that question, as is apparent from paragraph 41 to 58 of this judgment, they do not necessarily imply the existence of a link between the conflicting marks, but they do not exclude one either. It is for the national court to base its analysis on all the facts of the case in the main proceedings.

62 The answer to point (i) of Question 1 and to Question 2 must therefore be that Article 4(4)(a) of the Directive must be interpreted as meaning that whether there is a link, within the meaning of *Adidas-Salomon and Adidas Benelux*, between the earlier mark with a reputation and the later mark must be assessed globally, taking into account all factors relevant to the circumstances of the case.

63 The fact that for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark calls the earlier mark with a reputation to mind is tantamount to the existence of such a link, within the meaning of *Adidas-Salomon and Adidas Benelux*, between the conflicting marks.

64 The fact that:

- the earlier mark has a huge reputation for certain specific types of goods or services, and
- those goods or services and the goods or services for which the later mark is registered are dissimilar or dissimilar to a substantial degree, and
- the earlier mark is unique in respect of any goods or services,

does not necessarily imply that there is a link, within the meaning of *Adidas-Salomon and Adidas Benelux*, between the conflicting marks.”

21. Strength of reputation is one of the factors to be assessed in relation to the existence of a link, as is the longevity of Ford’s oval mark; that it is unique; and that it has penetrated the consciousness of all sections of the public, whether car drivers or

not⁹. The mark is ubiquitous. The marks are strikingly similar visually and used on goods which are purchased, primarily, by sight. Despite the goods (cars and clothes) not being similar, the public targeted by Fraud is the same as that targeted by Ford. These are consumer goods. The huge reputation and public awareness of the Ford oval mark means that lack of similarity between goods has little effect in offsetting any bringing to mind of Ford's mark. The public, on seeing Fraud's mark will call Ford's mark to mind. There is no doubt in my mind that a link would be made. I will go on to look at the third condition, which is whether damage will be caused, beginning with detriment to repute ('tarnishing').

Detriment to repute

22. Detriment to repute, or tarnishing, is a reduction in the attractive power of the earlier mark, caused by the use of the later mark. In its most frequently found form, detriment to repute arises because of an unpleasant association caused by the nature of the goods for which the later mark will be used, such as tobacco products (as in the *Hollywood v Souza Cruz* case¹⁰), causing harm to the image of the earlier mark. A trade mark of repute, such as Ford's, is not simply an indicator of origin; it is a communication tool by which an image is conveyed to the public. In the *Hollywood* case, the earlier mark conveyed an image of youth, health and vitality, which would be harmed by the use of a similar mark on tobacco products. The Third Board of Appeal of OHIM stated, in Case R 1127/2000–3 *Elleni Holding BV v Sigla SA* [2005] ETMR 7:

“40 ... it has to be noted that the trade mark works not only as an indication of origin, but also serves as a communication tool which must be protected as well.

41 The message incorporated into the trade mark, whether it is informative or symbolic, may refer to the product's qualities, or indeed to intangible values such as luxury, lifestyle, exclusivity, adventure, youth, etc. It may result from the qualities of the product or service for which it is used, but also from its proprietor's reputation or other elements based on the particular presentation of the product or service or on the exclusivity of sales networks”

The Third Board of Appeal went on to describe detriment to repute:

“42 Hence, once an image associated with a trade mark which has a reputation has been shown to exist, the fact that the contested sign is detrimental to this image, must still be demonstrated.

43 It must, therefore, be shown that the trade mark is sullied or debased by its association with something unseemly. This may happen when the applied for trade mark, to which the mark with reputation may be associated, is used, on the one hand, in an unpleasant, obscene or degrading context or, on the other hand, in a context which is not inherently unpleasant but which proves to be incompatible with the trade mark's image. In all cases, there is a comparison

⁹ As per the judgment of the CJEU in *You-Q BV v Apple Corps Ltd* C-294/12 P.

¹⁰ [2002] ETMR 64.

which is injurious to the trademark's image and what is known in English as dilution by tarnishment.”

23. In the present case, Fraud's goods (clothing) are not, of themselves, unpleasant, obscene or degrading. However, whilst Fraud's goods are part of the context of use, the concept of Fraud's mark also forms part of that context. The concept of Fraud's mark has directly unpleasant connotations of deception, cheating and illegality. For a business, the very last thing wanted is to be touched in any way by such ideas. Car manufacturers are fiercely competitive in terms of vehicle innovation, popularity, safety and efficiency. Ford is no exception. Its evidence shows that its mark signifies a manufacturer at the forefront of developing vehicle design and technology¹¹. The mark is a tool for communicating not only trade origin but also an image of all these things combined. On seeing Fraud's mark, the link with Ford's mark will be unavoidable and the feelings aroused by the word FRAUD will be entirely negative. It is possible that people will see a parody and simply be amused by the link to FORD. However, even for those who see the joke, the creation of a mental link between FORD and FRAUD is liable to sully Ford's mark. Furthermore, some people may see Fraud's mark as making a serious negative statement about FORD and its values, to which Ford has no opportunity to reply. That sort of link is liable to sully the reputation of the FORD mark, particularly if the applicant's mark became a commercial success. Whichever way it is looked at, Fraud's mark will sully or debase that image. **I find that use of Fraud's trade mark would cause detriment to the repute of Ford's mark. Ford succeeds under this type of damage.**

Unfair advantage

24. I will also deal with whether Fraud's mark will give it an unfair advantage because there will be an increased chance that the public will buy Fraud's goods because of the link made with Ford's mark. Fraud says nothing about its choice of mark other than that 'Fraud' is a "business word" it uses. It is possible that the intention to call to mind Ford's mark is tongue-in-cheek; if so, parody is a defence which needs to be pleaded explicitly. Even if it had been pleaded as a defence, *Kerly's Law of Trade Marks and Trade Names*, fifteenth edition, says this about parody and trade marks (paragraph 14-112, footnotes omitted)¹²:

“No defence of parody or satire is provided by the 1994 Act but it seems likely that, if the use complained of is truly parodic or satirical, then this is a matter which may be taken into account by the court in determining whether the use complained of is without due cause. Nevertheless the scope for any such defence is likely to be limited where the other requirements necessary to establish infringement are satisfied. To fall within the scope of s.10 the use must be in the course of trade as a trade mark. Accordingly any such use will be commercial and is likely to be for the purpose of furthering the sales of the defendant's goods or services. Assuming also that the use either causes detriment to the trade mark owner or provides an advantage to the alleged

¹¹ See, for example, exhibit MS13.

¹² In the context of section 10 infringement which, for this argument, is analogous.

infringer it is suggested that in most cases a defence of satire or parody is unlikely to be viewed by the court with much sympathy.”

25. Since Fraud has applied for a trade mark, the use of its mark will be in the course of trade as a trade mark, not purely as a joke or a political statement. Its use will be commercial for the purpose of selling Fraud’s goods. Parody is, therefore, no defence, even if it had been pleaded. There is no “due cause” defence. Fraud has not pleaded one; its statement that the word FRAUD is a “business word” it uses, and that it has registered the copyright in the design, comes nowhere near to explaining why Fraud feels a compelling business necessity to use the word in a get-up which so clearly mimics Ford’s famous mark. Fraud’s mark is shown on the application form as a white word on a blue oval, almost exactly in the manner of Ford’s white mark in a blue oval (without the white border). Ford’s mark has become associated in the mind of a significant portion of the public with that particular colour combination. This is relevant to the global assessment of whether there is unfair advantage¹³. I am of the view that there is nothing coincidental or accidental about the configuration of Fraud’s mark; instead, the most obvious explanation for the blue oval, the font, the strong visual similarity and the strong aural similarity is that there is an intention to bring Ford’s mark to mind to increase Fraud’s sales. The CJEU described intention in *C-487/07 L’Oréal SA v Bellure NV*:

“Article 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the taking of unfair advantage of the distinctive character or the repute of a mark, within the meaning of that provision, does not require that there be a likelihood of confusion or a likelihood of detriment to the distinctive character or the repute of the mark or, more generally, to its proprietor. The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an advantage taken unfairly by that third party of the distinctive character or the repute of that mark where that party seeks by that use to ride on the coat-tails of the mark with a reputation in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark’s image.”

26. Fraud’s mark is intended to be a reference to Ford’s famous mark. Referencing Ford’s famous mark gives Fraud a sales advantage it would not otherwise have had, and that advantage is intentional and unfair. **I find that use of Fraud’s trade mark would take unfair advantage of the repute of Ford’s mark. Ford also succeeds under this type of damage.**

¹³ *Specsavers International Healthcare Limited and Others v Asda Stores Limited*, CJEU C-252/12: “Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours with the result that it has become associated in the mind of a significant portion of the public with that colour or combination of colours, the colour or colours which a third party uses in order to represent a sign alleged to infringe that trade mark are relevant in the global assessment of the likelihood of confusion or unfair advantage under that provision.”

27. Ford only needs to establish success under one of the three types of damage to which I referred earlier. It has succeeded under two; I do not need to look at the third.

Outcome

28. The opposition succeeds under section 5(3) of the Act. The application is refused.

Other grounds

29. As I have found that Ford has succeeded under two of the types of damage it pleaded under section 5(3), there is no need for me to consider the other grounds of Ford's opposition. I add here that although Fraud's evidence was not admitted to the proceedings, it remained on the official file. Having seen the non-admissible evidence, even if it had been admitted to the proceedings, I am clear that its content would not have made a difference to the outcome of my decision.

Costs

30. Ford has been successful and is entitled to a contribution toward the cost of the proceedings. The registrar normally awards costs from the published scale, as set out in Tribunal Practice Notice 4/2007. I assess the cost award as follows:

Opposition fee	£200
Preparing a statement and considering the counterstatement	£300
Filing evidence	£700
Written submissions	£300
Total	£1500

31. I order Fraud Music Company to pay Ford Motor Company the sum of £1500. 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 12th day of December 2013

**Judi Pike
For the Registrar,
the Comptroller-General**

Annex: the opponent's earlier marks, except for CTM 8430704, and the 5(4)(a) list of goods and services

(i) CTM 4670618

FORD

Filed 24 October 2005; registration procedure completed 1 April 2008.

Class 1

Adhesives used in industry; compositions for repairing surfaces; sealing compositions; defrosting compositions; anti-freezing compositions; chemical products for use in the operation, repair, servicing and maintenance of motor land vehicles.

Class 2

Coating compositions & preservatives, all in the nature of paint; (all adapted for use with motor land vehicles, engines or with transmission assemblies).

Class 3

Cleaning, polishing, scouring & abrasive compositions; perfumes, cosmetics, soaps, non-medicated toilet preparations; shaving and after-shave preparations; oils, creams and lotions for the skin.

Class 4

Industrial oils and greases; lubricants and lubricating oils being hydraulic oils, all for vehicles & for vehicle engines; penetrating oils being lubricants.

Class 5

First aid kits sold complete.

Class 6

Hinges, non-electric locks & latches; badges for vehicles; fasteners; pipes (not being boiler tubes or parts of machines) & connectors therefore; tanks for liquids; all of common metal; tow ropes of metal; hinges; badges; fasteners; keys; key blanks; key fobs; key rings; vehicle registration plates; money clips; non-luminous signs; boxes; luggage labels; ornaments; all being goods composed mainly of non-precious metal.

Class 7

Alternators; air cleaners (air filters) for engines; compressors (machines); carburettors; fans & fan belts, all for engine cooling radiators (other than for land vehicles); clutches; engines (not for land vehicles); exhausts; cooling radiators for engines; speed change gear, none for land vehicles; fuel feed apparatus for engines; fuel injection devices for internal combustion engines; electric generators; hydraulic lifting gear; oil cooling apparatus (for machines); pumps (other than petrol vending pumps, surgical pumps or air pumps being vehicle accessories); valves; power transmission take-off units for motor vehicle engines, power transmission take-off units for motor vehicle for use as prime movers; parts of the aforementioned goods; agricultural machines & agricultural implements; bushes & bearings, all being parts of vehicles, engines, motors, or of machines; machine couplings; drive belts; drive chains; brakes; caps for cooling radiators; mechanical control apparatus for engines, brakes, clutches, accelerators or for transmission apparatus; hydraulic cylinders; hydraulic motors; hydraulic pipes all for machines; electric motors; transmission gear and transmission shafts (none for land vehicles); constant velocity joints; engine parts; connecting rods; control cables; ignition apparatus and ignition distributors, all for internal combustion engines; filters; tappets; ignition glow plugs; ignition spark plugs; pistons; piston rings; rocker arms; manifolds; camshafts; universal joints; turbo-superchargers for engines; earthmoving, earthworking, excavating, loading and tipping machines; pulleys for machines; car vacuum cleaners; fans; fan belts; radiators; radiator caps; exhausts, exhaust cowls; parts and fittings for all of the above.

Class 8

Lifting jacks; hand tools; hand-tool sets; parts of the aforementioned goods; can openers; scissors; knives; ice scrapers; pocket knives; manicure sets.

Class 9

Electric accumulators; aerials; anti-theft warning devices; electric batteries & mountings; electric lighters; electric circuit breakers; commutators; electric condensers; electric connections; electric cables; electric fuses; electric fuse boxes; electric control apparatus & instruments for motor vehicles & engines; electrical sensors; fire extinguishing apparatus; gauges; instrument panels & clusters; lenses for lamps; loudspeakers; odometers; printed electrical circuits; electric relays; electric switches; speedometers; tachometers; temperature sensors; voltage regulators; voltmeters; electric wiring harnesses; ammeters; radio apparatus; sound reproducing equipment; telecommunication equipment; tape players; compact disc players; testing apparatus none being for medical purposes; computer software; car telephone installations; highway emergency warning equipment; calculators; tape cassettes; recording media; storage boxes for recording media; sunglasses; magnets; tape measures; binoculars; thermometers; magnifying glasses; compasses, spectacles, ophthalmic frames; mobile telephone mounting equipment; computer software.

Class 11

Installations & apparatus for air conditioning, ventilation or heating motor land vehicles; lighting installations & apparatus; lamp assemblies; parts for the aforementioned goods; anti-dazzle devices; bulbs for lamps; lamp fittings; reflectors; flashlights; electrical torches; electric blowers.

Class 12

Motor land vehicles; vehicle axle assemblies; vehicle bodies; brake calipers for vehicles; braking installations; draw bars; bumper bars; clutches; differential gears; drive gears; drive shafts; engines; motors; gear change selectors; transmissions; transmission shafts; break cylinders & motors; couplings; bearings; motor vehicle chassis; manual & power steering apparatus; personal safety restraints seats; seat covers; sliding roofs; vehicle steering columns; vehicle wheels hubs; vehicle wheels; parts for all the aforementioned goods; wheel trims; deflectors; direction indicators; doors; hatches; upholstery; handles for doors; horns; mirrors (retrovisors); mud-flaps; roof-racks; ski-racks; shock absorbers; springs; stabiliser bars; starter motors; steering wheels; steering linkages; suspensions; suspension lowering outfits; torsion bars; tow bars; windows; window winding mechanisms; windscreen wipers; arm rests; balance weights for wheels; brake pads & brake linings for vehicles; cabs; caps for vehicle fuel tanks; engine mountings; tanks, all being for motor land vehicles; engine noise shields; protective covers for motor land vehicles; radiator grilles; fluid reservoirs; stowage boxes; stowage compartments; wheel carriers; cab tilt mechanisms; trim panels; spoilers, side skirts; anti-theft devices; anti-theft warning devices; vehicle window blinds; luggage restraints for vehicles; luggage nets; snow chains; pet screens; stone screens; safety seats for children; safety cushions; sun shades; bicycles; hitches and implements, all for tractors; seat cushions; parts and fittings for all the above; all being apparatus for locomotion by land, air or water or being parts and fittings for apparatus for locomotion by air, land or water.

Class 14

Clocks, watches, costume jewellery, cuff-links, tie clips, coins, medals, lapel pins, rings.

Class 16

Books; periodicals, magazines; newspapers; instructional and teaching materials; spare parts lists, maintenance manuals and advertising materials; printed publications relating to automotive subjects; pens, pencils; pen stands; calendars; posters, paper cubes & notes, letter holders, plastic carrier bags; paper knives; stationery; office requisites.

Class 17

Fasteners & connectors, all made of plastic materials, for pipes & cables; flexible covers made of rubber or of plastics materials for protecting mechanical components; mountings made of rubber or of plastics materials for engines, transmission assemblies & for exhausts; plastic materials in the form of sheets (non-textiles) for use in the manufacture of roof coverings for vehicles; clutch linings; gaskets (other than fibrous gaskets for ships); washers (other than washers for water taps) made of rubber, plastics materials or of vulcanised fibre; grommets made of rubber or of plastics material; sealing & caulking compounds (in the nature of jointings or packings); insulating materials; non-metallic hoses; oil seals (packings); strips made of rubber or of plastics materials for sealing joints.

Class 18

Articles made of leather or of imitation leather; traveling bags; handbags; document cases; suitcases; wallets, purses; card cases, bags, cosmetic cases, suitcases, briefcases, walking sticks, parasols; umbrellas & luggage; rucksacks and knapsacks.

Class 20

Storage containers; boxes; vehicle registration plates; pillows; clamps; (all of non-metal); all being parts & fittings for motor land vehicles; furniture; mirrors; picture frames; blinds; trays.

Class 21

Cleaning cloths, cleaning utensils for vehicles; mugs, cups, cooling bags, drinking bottles & bottle openers; household utensils and containers; vessels and containers; glassware; porcelain ware; earthenware; canisters.

Class 22

Non-metallic tow ropes.

Class 24

Pennants made of textiles, flags & towels; textile articles included in class 24.

Class 25

Articles of outer clothing; leisurewear; sports clothing; headgear; jackets, coats, pullovers, shirts, overalls, coveralls, belts, ties, waistcoats, sweaters; rain wear; scarves; trousers; sleep wear.

Class 27

Floor coverings; vehicle carpet & mats; door mats.

Class 28

Toy models and model vehicles, golf balls, balloons & beach balls; sports racquets; games, playthings, gymnastic and sporting articles; fishing tackle; playing cards.

Class 33

Wines, sprits and liqueurs.

Class 34

Matches, smokers' lighters; tobacco pouches, cigar cutters, tobacco pipe cleaners; cigar and cigarette cases; ash trays; cigarette boxes.

Class 35

Business management advisory services, (all relating to the design, development, manufacture, sale, repair or maintenance of motor vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid) organisation of promotional goods programmes.

Class 36

Insurance, warranty, financing, hire purchase and lease purchase financing services; (all relating to motor vehicles, agricultural or earthworking equipment parts or fittings of the aforesaid); credit card services.

Class 37

Services related to the custom-built construction of motor land vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid; inspection, repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning painting and polishing services; all in respect of motor land vehicles, agricultural or earthworking equipment, engines or parts and fittings of the aforesaid.

Class 38

- Class 39 Telecommunication services; paging services.
- Class 40 Rental, leasing and hiring of vehicles; services relating to the transportation of people in vehicles; warehousing and distribution of vehicle parts.
- Class 41 Engraving; surface treatment and finishing, all of metals, plastics, textiles, glass, wood, leather, rubber and of ceramics; all for motor land vehicles and of parts and fittings therefore.
- Class 42 Education and training services; all relating to the management of businesses connected with motor land vehicles, parts and fittings therefore, or the construction, repair or maintenance thereof; services in connection with the organisation, and conduct of sports, recreational and entertainment competitions and functions; provision of sports facilities; museum services.
- Class 43 Services in connection with research development and testing of new products.
- Class 44 Hotel services; restaurant and catering services.

(ii) CTM 1533025



Filed 28 February 2000; registration procedure completed 17 February 2004

- Class 1 Adhesives; compositions for repairing surfaces; sealing compositions; defrosting compositions; anti-freezing compositions; chemical products for use in the operation, repair, servicing and maintenance of motor land vehicles.
- Class 2 Coating compositions & preservatives, all in the nature of paint; (all adapted for use with motor land vehicles, engines or with transmission assemblies).
- Class 3 Cleaning, polishing, scouring & abrasive compositions; perfumes, cosmetics, soaps, non-medicated toilet preparations; shaving and after-shave preparations; oils, creams and lotions for the skin.
- Class 4 Industrial oils and greases; lubricants and hydraulic oils, all for vehicles & for vehicle engines; penetrating oils being lubricants.
- Class 5 First aid outfits sold complete.
- Class 6 Hinges, non-electric locks & latches; badges for vehicles; fasteners; pipes (not being boiler tubes or parts of machines) & connectors therefor; tanks for liquids; all of common metal; tow ropes of metal; canisters; hinges; badges; fasteners; keys; key blanks; key fobs; key rings; vehicle registration plates; parts & fittings for motor land vehicles included in class 6; money clips; non-luminous signs; boxes; luggage labels; ornaments; all being goods composed mainly of non-precious metal.
- Class 7 Alternators; air cleaners (air filters) for engines; compressors (machines); carburettors; fans & fan belts, all for engine cooling radiators (other than for land vehicles); clutches; engines (not for land vehicles); exhausts; cooling radiators for engines; speed change gear, none for land vehicles; fuel feed apparatus for engines; fuel injection devices for internal combustion engines; electric generators; hydraulic lifting gear; oil cooling apparatus (for machines); pumps (other than petrol vending pumps, surgical pumps or air pumps being vehicle accessories); valves; power transmission take-off units for motor vehicle engines, for use as prime movers; parts of the aforementioned goods; agricultural machines & agricultural implements; bushes & bearings, all being parts of vehicles, engines, motors, or of machines; machine couplings; drive belts; drive chains; brakes; caps for cooling radiators; mechanical control apparatus for engines, brakes, clutches, accelerators or for transmission apparatus; hydraulic cylinders; hydraulic motors; hydraulic pipes all for machines; electric motors; transmission gear and transmission shafts (none for land vehicles); constant velocity joints; hitches and implements, all for tractors; engine parts; connecting rods; control cables; ignition apparatus and ignition distributors, all for internal combustion engines; filters; tappets; ignition glow plugs; ignition spark plugs; pistons; piston rings; rocker arms;

manifolds; camshafts; universal joints; turbo-superchargers for engines; earthmoving, earthworking, excavating, loading and tipping machines; pulleys for machines; parts and fittings for motor land vehicles and for engines included in class 7.

Class 8

Lifting jacks; hand tools; hand-tool sets; parts of the aforementioned goods; can openers; scissors; knives; ice scrapers; pocket knives; manicure sets & manicure tools.

Class 9

Electric accumulators; aerials; anti-theft warning devices; electric batteries & mountings; electric blowers; electric lighters; electric circuit breakers; commutators; electric condensers; electric connections; electric cables; electric fuses; electric fuse boxes; electric control apparatus & instruments for motor vehicles & engines; electrical sensors; fire extinguishing apparatus; gauges; instrument panels & clusters; lenses for lamps; loudspeakers; odometers; printed electrical circuits; electric relays; electric switches; speedometers; tachometers; temperature sensors; voltage regulators; voltmeters; electric wiring harnesses; ammeters; radio apparatus; sound reproducing equipment; telecommunication equipment; tape players; compact disc players; testing apparatus; computer software; parts & fittings for motor land vehicles included in class 9; car telephone installations; car vacuum cleaners; highway emergency warning equipment; cleaning equipment for motor vehicles; calculators; tape cassettes; recording media; storage boxes for recording media; sunglasses; magnets; tape measures; binoculars; thermometers; magnifying glasses; compasses, spectacles, ophthalmic frames.

Class 11

Installations & apparatus for air conditioning, ventilation or heating motor land vehicles; lighting installations & apparatus; lamp assemblies; parts for the aforementioned goods; anti-dazzle devices; bulbs for lamps; lamp fittings; reflectors; parts & fittings for motor land vehicles included in class 11, flashlights; electrical torches.

Class 12

Motor land vehicles & parts & fittings therefor included in class 12; vehicle axle assemblies; vehicle bodies; brake calipers; braking installations; draw bars; bumper bars; clutches; differential gears; drive gears; drive shafts; engines; motors; fans; gear change selectors; transmissions; transmission shafts; radiators; radiator caps; exhausts; exhaust cowls; hydraulic cylinders & motors; couplings; bearings; fan belts; motor vehicle chassis; manual & power steering apparatus; personal safety restraints' seats; seat covers; sliding roofs; vehicle steering columns; vehicle wheels hubs; vehicle wheels; parts for all the aforementioned goods; wheel trims; deflectors; direction indicators; doors; hatches; upholstery; handles for door; horns; mirrors (retrovisors); mud-flaps; roof-racks; ski-racks; shock absorbers; springs; stabiliser bars; starter motors; steering wheels; steering linkages; suspensions; suspension lowering outfits; torsion bars; tow bars; windows; window winding mechanisms; windscreen wipers; arm rests; balance weights for wheels; brake pads & brake linings for vehicles; cabs; caps for vehicle fuel tanks; mechanical controls; engine mountings; tanks; engine noise shields; protective covers; radiator grilles; fluid reservoirs; stowage boxes; stowage compartments; wheel carriers; cab tilt mechanisms; trim panel; spoilers, side skirts; anti-theft devices; vehicle window blinds; luggage restraints for vehicles; luggage nets; snow chains; pet screens; stone screens; safety seats for children; safety cushions; sun shades; mobile telephone mounting equipment; bicycles.

Class 14

Clocks, watches, costume jewellery, cuff-links, tie clips, coins, medals, lapel pins, rings, smokers' articles.

Class 16

Books; periodicals, magazines; newspapers; instructional and teaching materials; spare parts lists, maintenance manuals and advertising materials; printed publications relating to automotive subjects; pens, pencils; pen stands; calendars; posters, paper cubes & notes, letter holders, plastic carrier bags; playing cards; paper knives; stationery; office requisites; computer software.

Class 17

Fasteners & connectors, all made of plastic materials, for pipes & cables; flexible covers made of rubber or of plastics materials for protecting mechanical components; mountings made of rubber or of plastics materials for engines, transmission assemblies & for exhausts; plastic materials in the form of sheets (non-textiles) for use in the manufacture of roof coverings for vehicles; clutch linings; gaskets (other than fibrous gaskets for ships); washers (other than washers for water taps) made of rubber, plastics materials or of vulcanised fibre; grommets made of rubber or of plastics material; sealing & caulking compounds (in the nature of jointings or packings); insulating materials; non-metallic hoses; oil seals (packings); strips made of rubber or of plastics materials for sealing joints; parts and fittings for motor land vehicles in class 17.

Class 18

Articles made of leather or of imitation leather; travelling bags; handbags; document cases; suitcases; wallets, purses; card cases, belts, bags, cosmetic cases, suitcases, briefcases, walking sticks, parasols; umbrellas & luggage; rucksacks and knapsacks.

Class 20

Storage containers; non-luminous signs; boxes; canisters; vehicle registration plates; seat cushions; pillows; clamps; pennants; (all of non-metal); all being parts & fittings for motor land vehicles; furniture; mirrors; frames; blinds; trays.

Class 21

Cleaning cloths, cleaning utensils for vehicles; mugs, cups, cooling bags, drinking bottles & bottle openers; household utensils and containers; vessels and containers; glassware; porcelain ware; earthenware.

Class 22

Non-metallic tow ropes.

Class 24

Pennants, flags & towels; textile articles included in class 24.

Class 25

- Articles of outer clothing; leisurewear; sports clothing; headgear; jackets, coats, pullovers, shirts, overalls, coveralls, belts, ties, waistcoats, sweaters; rain wear; scarves; trousers; sleep wear.
- Class 27** Floor coverings; vehicle carpet & mats; door mats.
- Class 28** Models, golf balls, games equipment, balloons & beach balls; sports racquets; games, playthings, gymnastic and sporting articles; fishing tackle.
- Class 33** Wines, sprits and liqueurs.
- Class 34** Matches, smokers' lighters; tobacco pouches, cigar cutters, tobacco pipe cleaners; cigar and cigarette cases; ash trays; cigarette boxes.
- Class 35** Business management advisory services, (all relating to the design, development, manufacture, sale, repair or maintenance of motor vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid) organisation of promotional goods programmes.
- Class 36** Insurance, warranty, financing, hire purchase and lease purchase financing services; (all relating to motor vehicles, agricultural or earthworking equipment parts or fittings of the aforesaid); credit card services.
- Class 37** Services related to the custom-built construction of any of the following, including motor land vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid; inspection, repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning painting and polishing services; all in respect of motor land vehicles, agricultural or earthworking equipment, engines or parts and fittings of the aforesaid.
- Class 38** Telephone services relating to vehicle telephones or mobile telephones; telecommunication services; paging services.
- Class 39** Rental, leasing and hiring of vehicles; services relating to the transportation of people in vehicles; warehousing and distribution of vehicle parts.
- Class 40** Engraving; surface treatment and finishing, all of metals, plastics, textiles, glass, wood, leather, rubber and of ceramics; all for motor land vehicles and of parts and fittings therefor.
- Class 41** Education and training services; all relating to the management of businesses connected with motor land vehicles, parts and fittings therefor, or the construction, repair or maintenance thereof; services in connection with the organisation, and conduct of sports, recreational and entertainment competitions and functions; provision of sports facilities; museum services.
- Class 42** Services in connection with research development and testing of new products; hotel services; restaurant and catering services.

(iii) CTM 336636



Filed 20 September 1996; registration procedure completed 10 February 1999

- Class 6** Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
- Class 25** Clothing, footwear, headgear.
- Class 28** Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

5(4)(a) goods and services:

Class 1:

Adhesives used in industry; compositions for repairing surfaces; sealing compositions; defrosting compositions; anti-freezing compositions; chemical products for use in the operation, repair, servicing and maintenance of motor land vehicles.

Class 2:

Coating compositions & preservatives, all in the nature of paint; (all adapted for use with motor land vehicles, engines or with transmission assemblies).

Class 3:

Cleaning, polishing, scouring & abrasive compositions; perfumes, cosmetics, soaps, non-medicated toilet preparations; shaving and after-shave preparations; oils, creams and lotions for the skin.

Class 4:

Industrial oils and greases; lubricants and lubricating oils being hydraulic oils, all for vehicles & for vehicle engines; penetrating oils being lubricants.

Class 5:

First aid kits sold complete.

Class 6:

Hinges, non-electric locks & latches; badges for vehicles; fasteners; pipes (not being boiler tubes or parts of machines) & connectors therefore; tanks for liquids; all of common metal; tow ropes of metal; hinges; badges; fasteners; keys; key blanks; key fobs; key rings; vehicle registration plates; money clips; non-luminous signs; boxes; luggage labels; ornaments; all being goods composed mainly of non-precious metal.

Class 7:

Alternators; air cleaners (air filters) for engines; compressors (machines); carburettors; fans & fan belts, all for engine cooling radiators (other than for land vehicles); clutches; engines (not for land vehicles); exhausts; cooling radiators for engines; speed change gear, none for land vehicles; fuel feed apparatus for engines; fuel injection devices for internal combustion engines; electric generators; hydraulic lifting gear; oil cooling apparatus (for machines); pumps (other than petrol vending pumps, surgical pumps or air pumps being vehicle accessories); valves; power transmission take-off units for motor vehicle engines, power transmission take-off units for motor vehicle for use as prime movers; parts of the aforementioned goods; agricultural machines & agricultural implements; bushes & bearings, all being parts of vehicles, engines, motors, or of machines; machine couplings; drive belts; drive chains; brakes; caps for cooling radiators; mechanical control apparatus for engines, brakes, clutches, accelerators or for transmission apparatus; hydraulic cylinders; hydraulic motors; hydraulic pipes all for machines; electric motors; transmission gear and transmission shafts (none for land vehicles); constant velocity joints; engine parts; connecting rods;

control cables; ignition apparatus and ignition distributors, all for internal combustion engines; filters; tappets; ignition glow plugs; ignition spark plugs; pistons; piston rings; rocker arms; manifolds; camshafts; universal joints; turbo-superchargers for engines; earthmoving, earthworking, excavating, loading and tipping machines; pulleys for machines; car vacuum cleaners; fans; fan belts; radiators; radiator caps; exhausts, exhaust cowls; parts and fittings for all of the above.

Class 8:

Lifting jacks; hand tools; hand-tool sets; parts of the aforementioned goods; can openers; scissors; knives; ice scrapers; pocket knives; manicure sets.

Class 9:

Electric accumulators; aerials; anti-theft warning devices; electric batteries & mountings; electric lighters; electric circuit breakers; commutators; electric condensers; electric connections; electric cables; electric fuses; electric fuse boxes; electric control apparatus & instruments for motor vehicles & engines; electrical sensors; fire extinguishing apparatus; gauges; instrument panels & clusters; lenses for lamps; loudspeakers; odometers; printed electrical circuits; electric relays; electric switches; speedometers; tachometers; temperature sensors; voltage regulators; voltmeters; electric wiring harnesses; ammeters; radio apparatus; sound reproducing equipment; telecommunication equipment; tape players; compact disc players; testing apparatus none being for medical purposes; computer software; car telephone installations; highway emergency warning equipment; calculators; tape cassettes; recording media; storage boxes for recording media; sunglasses; magnets; tape measures; binoculars; thermometers; magnifying glasses; compasses, spectacles, ophthalmic frames; mobile telephone mounting equipment; computer software.

Class 11:

Installations & apparatus for air conditioning, ventilation or heating motor land vehicles; lighting installations & apparatus; lamp assemblies; parts for the aforementioned goods; anti-dazzle devices; bulbs for lamps; lamp fittings; reflectors; flashlights; electrical torches; electric blowers.

Class 12:

Motor land vehicles and parts and fittings therefor included in Class 12; vehicle axle assemblies; vehicle bodies; brake calipers; braking installations; draw bars; bumper bars; clutches; differential gears; drive gears; drive shafts; engines; motors; fans; gear change selectors; transmissions; transmission shafts; radiators; radiator caps; exhausts; exhaust cowls; hydraulic cylinders and motors; couplings; bearings; motor vehicle chassis; manual and power steering apparatus; personal safety restraints' seats; seat covers; sliding roofs; vehicle steering columns; vehicle wheels hubs; vehicle wheels; parts for all the aforementioned goods; wheel trims; deflectors; direction indicators; doors; hatches; upholstery; handles for door; horns; mirrors (retrovisors); mud-flaps; roof-racks; ski-racks; shock absorbers; springs; stabiliser bars; starter motors; steering wheels; steering linkages; suspensions; suspension lowering outfits; torsion bars; tow bars; windows; window winding mechanisms; windscreen wipers; arm rests; balance weights for wheels; brake pads and brake linings for vehicles; cabs; caps for vehicle fuel tanks; engine mountings; tanks; engine noise shields; protective covers; radiator grilles; break fluid reservoirs for motor vehicles; engine coolant reservoirs for motor vehicles; windscreen washer fluid reservoirs for motor vehicles; stowage boxes; stowage compartments; wheel carriers; cab tilt mechanisms; trim panel; spoilers, side skirts; anti-theft devices; vehicle window blinds; luggage restraints for

vehicles; luggage nets; snow chains; pet screens; stone screens; safety seats for children; safety cushions; sun shades; mobile telephone mounting equipment; bicycles.

Class 14:

Clocks, watches, costume jewellery, cuff-links, tie clips, coins, medals, lapel pins, rings.

Class 16:

Books; periodicals, magazines; newspapers; instructional and teaching materials; spare parts lists, maintenance manuals and advertising materials; printed publications relating to automotive subjects; pens, pencils; pen stands; calendars; posters, paper cubes & notes, letter holders, plastic carrier bags; paper knives; stationery; office requisites.

Class 17:

Fasteners & connectors, all made of plastic materials, for pipes & cables; flexible covers made of rubber or of plastics materials for protecting mechanical components; mountings made of rubber or of plastics materials for engines, transmission assemblies & for exhausts; plastic materials in the form of sheets (non-textiles) for use in the manufacture of roof coverings for vehicles; clutch linings; gaskets (other than fibrous gaskets for ships); washers (other than washers for water taps) made of rubber, plastics materials or of vulcanised fibre; grommets made of rubber or of plastics material; sealing & caulking compounds (in the nature of jointings or packings); insulating materials; non-metallic hoses; oil seals (packings); strips made of rubber or of plastics materials for sealing joints.

Class 18:

Articles made of leather or of imitation leather; traveling bags; handbags; document cases; suitcases; wallets, purses; card cases, bags, cosmetic cases, suitcases, briefcases, walking sticks, parasols; umbrellas & luggage; rucksacks and knapsacks.

Class 20:

Storage containers; boxes; vehicle registration plates; pillows; clamps; (all of non-metal); all being parts & fittings for motor land vehicles; furniture; mirrors; picture frames; blinds; trays.

Class 21:

Cleaning cloths, cleaning utensils for vehicles; mugs, cups, cooling bags, drinking bottles & bottle openers; household utensils and containers; vessels and containers; glassware; porcelain ware; earthenware; canisters.

Class 22:

Non-metallic tow ropes.

Class 24:

Pennants made of textiles, flags & towels; textile articles included in class 24

Class 25:

Articles of outer clothing; leisurewear; sports clothing; headgear; jackets, coats, pullovers, shirts, overalls, coveralls, belts, ties, waistcoats, sweaters; rain wear; scarves; trousers; sleep wear.

Class 27:

Floor coverings; vehicle carpet & mats; door mats.

Class 28:

Toy models and model vehicles, golf balls, balloons & beach balls; sports racquets; games, playthings, gymnastic and sporting articles; fishing tackle; playing cards.

Class 33:

Wines, sprits and liqueurs

Class 34:

Matches, smokers' lighters; tobacco pouches, cigar cutters, tobacco pipe cleaners; cigar and cigarette cases; ash trays; cigarette boxes.

Class 35:

Business management advisory services, (all relating to the design, development, manufacture, sale, repair or maintenance of motor vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid) organisation of promotional goods programmes; retail services in relation to all goods listed above in each class.

Class 36:

Insurance, warranty, financing, hire purchase and lease purchase financing services; (all relating to motor vehicles, agricultural or earthworking equipment parts or fittings of the aforesaid); credit card services.

Class 37:

Services related to the custom-built construction of motor land vehicles, agricultural or earthworking equipment or of parts and fittings of the aforesaid; inspection, repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning painting and polishing services; all in respect of motor land vehicles, agricultural or earthworking equipment, engines or parts and fittings of the aforesaid; repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning, painting and polishing services; all in respect of motor land vehicles, agricultural or earthworking equipment, engines or parts and fittings of the aforesaid; inspection as part of review for repair, restoration, maintenance, reconditioning, diagnostic tuning, cleaning, painting and polishing surfaces all in respect of motor land vehicles, agricultural or earth working equipment, engines or parts and fittings of the aforesaid.

Class 38:

Telecommunication services; paging services.

Class 39:

Rental, leasing and hiring of vehicles; services relating to the transportation of people in vehicles; warehousing and distribution of vehicle parts.

Class 40:

Engraving; surface treatment and finishing, all of metals, plastics, textiles, glass, wood, leather, rubber and of ceramics; all for motor land vehicles and of parts and fittings therefore.

Class 41:

Education and training services; all relating to the management of businesses connected with motor land vehicles, parts and fittings therefore, or the construction, repair or maintenance thereof; services in connection with the organisation, and conduct of sports, recreational and entertainment competitions and functions; provision of sports facilities; museum services.

Class 42:

Services in connection with research development and testing of new products.

Class 43:

Restaurant and catering services.