



[2011] EWPC 008

Case No: OCL 70100

IN THE PATENTS COUNTY COURT

St. Dunstan's House
133-137 Fetter Lane
London EC4A 1HD
Date: 22/03/2011

Before :

HIS HONOUR JUDGE BIRSS QC

Between :

DAME VIVIENNE WESTWOOD OBE

Claimant

- and -

ANTHONY EDWARD KNIGHT

Defendant

Henry Ward instructed by Taylor Wessing LLP for the Claimant
Anthony Knight represented himself

Hearing date: 8th March 2011

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
HIS HONOUR JUDGE BIRSS QC

JUDGE BIRSS :

Contents:

Topic	Paragraph
Introduction	1
The proceedings up to, including and after the trial	3
The witnesses	30
The law	35
- Trade Mark Infringement	36
- Passing Off	52
- Validity of trade marks	61
- Copyright Infringement	61
The facts	
- The history of Vivienne Westwood's business	71
- Mr Knight	84
The issues	97
i. VIVIENNE WESTWOOD	100
ii. The orb	115
iii. Red Label	140
iv. Let it Rock	150
v. Too fast to live too young to die	160
vi. World's End	171
vii. The arm and cutlass	176
viii. The Satyr/Cherub	183
ix. I love crap	193
x. The Lips	202
xi. AR, Active Resistance to Propaganda	205
xii. Destroy	213
The defendant's conduct as a whole	222
Art 5(2) of the Directive	227
Domain names	232
Conclusion	236
Postscript	237
Annexes	

Introduction

1. In this action the claimant is Dame Vivienne Westwood O.B.E. the British fashion designer. The defendant is Anthony Edward Knight. He sells fashion clothing and accessories over the internet. In doing so Mr Knight uses various names and marks of which the claimant complains in this case. The causes of action alleged are:
 - i) infringement of registered trade mark and passing off as a result of the defendant's use of various marks;
 - ii) infringement of copyright, in that certain of the claimant's devices represent original artistic works created by the claimant and the defendant is alleged to have copied them and thereby infringed copyright; and
 - iii) a declaration that trade mark registrations which the defendant has obtained are invalid having regard to the claimant's own prior marks. The registered trade marks being attacked are No.s 2437947 (Red Planet and device), No. 2485853 (Red Plant Jeans and device), and No. 2555661 (Red Planet Westwood).
2. This is the first trial in the Patents County Court conducted under the new procedural scheme applicable in this court which came into force in October 2010.

Proceedings up to, including and after the trial

3. The case management conference (CMC) took place on 19th November 2010, see *Westwood v Knight* [2010] EWPC 016.
4. On 25th February 2011 Mr Knight sent to the court a document headed "Formal Complaint". This document sets out various complaints Mr Knight has as regards to the conduct of "Judge Burgess of the patents county courts". I will return to that document below.
5. The directions given at the CMC included a direction setting the date for skeleton arguments to be filed. On the relevant day (Wednesday 2nd March) the claimant's skeleton argument was filed albeit that it was very late in the evening, arriving by email at 10 minutes to midnight. No skeleton argument was filed on Mr Knight's behalf.
6. On 3rd March 2011 of my own motion I made an order pursuant to CPR Part 3 rule 3.3(1) to convene a telephone hearing on Friday 4th March at a time to be agreed between the parties. The court was available at any time between 9.30am and 5 pm. The reasons for making the order were attached to the order and were as follows:-

(1) This matter is due for trial on 8th March 2011. The parties' skeleton arguments for the trial were due yesterday (2nd March 2011). The claimant's skeleton argument arrived by email yesterday (albeit very late in the evening) but no skeleton argument has been filed by the defendant.

(2) By an email on 2nd March 2011 the defendant has also requested that the case be on hold until after a complaint he has made has been dealt with.

(3) The court needs to know whether the defendant intends to file a skeleton argument and if so what proposals the defendant has for doing so. The telephone hearing will also provide the defendant with an opportunity to explain why the case should be placed “on hold”.

(4) The parties should liaise about a suitable time on Friday to conduct the telephone hearing. The claimant’s solicitors can arrange the telephone conference call. The hearing should not require more than ½ hr. I am available at any time from 9.30 am until 5.30 pm. If it proves impossible to arrange a time on Friday, I am available this afternoon between 2 pm and 4.30 pm and also on Monday but I urge the parties to find a time on Friday which is suitable. The claimant need not attend the hearing by counsel if he is unavailable.

7. One of the solicitors for the claimant spoke to Mr Knight on Thursday and a time of 9.30am was agreed for the telephone hearing. The matter was listed accordingly. Mr Knight made it clear that he would not attend the hearing if it was before me. The telephone hearing went ahead as planned at 9.30 am on Friday morning. Mr Knight did not attend.
8. At the hearing the claimant’s solicitor Mr Rawkins submitted that the trial should go ahead.
9. As regards a skeleton argument from Mr Knight, Mr Rawkins informed me that in conversations between Mr Knight and his firm, Mr Knight had indicated that his arguments were set out in the various documents he has already filed, copies of which are in the trial bundles. Mr Knight has indeed filed a number of documents at court, many entitled “counterstatement of claim”. He is not obliged to file a skeleton argument if his arguments are already set out elsewhere. The hearing concluded after 5 minutes or so.
10. At 11.15 am I was informed that Mr Knight was prepared to attend at telephone hearing at 11.30 am. According another hearing went ahead at 11.30.
11. At the hearing Mr Knight explained that he had a number of applications he had been trying to make. He felt the court and the claimant were ignoring his requests for essential evidence. On his undertaking to pay the appropriate application fee when he came to court for the trial on Tuesday and at the claimant’s suggestion I heard the applications then and there. The first application was for disclosure of certain documents relating to an opposition by the claimant’s Latimo company against Mr Knight’s trade mark No. 2437947 (Red Planet and device). After starting the opposition, it was withdrawn by Latimo. This mark is subject to the invalidity attack. Mr Knight’s point was that the documents would show that the claimant’s concerns about his mark No. 2437947 during the opposition were narrower than they are before the court. I ordered disclosure to be given.
12. Mr Knight raised a point about the status of one of the claimant’s marks (No. 5805528) before OHIM. He referred to communications he had had with OHIM but copies had not been filed and so the matter could not be dealt with. Mr Knight’s other applications were rhetorical in nature. He wanted the claimant to disclose all the actions the claimant was taking against various other companies which Mr Knight contended were using marks like his own. His rhetorical point was that if the

claimant will not sue them, why is she suing him? I did not order disclosure on the basis that he could make the rhetorical point at trial without disclosure.

13. Finally the trial timetable was discussed. The order made at the CMC did not provide for any cross-examination of witnesses. The claimant had proposed a timetable consisting of submissions from the claimant's counsel, submissions from the defendant and then a reply from the claimant's counsel. However the proposal did not provide for equal time for each of the parties (cf Part 63 Practice Direction paragraph 31.2), giving more time to the claimant. I proposed a small adjustment which gave each side equal time. Both sides agreed to the slightly amended timetable.
14. Finally I asked Mr Knight whether he maintained his complaint against me, objecting to my hearing the trial. He explained he did not maintain it. The trial could go ahead as planned.

The trial

15. The trial took place on Tuesday 8th March. Two preliminary matters were addressed and the remainder of the time was spent on the parties' submissions. The case finished in a single day. Mr Henry Ward instructed by Taylor Wessing represented the claimant and the defendant represented himself.
16. The first preliminary matter was the disclosure from the claimant of the documents relating to the Latimo opposition against Mr Knight's trade mark No. 2437947. Mr Knight complained that the document he wanted to see was not present. Mr Knight repeated what he told me on Friday, i.e. that the document showed that the claimant's only concern about the mark was about the Maltese cross which forms part of it. It became clear that a point of this kind had been the subject of without prejudice correspondence between the parties. My disclosure order did not include without prejudice material and that appeared to be the explanation why the letter Mr Knight remembered had not been disclosed. Mr Knight accepted that no without prejudice material should be disclosed but was adamant that there was another letter on the same point which was not written without prejudice. I directed that the claimant's solicitor should make a witness statement confirming that they had reviewed the file and disclosed all documents which should be disclosed. Mr Rawkins of Taylor Wessing did that in the course of the day and is to be commended for his expedition. His statement confirmed that there was no further material to be disclosed. It was entirely clear that, despite the fact I had been told about something which was privileged, there was no good reason not to continue with the case. Neither side objected to that course.
17. The second preliminary matter related to the status of the claimant's CTM No. 5805528 before OHIM. Mr Knight had opposed the grant of this mark. His opposition had been rejected. Mr Knight contended that he had not received the formal notification of that rejection. He contended that this meant he had not been able to appeal the decision. Mr Knight produced an email from OHIM dated 7th February 2011 which appeared to indicate that they were looking into whether he had been notified by post as he should have been. Mr Knight submitted that the infringement case based on this mark should not go ahead because OHIM may re-

open the opposition against registration. The claimant (rightly) wished to see the communications passing between OHIM and Mr Knight leading up to the email.

18. Mr Knight had sent a complaint to OHIM about this in October 2010 and a copy was in the court bundles. However the communications between that point and the email of 7th February were not in the bundles. Mr Knight said he had not been asked for the material but did not have it with him anyway. The material was back in Mr Knight's office in Manchester. The claimant's advisers had spoken to officials at OHIM and had been told that if I wrote to OHIM (by email) asking for copies of the material, it would be provided by email that day. Mr Knight consented to this course. My clerk emailed OHIM that morning, in the meantime the case continued.

The course of the trial

19. During the course of the trial it was clear that, like many litigants in person, Mr Knight did not distinguish between submissions and evidence. He made many statements in the course of his main speech and on other occasions which were matters of evidence which ought to have been in a witness statement (but were not). I do not criticise Mr Knight for that since it is a distinction which many non-lawyers do not regard as intuitively obvious. However it does not follow that everything Mr Knight said and more particularly a number of documents he handed up or sought to hand up should be admitted as evidence in this case.
20. During the trial Mr Ward submitted that it was manifest that Mr Knight was using the marks complained of to deliberately mislead customers into thinking that they were buying genuine Vivienne Westwood goods rather than Mr Knight's goods. That is an allegation of fraud, deliberate deception. I should say that Mr Ward had a proper basis for making the allegation on the material available (and it was pleaded) however the trial was not going to involve cross-examination of Mr Knight. Indeed at the CMC the claimant's representatives had submitted that there was no need for cross-examination and none was ordered.
21. The material before the court, although supportive of the inference urged by the claimant, can also be explained by a defendant who intends to link his goods with the claimant's marks but not in a way which misleads customers as to the trade origin of the goods. That link is the basis of the claimant's case under s10(3) of the 1994 Trade Marks Act (Art 5(2) of the Directive). Mr Knight in his submissions also distinguished between counterfeiters selling fake Vivienne Westwood products and his kind of trading which he clearly regarded as different. To address these issues properly would involve, amongst other things, embarking on an analysis of Mr Knight's intentions as regards the link point and also the distinction Mr Knight draws (if it exists). I do not need to make a finding as to Mr Knight's state of mind. To do so without cross-examination in this case would not be fair and I decline to do so.
22. In his submissions Mr Knight made allegations that documents exhibited to the witness statement of the claimant's main witness Mr D'Amario were fabricated. Mr Ward pointed out that no application to cross-examine Mr D'Amario had been made. Mr Knight did not make any such application even as late in the day as the afternoon of the trial having heard the submission of Mr Ward. Again I will deal with the specifics in context but as a general matter, in my judgment, it was not open to Mr Knight to take this approach. If he had wanted to assert that any of the claimant's

evidence was fabricated or untruthful he could and should have applied to cross-examine. The application should have been made at the CMC. The particular point (that the Satyr/cherub derived from 1987) was in the Particulars of Claim in its form before the CMC. Mr Knight did not attend the CMC and he submitted that the CMC should not have taken place without him (that was dealt with in paragraphs 11-13 of my previous judgment *Westwood v Knight* (above)). The matters Mr Knight had raised in correspondence were taken into account at the CMC. They did not include an application to cross-examine. Furthermore an application to cross-examine could still have been after the CMC once Mr Knight saw Mr D'Amario's witness statement in January. The procedural scheme is more restrictive in dealing with such applications but in a proper case they can be made. An application on proper grounds could have been considered before trial and dealt with.

23. Mr Knight handed up three documents which were clearly matters of evidence which could and should have been provided earlier. I admitted one (a document purporting to show when Mr Knight had first used a version of an AR logo) because it seemed to me not to prejudice the claimant in any way because it was irrelevant. I allowed Mr Knight to show me the other two on the express basis that I would rule in this judgment whether to admit them.

OHIM's reply on CTM No. 5805528

24. OHIM's reply to my request arrived with my clerk in the afternoon, attaching copies of the email communications. I am very grateful to the officials at OHIM for their expeditious help in this matter. Mr Knight maintained his submission that the court should not consider CTM No. 5805528 because he had lost the opportunity to appeal as a result of the alleged notification problem. Being able to see the picture as a whole with it was clear that Mr Knight had not missed an appeal deadline as a matter of substance. Mr Knight's case was that he had not received the formal notification of the adverse decision. Whether or not he had, by 5th October 2010 Mr Knight clearly was well aware of it because he was complaining to OHIM about it. The appeal deadline did not expire until 29th December 2010. Therefore Mr Knight had ample time to appeal if he had wanted to. The CTM No. 5805528 is part of this case and will be considered in this judgment.
25. A further matter arose in relation to the emails from OHIM once the submissions on the merits of the case were complete. Amongst the emails was a further copy of the 7th February 2011 email which was already before the court. The message was from Andrea Di Carlo of OHIM to Mr Tony Knight and is marked 07.02.11 at 10:31:12. The email related to efforts by OHIM to trace through the Spanish and UK postal system, the notification of the decision sent by OHIM to Mr Knight. The two versions of what was obviously the same email differed. In the one from OHIM the email included a statement that OHIM knew that the notification had reached the UK on 6th October 2010 and provided detailed information giving the "status of the sending" with a serial number and other data. The other version had been sent by Mr Knight to Taylor Wessing and a copy was in the trial bundle. The statement that OHIM knew the notification had reached the UK and the sending data was absent. The claimant submitted that Mr Knight should provide an explanation for the discrepancy. The clear suggestion by the claimant was that Mr Knight must have altered the email sent to Taylor Wessing by deleting the information. Mr Knight could not explain the matter and suggested that it was the claimant who must have altered the email (since

the copy in the trial bundles was of the email to Taylor Wessing). Mr Knight said he was not lying and asked to go into the witness box. Mr Ward submitted that nothing would be served by that since Mr Knight had explained his position orally in any case and it was clear what Mr Knight's position was. I decided no purpose would be served by putting Mr Knight in the witness box on this issue.

26. On 9th March, after the trial, I received an email from Mr Knight dealing with this matter saying that all Mr Knight had done was forward the email to Taylor Wessing and stating that he can only assume there was some form of error. He said it would not be the first time this had happened and he had had "issues" with Taylor Wessing when certain attachments and email would not open on his system. It is right to record that Mr Knight had indeed raised problems with emails before. He was apparently having trouble opening attachments.
27. In my judgment it is neither necessary nor appropriate to embark on trying to resolve the email issue. Tampering with emails and evidence is an extremely serious matter, however it would be disproportionate to allow this trial to be side tracked into addressing the issue. I will make no finding one way or the other on the OHIM email.

The end of the trial

28. The trial was complete at the end of a single day. At the end of the hearing Mr Knight reconfirmed that he no longer maintained any of the complaints he had raised before the trial.

After the trial

29. In course of considering judgment a point arose on which I sought the parties' assistance. The point was the possible impact of s52 of the Copyright Designs and Patents Act 1988 Act and of the transitional provisions relating to s52. It was not a point taken by Mr Knight, however it seemed to me that if those provisions applied then they were capable of having an important effect on some of the claimant's copyright claims which could not be ignored. I sent a note to both sides and each responded promptly. As a result the claimant did not maintain one of its copyright claims and accepted that no injunction would be available for another claim. I will deal with the details in context.

The witnesses

30. The evidence for the claimant comes from three witnesses. The claimant's primary witness is Mr Carlo D'Amario. He has been the claimant's business partner since 1985. Mr D'Amario exhibited an article from The Independent newspaper in 1997 about himself which described him as "an Italian ex-communist" who turned "the high priestess of punk haute couture into a capitalist success". He is a director of the claimant's various operating companies including Latimo SA, Vivienne Westwood Ltd, VW Parfum Ltd and Vivienne Westwood Srl. The business as a whole, regardless of which operating company it is conducted by, is referred to as the VW Business.
31. Mr D'Amario explains the history of the VW Business and then gives detailed evidence relating to the various particular marks used by the VW Business to which this case relates. That is the bulk of his evidence. Finally Mr D'Amario gives evidence about the defendant's activities.
32. The claimant also relies on a brief passage (paragraph 13) from the witness statement of Jason Rawkins of Taylor Wessing. This relates to the status of various marks at OHIM.
33. Finally the Particulars of Claim were relied on as evidence. In accordance with CPR Pt 63.21 applicable to the Patents County Court, the statement of truth had been signed by persons who between them have knowledge of the facts alleged. Mr D'Amario had signed the statement of truth in relation to the facts in the Particulars of Claim insofar as they relate to the period from 1985 onwards. The claimant signed the statement of truth in relation to the remaining earlier aspects. Thus following the CMC the Particulars of Claim were to be part of the evidence. This was an important matter since the evidence for subsistence and ownership of copyright is contained entirely in the Particulars of Claim.
34. For the defendant Mr Knight provided a number of documents (at least 14) which include a mixture of evidence and argument. His original defence (called a Counterstatement of claim) includes a statement of truth signed by Mr Knight. Nothing turns on the form in which Mr Knight presented his material to the court.

The Law

35. There are four separate claims: trade mark infringement, passing off, invalidity of the defendant's registered trade marks and copyright infringement. For some marks only one kind of claim is made but for most of the claimant's marks, claims based on more than one of these heads arises. In order to deal with the law I will address each legal topic separately but when it comes to applying the law to the facts it will be convenient to deal with the issues topically, mark by mark.

Trade mark infringement

36. The Trade Marks Act 1994 implemented Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks and made provision in connection with Council Regulation (EC) No. 40/94 on the Community Trade Mark. In 2008 a codified version of the directive was produced which is

Directive 2008/95/EC of 22 October 2008. Similarly Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark was replaced by the codifying Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark. In this judgment I will refer only to the codified Trade Marks Directive since there was no suggestion the relevant provisions of the Regulation were different.

37. Infringement of the registered trade marks under each of the provisions in Article 5 of the Trade Marks Directive, namely Articles 5(1)(a), (b), and 5(2) is alleged. The provisions of s10(1), 10(2) and 10(3) of the Trade Marks Act 1994 correspond to Articles 5(1)(a), (b) and 5(2) of the Directive. For the Community Trade Marks, infringement under the corresponding provisions of the Community Trade Mark Regulation (i.e. Articles 9(1)(a), (b) and (c)) is relied on.
38. The relevant provisions of the Trade Marks Directive are:

Article 5

Rights conferred by a trade mark

1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:
 - (a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;
 - (b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark
 2. Any Member State may also provide that the proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trade mark in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the Member State and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.
39. The claimant made no detailed submissions on the law on this issue, referring simply to the recent judgment of Mr Justice Floyd in *Hasbro v 123 Nahrungsmittel* 2011 [EWHC] 199 (Ch).

Article 5(1)(a)

40. In some circumstances the claimant relies on this limb (identical marks on identical goods). The correct test for identity of marks was referred to and explained by the Court of Justice in Case C-291/00 *Societe LTJ Diffusion v Sadas Vertbaudet* [2003] FSR 608. At para 54 the Court said:

the answer to the question referred must be that Art 5(1)(a) of the Directive must be interpreted as meaning that a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.

Article 5(1)(b)

41. Generally the claimant also relies on this limb (identical or similar marks on identical or similar goods whereby there is a likelihood of confusion). In paragraph 195 of *Hasbro Floyd J* followed the judgment of Arnold J in *Och-Ziff Management Europe Ltd v. OCH Capital LLP* [2010] EWHC 2599 (Ch) at paragraphs 72 – 74, wherein Arnold J. cited with approval the summary of the case law of the CJEU used by the UK Trade Marks Registry for the purpose of considering likelihood of confusion. As Floyd J pointed out, although these are in the context of registration against relative rights grounds, the principles listed all apply to infringement. They are:

“(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinct and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the relevant public by a composite trade mark may, in certain circumstances, be dominated by one more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier mark may retain an

independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa;

(h) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks causes the public to wrongly believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.”

42. The summary is derived from the judgments of the CJEU in Case C-251/95 *Sabel BV v. Puma AG*. [1997] ECR I-6191; Case C-342/97 *Lloyd Schuhfabrik Meyer & Co GmbH v. Klijsen Handel BV* [1999] ECR I-3819; Case C-334/05 *P Shaker di L Laudato & C SAS v. OHIM* [2007] ECR I-4529; Case C-3/03 *Matratzen Concord v. OHIM* [2004] ECR I-3657; Case C-120/04 *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* [2005] ECR I-8551; Case C-39/97 *Canon Kabushiki Kaisha v. Metro Goldwyn Mayer Inc* [1998] ECR I-5507; and Case C-425/98 *Marca Mode CV v. Adidas AG* [2000] ECR I-4861.
43. In *Och-Ziff*, Arnold J also pointed out that, in the infringement context, likelihood of confusion is to be determined by reference to the use which has actually been made of the sign in context (as opposed to the consideration of notional fair use in the registration context).

Article 5(2)

44. Although Article 5(2) appears to be restricted to cases in which the goods are “not similar” to those registered, in fact it is not so limited: Case C-292/00 *Davidoff & Cie SA and Zino Davidoff v Goffkid* [2003] 1 WLR 1714.
45. As Floyd J explained in *Hasbro* (paragraph 213), the provision is concerned with extending the protection for marks with a reputation beyond the protection which is available for marks which do not. In Case C-301/07 *PAGO International GmbH* [2010] ETMR 5, the Court of Justice considered the reputation required for the corresponding test in the CTM Regulation and said that:

“The degree of knowledge required must be considered to be reached when the Community trade mark is known by a

significant part of the public concerned by the products or services covered by the mark”

46. The position is the same under the Directive – Case C-375/97 *General Motors Corp. v Yplon SA* [1999] ECR I-5421.
47. For there to be infringement it is also necessary to establish the existence of a link or connection between the marks and the sign complained of in the minds of the relevant public: see Case C-487/07 *L’Oreal v Bellure NV* at para 36. In paragraph 218 of *Hasbro Floyd J* found that even if he had been wrong about the risk of confusion (relevant to Art 5(1)(b)), the use of signs by the defendant in that case was certainly sufficient to bring the marks to mind in a significant class of consumers, even if the effect of the signs is not sufficient for them to assume that there is common origin. Mr Ward urged the same approach on me here, i.e. even if confusion as to trade origin was not established, a link in the mind of the average consumer was established.
48. Finally the use of the sign complained of must take unfair advantage of, or be detrimental to, the distinctive character or the repute of the mark relied on.
49. In paragraph 219 of *Hasbro Floyd J* held that on the facts of the case before him the requirement of unfair advantage was established because:

by bringing the mark to the mind in a way which falls short of actual confusion, the defendants are taking advantage of the goodwill which attaches to the marks. To those who make the connection, the signs complained are misappropriating the cachet which is attached to the marks.
50. In paragraph 220 of *Hasbro Floyd J* held that on the facts of the case before him the requirement of detriment was also established because it was for the mark owner to decide on the type of goods which are associated with their goodwill. The point in *Hasbro* was that the goods were of a kind (edible) which the claimant did not sell. Floyd J held that the mark owner could justifiably complain of detriment if their goodwill attaches to such a product.
51. I will follow the same approach as Floyd J.

Passing off

52. The necessary elements of the action for passing off are those set out by the House of Lords in the *Jif Lemon* case *Reckitt & Colman Products Ltd v. Borden Inc* [1990] RPC 341 (HL) at page 406 per Lord Oliver of Aylmerton and page 417 per Lord Jauncey of Tullichettle:
 - i) that the claimant’s goods or services have acquired a goodwill in the market and are known by some distinguishing name, mark or other indicium;
 - ii) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the claimant;

- iii) and that the claimant has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.
53. Passing off forms an important part of the claimant's case for two reasons. First a number of the marks relied on are not or not yet registered and second the claimant submitted that the defendant's approach as a whole falls to be considered under the rubric of passing off.
54. At times Mr Ward appeared to elide the test for trade mark infringement with the test for passing off but the two are not the same and he correctly modified his submissions to recognise the differences. First (see Floyd J in *Hasbro* at para 235) an absence of a well known mark of the claimant's is capable of being a relevant factor in passing off in circumstances in which it may be less relevant for trade mark infringement. Whether or not there has been actual confusion is usually also significant in passing off.
55. Second the considerations arising under Art 5(2) of the Directive are distinct from passing off in various ways. First the reputation necessary to satisfy Art 5(2) in the first place is more extensive than the reputation necessary to found a claim in passing off. The test for Art 5(2) is knowledge by a significant part of the public (see *PAGO* above). That is a higher hurdle than needed in passing off and there will be many cases in which a trader will have acquired entirely sufficient goodwill and reputation to start a passing off action without coming near the *PAGO* test. Second the misrepresentation referred to in the *Jif Lemon* case is a misrepresentation as to trade origin. It corresponds to the origin confusion considered under Art 5(1)(b). This is not the case to embark on an consideration of whether the wider form of passing off discussed in the *Advocaat* case *Erven Warnink v Townend* [1980] RPC 31 might allow for factors akin to the link needed for Art 5(2) to be considered and Mr Ward did not submit that it was.
56. Mr Ward relied on the principle that if a fraudulent intention on the part of the defendant is proved then the burden on proof in a passing off claim is much lighter and the court will not readily push the inquiry further (see Kerly 14th Ed paragraph 15-199 - 15-200). This issue does not arise on my finding in relation to Mr Knight. Mr Ward also relied on a submission that "proximity may be a badge of fraud" based on Kerly paragraph 15-222. In my judgment the proximity referred to is the place of business of the defendant. That has nothing to do with this case.

Invalidity of trade marks

57. The provision relied on by Mr Ward was s47(2) of the Trade Marks Act 1994 which provides:

47.— Grounds for invalidity of registration.

...

(2) The registration of a trade mark may be declared invalid on the ground—

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

58. Sections 5(1), 5(2) and 5(3) of the 1994 Act then set criteria which correspond to the tests for infringement under Articles 5(1)(a), (b) and 5(2). So for example by s5(1) a trade mark will be invalid if it is identical with an earlier trade mark and it specifies identical goods, and so on for s5(2)/Art 5(1)(b) and s5(3)/Art 5(2).

59. Section 5(4) provides that

5(4) A trade mark shall not be registered if or to the extent that its use in the United Kingdom is liable to be prevented-

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

60. Thus passing off is relevant both as a cause of action by the claimant and as a basis for its claim for invalidity.

Copyright

61. Copyright subsists in an original artistic work (s1 Copyright Designs and Patents Act 1988); an artistic work can be a graphic work irrespective of artistic quality such as a drawing (s3 1988 Act); the author of a work is the first owner of copyright in it (s11 1988 Act) and “author” means the person who created the work (s9 1988 Act). For works created by employees in the course of their employment, the first owner will be the employer (s11 (2) 1988 Act). A work will qualify for copyright under the Act if the author was a British citizen when the work was made or published as the case may be (s154 (1) and (4) 1988 Act). A work of joint authorship qualifies if any of the authors satisfies the requirements (s154(3) 1988 Act).

62. A work which was merely copied from some other source will not be original but a work can certainly satisfy the test for originality even if it includes elements from pre-existing works. As a general proposition a work will be original provided, looking at the work as a whole, that work was not the product of slavishly copying from an existing source.

63. It is an infringement of copyright to copy the whole or any substantial part of the work without permission; which, for an artistic work, means to reproduce it in a material form (s16(1), (2), (3) and s17(1), (2) 1988 Act). Deciding whether there is a sufficient objective similarity between the copy and the original work to represent a taking of a substantial part is a matter of degree and there are numerous cases on the point (e.g. Designers Guild v Russell Williams [2001] 1 WLR 2416, Ladbroke v

William Hill [1964] 1 WLR 273, and *Baigent v Random House* [2007] EWCA Civ 247). No single reformulation of the statutory test can ever be appropriate.

64. After trial an issue arose concerning s52 of the 1988 Act. The section provides:

52.— Effect of exploitation of design derived from artistic work.

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and

(b) marketing such articles, in the United Kingdom or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

...

65. The consequence of s52, if it applies, is that after 25 years from the end of the year in which relevant articles are first marketed, the work may be copied by making such articles. There was a similar (but by no means identical) provision in the 1956 Act at section 10. It also cut down the effective period of copyright protection in certain circumstances for certain purposes but the period was 15 years.

66. The 1988 Act contains relevant transitional provisions in Schedule 1, paragraph 20 as follows:

Schedule 1, Paragraph 20

(1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before commencement, section 52(2) of this Act applies with the substitution for the period of 25 years mentioned there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.

67. Section 10 of the 1956 Act was amended a number of times. In its form just before commencement of the 1988 Act it provided as follows:

10.— Special exception in respect of industrial designs.

[...]

(2) Where copyright subsists in an artistic work, and—

(a) a corresponding design is applied industrially by or with the licence of the owner of the copyright in the work, and

(b) articles to which the design has been so applied are sold, let for hire, or offered for sale or hire whether in the United Kingdom or elsewhere, the following provisions of this section shall apply.

(3) Subject to the next following subsection, after the end of the relevant period of 15 years it shall not be an infringement of the copyright in the work to do anything which at the time when it was done would, if a corresponding design had been registered under the Registered Designs Act 1949 (in this section referred to as “the Act of 1949”) immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

In this subsection “the relevant period of 15 years” means the period of 15 years beginning with the date on which articles, such as are mentioned in paragraph (b) of the last preceding subsection, were first sold, let for hire or offered for sale or hire, whether in the United Kingdom or elsewhere.

[...]

68. I have not set out the whole of either s10 or s52 because I do not need to decide whether they apply. The claimant accepted that in the case in which it might matter (the Orb device), s10 applied in relation to that artistic work before commencement. Therefore the criterion set by Schedule 1, paragraph 20 is satisfied in that case. The claimant also accepted that the effect of s52 as a result was that no injunction could be claimed after the end of the relevant period. There is a point of law arising however as to the relevant period.
69. The effect of the transitional provision is that the period of protection referred to in s52 is cut down from 25 years mentioned in the 1988 Act to the 15 year period mentioned in the 1956 Act. The claimant submitted that the effect of the transitional provision was the other way round - lengthening the period from the 15 years in the 1956 Act to the 25 years in the 1988 Act. However the provision does not work that way. The 1988 Act repeals the 1956 Act. If s10 applied before the 1988 Act then it would have applied with a 15 year period. Paragraph 20 of Schedule 1 applies s52 instead. The period in s52 is normally 25 years. Paragraph 20 substitutes that 25 year period with the 15 year period of s10 of the 1956 Act.
70. Finally, a question arose concerning the enforcement of a copyright claim in a case in which the work is may be immoral, scandalous or contrary to family life. It arose because one of the claimant’s works includes the Nazi swastika symbol superimposed on an inverted image of Christ on the cross which symbolises the antichrist. However after trial the claimant dropped the copyright claim in relation to this work as a result of the point on s10 of the 1956 Act and I do not need to decide the enforcement issue.

The facts

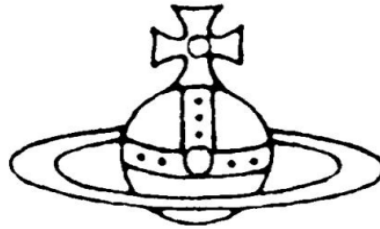
Vivienne Westwood

71. The Claimant opened her first shop at 430 Kings Road in London in 1971 with her partner Malcolm McLaren. In 1971 the shop was called “Let It Rock”. The shop sold Rock n’ Roll music and fashions at a time when hippies were the fashion. In 1972 the

shop was renamed “Too Fast to Live, Too Young to Die” and the claimant and Malcolm McLaren sold zoot suits, clothing with zips and chains as well as T-shirts with slogans. Mr Knight contended that the slogan “Too Fast to Live, Too Young to Die” had been derived from a biker jacket. There is evidence in the materials provided by the claimant to support that but it is unnecessary to decide where the slogan itself came from. In 1972 the claimant also created a device consisting of the same slogan around a skull and crossbones. The use of the device as a mark will be addressed below. The device is:



72. In 1974 the name of the shop was changed to “Sex” and clothing the claimant sold became sexually provocative. In 1976 the shop was called “Seditionaries”. This was the time when the British punk movement began. The claimant and Malcolm McLaren were closely associated with punk. They were closely linked with the British punk rock group, the Sex Pistols, who often wore the claimant’s designs. One famous example was a DESTROY T-shirt worn by Jonny Rotten and other members of the Sex Pistols. The DESTROY image combines a Nazi swastika, the inverted Christ on the cross image of the anti-christ and HM The Queen’s head on a postage stamp. The image is in Annex 1. There was also a version without the swastika. The DESTROY T shirt was described in The Times in 2001 as an icon of modern design.
73. In my judgment by the end of the 1970s the claimant had become a very well known British avant-garde fashion designer, producing highly provocative and very influential designs.
74. In 1981 the shop’s name was changed to “World’s End” and it has remained under that name ever since. For Autumn/Winter 1981 the claimant showed her first catwalk presentation at Olympia. It was her “Pirate” collection with clothing incorporating imagery associated with pirates. One of the images used was a device of an arm holding a cutlass. This image is associated with the flag of 17th century pirate called Thomas Tew. The claimant’s authorised biography credits this Pirate collection with launching the New Romantic movement. Mr Ward relied on this although he did not explain what the New Romantic movement was. It was a British pop music movement in the early 1980s associated with bands like Spandau Ballet, Duran Duran and Adam and the Ants. The New Romantics dressed in flamboyant clothing.
75. In the mid 1980s the claimant’s style changed again. Street style and youth culture ceased to play the hitherto major role it had had in her work. The claimant looked to traditional Saville Row tailoring techniques, British fabrics and 17th and 18th century art for inspiration. As part of this development, in 1985 the claimant first used a device consisting of an orb encircled by a ring similar to the rings of Saturn. Mr D’Amario gave evidence that this represents a fusion of the traditional (the Royal orb) and a step into the future (the Saturn ring). The orb device is:



76. There is no doubt that the orb part of the device bears a resemblance to the well known mark associated with Harris Tweed. Mr Knight drew attention to this resemblance. Mr D’Amario explained that the claimant introduced a “Harris Tweed” collection in 1987 in collaboration with Harris Tweed by commissioning nine 80-metre rolls of specially woven Harris Tweed. As a result she became well known for pioneering the use of tweed in high fashion. Mr D’Amario also explains that in 1989 the claimant and the Harris Tweed Authority entered into a co-existence agreement relating to the mark. The claimant would use her ringed orb device with a Maltese cross (as above) on garments not made of tweed, while for tweed garments the claimant would use the ringed orb but the cross would be replaced by an owl with its wings outstretched. The Harris Tweed Authority agreed.
77. Other marks which derive from the 1980s are as follows:-

- i) In 1987 an image of a cherub/satyr was used on an invitation to a Vivienne Westwood Spring/Summer 1988 fashion show “PAGAN I”. Subsequently the image has been used, with variations, in other contexts. The image is:



One variation of this image has the cherub/satyr holding the Vivienne Westwood orb.

- ii) In 1988 the VW Business launched the ANGLOMANIA line of women’s and menswear under the following logo:



The arm and cutlass in the middle of the logo is the one mentioned above with the Pirate collection.

78. Two developments in 1992 were:

- i) the creation of a device combining the orb with the name Vivienne Westwood in a fancy script:



- ii) the launch of a womenswear line called RED LABEL. One way of using “Red Label” was to combine it with the orb and the name Vivienne Westwood in the fancy script (Annex 7).
79. In 2004 the Victoria and Albert Museum held a major retrospective exhibition relating to the claimant’s work. The V&A had been acquiring items from the claimant’s collections since 1983. At that time the VW Business started using a LIPS mark, consisting of a photograph of the lips of a model, Sara Stockbridge actually taken in 1987. It first appeared in an invitation to the exhibition at the V&A. It is shown in Annex 2.
80. For the claimant’s GOLD LABEL Spring/Summer 2006 show the slogan “Active Resistance to Propaganda” and the mark AR were used. An image of the AR mark is in Annex 3. The A and the R share a common vertical line. In addition in 2007 the claimant launched her Active Resistance to Propaganda manifesto. The manifesto was launched with readings of it by the claimant at the Wallace Collection in London and in other places.
81. In 2007 the claimant created an image known as “I Love Crap” as shown in Annex 4 as a badge. The word “love” is depicted by heart. The image can be said to subvert the usual idea of souvenirs using a heart to say “I love something” like I love London or I love New York etc.
82. Today, the claimant via the VW Business owns and operates four stores in London, one in Leeds, one outside Oxford, one in Milan and one opening in Los Angeles in 2011, together with showrooms in London, Milan, Paris and Los Angeles. Franchise stores are located in Liverpool, Newcastle, Glasgow, Manchester (three stores), Nottingham and York. In total, the Claimant and her companies operate over 120 Vivienne Westwood stores across 86 countries, with a total of over 700 points of sale worldwide (including, for example, concessions in premium department stores). These stores sell the Claimant’s four distinct clothing ranges and accessories, from couture to casual wear.
83. It is clear that the claimant’s “house” marks are “Vivienne Westwood” and the orb. They are used more or less universally. The other marks and images appear in a variety of combinations both with each other and with Vivienne Westwood and the orb mark. The public are used to seeing various of the claimant’s marks together in combination. The one image which is mentioned above and which the claimant makes no specific use of today is the DESTROY image.

84. Mr Knight is a fashion designer based in Manchester. He sells his goods – clothing and accessories - on the internet. Mr Knight has websites of his own and sells through systems such as eBay. “Saint ArtJunkie” is a name Mr Knight uses for himself on the net.
85. Mr Knight produced a copy of flyer he used for a show in 1994. The show took place in Langley Primary School, Langley, Middleton. The flyer states that the show was a “Special Show from a young home grown Designer 15-Feb 1994”. The words “Red Planet Jeans” are in prominent letters down one side with “Menace Show” across the bottom. The garment depicted carries an image which is clearly the cherub/satyr image first used by the claimant.
86. Today Mr Knight uses a wide variety of marks – both words and devices – in relation to his goods. Many of them are the same or substantially the same as marks associated with the claimant to a greater or lesser extent. Simply as an example, a copy of a webpage www.artjunki.co.uk is in evidence. This is one of Mr Knight’s sites. The centre of the page has “Saint Artjunkie” under a skull and crossbones with a crown and then radiating out from the centre are black and white lines like the sun’s rays. Nine of the white portions contain text as follows:

Saint Artjunkie Clothing

Artrockers Clothing

Death before Dishonour

World’s End Apparel

Too fast to live too young to die

Divine Youth Apparel

Let it rock Apparel

Sacred Saints

Red Planet Westwood

87. The list can be seen to include three of the names used by the claimant for the shop on the Kings Road (Let it Rock, Too Fast To Live Too Young To Die and World’s End) as well as the mark “Red Planet Westwood”. This is merely exemplary of the matters giving rise to this case.
88. Mr Knight also uses a ringed orb device in various forms. Examples are given below. One of Mr Knight’s registered trade marks of which complaint is made is No. 2 437 947 in class 25. This was filed in November 2006 and was registered on 18th January 2008. The mark is in red and blue. It is:



89. Mr Knight also sells a T-shirt bearing an arm and cutlass device and the words “Saint Artjunkie” (see Annex 10).
90. In 2008 Mr Knight obtained another registered trade mark in class 25 (No. 2485853, registered on 3rd October 2008). This is:



91. In October 2008 Mr Knight also applied to register a mark consisting of an inverted Christ on the Cross with a swastika under the word DESTROY (see Annex 15). That application was refused. Mr Knight sells a t-shirt carrying an inverted Christ on the Cross with no swastika nor “Destroy” (Annex 16).
92. Other T-shirts Mr Knight sells include an “I love crap” shirt bearing using a splattered heart shape (Annex 11), a shirt bearing the words “AR Active Resistance to Propaganda Manifesto” (Annex 13), a t-shirt bearing the words “World’s End Apparel” and a shirt with a LIPS image which is obviously a copy of the image of the model Sara Stockbridge’s lips (Annex 12).
93. A copy of Mr Knight’s eBay page <http://stores.shop.ebay.uk/Saint-Artjunkie> from 28/9/2009 is in evidence. This shows a series of garments and a description of each. For example the list includes:
- i) A “saint artjunkie westwood zip skull hoody urban icon” garment.
 - ii) A “saint artjunkie westwood red planet baby orb” garment. The picture is very small but it seems to be a t-shirt and has an image which appears to be the same as the one in Mr Knight’s trade mark No. 2485853.
 - iii) A “saint artjunkie westwood Too fast t-shirt mens slim fit”. The image is small but the t-shirt appears to carry a copy of the claimant’s Too Fast To Live Too Young To Die logo.
 - iv) A “saint artjunkie westwood indie lips tee”. The image is again small but the t-shirt appears to carry a copy of the claimant’s LIPS image.

94. On 7th June 2010 Taylor Wessing sent a highly detailed letter before action to Mr Knight. Mr Knight denied the claimant's claims. Although some of his responses were measured, some were not. Two emails sent my Mr Knight on 9th June to Taylor Wessing consisted of nothing but abuse. There is no point in setting out the abusive language in this judgment. Before me Mr Knight was clearly embarrassed about it. He was right to be. The emails are symptomatic of part of Mr Knight's approach to this litigation. Although Mr Knight is perfectly capable of being an articulate and able advocate for his case, too often in correspondence he has descended into abuse and making unwarranted complaints about the behaviour of others.
95. The claim form was issued on 24th June 2010 and Particulars of Claim served.
96. On 12th August 2010 Mr Knight applied to register the words "Red Planet Westwood" in class 25. The mark No. 2555661 was registered on 31st December 2010. The claimant contends it is invalid.

The issues

97. The topics which fall to be considered can be broken down as follows:
- i) VIVIENNE WESTWOOD
 - ii) The orb
 - iii) Red Label
 - iv) Let it Rock
 - v) Too fast to live too young to die
 - vi) World's End
 - vii) The arm and cutlass
 - viii) The Satyr/Cherub
 - ix) I love crap
 - x) The Lips
 - xi) AR, Active Resistance to Propaganda
 - xii) Destroy.
98. The defendant's conduct as a whole falls to be considered as a whole and finally Art 592) of the Trade Marks Directive.
99. For each topic I will consider:
- i) The claimants rights
 - ii) The conduct complained of

iii) The relevant causes of action.

(i) *VIVIENNE WESTWOOD*

(a) *The Claimant's rights*

100. The claimant owns CTM 5089719 in inter alia class 25 for the words "VIVIENNE WESTWOOD". The specification of goods includes clothing, footwear and headgear and also jewellery.
101. The name VIVIENNE WESTWOOD today is a famous one associated with fashion, clothing and accessories. Mr Knight did not dispute that and no purpose would be served rehearsing Mr D'Amario's evidence on the point. For example in the calendar year 2010 wholesale sales revenues for VW Business were some £80 Million worldwide and £30 Million in the UK. Everything sold by the VW Business is sold under and by reference to the mark VIVIENNE WESTWOOD.
102. Plainly a very substantial goodwill and reputation attaches to VIVIENNE WESTWOOD in the UK related to fashion, clothing and accessories.

(b) *The conduct complained of*

103. Mr Knight uses the word WESTWOOD frequently as part of his branding, selling clothing and other goods, generally as part of the term "Red Planet Westwood". An example was given from the site www.artjunki.co.uk.
104. Mr Knight also uses the word VIVIENNE in close proximity to WESTWOOD. This is the conduct I will address in this section. Examples of Mr Knight's activity are as follows:
 - red planet westwood co shirt by designer vivienne may
 - red planet westwood scarf by designer vivienne M BNWT
 - red planet westwood cufflinks vivienne maye
 - red planet westwood cufflinks by vivienne peters
105. Obviously the word "vivienne" appears as well as "westwood" albeit not as "Vivienne Westwood". There is no evidence (relevant or not) that Mr Knight has a designer whose name is Vivienne (whether Vivienne May(e), Vivienne Peters or anything else).

(c) *The causes of action*

106. In this section I will confine myself to considering the case in which Mr Knight uses the words vivienne and westwood in close proximity. I will deal with "Red Planet Westwood" without Vivienne in the Red Label section below.
107. Mr Knight clearly takes care often to avoid use of the term "Vivienne Westwood" itself. However evidence that Mr Knight had sold jewellery under "Vivienne Westwood" was spotted by the claimant's advisers at trial. As a point it had not been

foreshadowed. Mr Knight said that the examples found were cases in which he was reselling genuine Vivienne Westwood jewellery. I am in no position to doubt that. Accordingly in my judgment that is not a case of trade mark infringement under Art 5(1)(a). Even in the cases in which “vivienne” and “westwood” appear in the same description they do not appear side by side. Mr Ward did not contend that that represented an identical sign to CTM 5089719.

108. In general terms, the way in which Mr Knight uses “Vivienne” with “Westwood” is in a description which can be generalised as: *red planet westwood* [product: scarf / shirt etc.] *by designer vivienne* [surname: may/peters etc.]. That is the description I will consider.
109. Under Art 5(1)(b), the goods Mr Knight sells are identical to the specification, the question is whether there is a likelihood of confusion. The mark CTM 5089719 as a whole consists of those two words albeit side by side. In Mr Knight’s trading descriptive words are inserted in between the two words (“westwood scarf by designer vivienne”). Sometimes Vivienne is given a surname (May or Peters) but sometimes not. The words “red planet” would clearly be perceived as part of a brand but it is also clear to the average consumer that Vivienne Westwood has a number of sub-brands (leaving aside that she actually has a sub brand Red Label and uses the rings of a planet (Saturn) as part of her orb device). In my judgment the words Vivienne and Westwood are particularly distinctive to the average consumer concerned with fashion and clothing when they used in conjunction with each other in some way.
110. The eBay materials in court show two examples of Mr Knight’s customers having bought his “red planet westwood [scarf/shirt] by designer vivienne may” thinking it was a genuine product of the claimant. One wrote “Cheater liar fraud, Be VERY very careful with this charlatan” (sic). Saint ArtJunkie’s reply to that was “didn’t read description offered refund refused this person out to cause trouble”.
111. Mr Knight relies on the existence of registered trade marks in class 25 which include the word “westwood”. He puts three forward. One (1199767) shows a person sleeping against a cactus wearing a sombrero and poncho with the word “WESTWOOD” in a sort of wild west script. Another (2191548) shows the word under a shield with two Ws in it and the third consists of the words “MARK WESTWOOD”. There is no evidence that these marks have had any impact on the public mind in the UK. They are irrelevant.
112. Mr Knight’s asks rhetorically why he is being sued if the claimant will not sue the companies behind these marks. The claimant’s advisers had refused to state whether she was or was not doing that. Whether the claimant is or is not taking action is a matter for the claimant with no impact in this case.
113. Looking at the matter globally, there is a very real likelihood that the average consumer will be confused by Mr Knight’s use of Westwood and Vivienne close together into thinking he or she is buying genuine goods of the claimant. In my judgment adding a surname like May or Peters to “designer Vivienne” may reduce the risk a little but not enough to make a material difference. This aspect of Mr Knight’s trading infringes CTM 5089719 under Art 5(1)(b) (strictly Art 9(1)(b) of the Regulation).

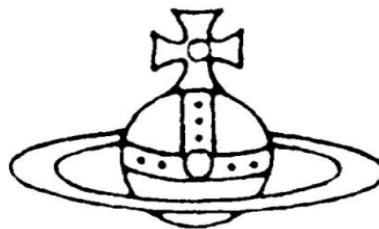
Passing off

114. The description under consideration also includes the words “red planet” and so, since that is addressed in the Red Label section below, I will leave passing off to be dealt with in that section.

(ii) *The orb*

(a) *The Claimant’s rights*

115. The claimant owns two registrations in class 25 for the orb (UK registered trade mark 1341566 and CTM 5558788). The mark is:



116. The CTM includes “clothing, footwear, headgear” in class 25 and “trunks and travelling bags” in class 18 while the UK mark is registered for “Boots; shoes; jodphurs; t-shirts; blouses; swimwear; nightdresses and pyjamas; underwear; bodices, brassieres, camisoles; corsets, vests, underpants; lingerie, stockings and tights; all included in Class 25”.

117. The evidence by means of the Particulars of Claim attested to by Mr D’Amario and the claimant, shows that claimant created the orb in 1985. It was an original artistic work and copyright subsists. The work qualifies for copyright because the claimant is a British citizen. The fact that the orb resembles the Harris Tweed mark does not undermine the originality of the work. Apart from anything else Harris Tweed’s orb does not incorporate Saturn’s ring.

118. In the post-trial submissions the claimant submitted that whilst the evidence was not explicit on the point, it is a proper inference that the design was applied industrially and s10 of the 1956 Act would apply. The claimant also submitted that the effect of the transitional provision (Sch 1 paragraph 20) was to extend the 15 year period of the 1956 Act to the 25 year period of s52. Thus the claimant submitted the 25 year period would expire at the end of 2010 (25 years from 1985). I addressed this legal question above. In my judgment the correct period is the 15 year period, i.e. expiring in December 2000. I should record that the claimant also submitted that the copyright claim was entirely secondary to the claims for trade mark infringement and passing off. I agree.

119. The claimant also owns two registrations with the orb and the words Vivienne Westwood in fancy script (UK registered trade mark No 1586964 in class 3 for toiletries and cosmetics etc. and CTM 976183 inter alia in class 25 for clothing, footwear and headgear). These two marks are the same, i.e:



120. The evidence by means of the Particulars of Claim attested to by Mr D’Amario and the claimant, shows that claimant created the orb plus fancy script Vivienne Westwood device (i.e. mark No 1586964 and CTM 976183) in 1992. It was an original artistic work and copyright subsists. The work qualifies for copyright because the claimant is a British citizen. No point under s10 arises (the work was created after the 1988 Act came into force). Furthermore a 25 year period under s52 has many years left to run.
121. The Particulars of Claim refer to the possibility that although the claimant created the various works relied on, certain employees (unnamed) of the operating companies in the VW Business in the course of their employment contributed to the development of the works. The pleading (now evidence) states that insofar as that work gives rise to an independent copyright, that copyright has been assigned to the Claimant. What is missing, no doubt by accident, is any evidence that the qualification provisions of Chapter IX of the 1988 Act (s153 – 160) were fulfilled. Mr Knight did not take this point. Nothing turns on it as a practical matter because the works all qualify as a result of the claimant’s British citizenship, however I should record that I make no finding in relation to copyright derived from employees in this way. This point applies to the other copyright works relied on as well.
122. In terms of goodwill and reputation, the orb device itself and in the device combining the orb plus Vivienne Westwood in fancy script are both clearly very well known. Mr D’Amario explained that unlike other marks to be dealt with below the VW Business does not track sales under the orb per se. He explained that nevertheless it is used extremely widely. Subject to some exceptions (the Anglomania and World’s End branded goods) in the last ten years all goods sold by the VW Business have been sold under the orb mark either on the goods themselves (on the exterior, on a label or on a swing tag) or visible in the store or concession or on a website. In terms of figures, the Mr D’Amario explained that the sales figures under the orb would be very similar to the sales under VIVIENNE WESTWOOD in general. The orb has been used on a vast range of goods: clothing of all kinds, accessories like bags, homewares like towels, jewellery of all sorts and glasses. Mr Knight did not dispute any of this.

(b) The conduct complained of

123. Mr Knight uses an orb device in a variety of forms. His orb is always a plain circle and never has the interior dots. It always has a ring although the form of the ring varies. It always has a Maltese cross although that varies too. Sometimes but not always Mr Knight superimposes a crescent (moon?) on top. An example with no crescent is on the blanket in Annex 6. Another form can be seen in his registered trade mark 2 437 947 Red Planet (above). Another can be seen being held by the cherub/satyr in his registered trade mark 2 485 853 (above).

124. Mr Knight also frequently uses the mark “Red Planet Westwood” with one of his orb devices and when he does so there is clear evidence that the word “Westwood” is sometimes used in the same fancy script as the claimant’s marks No 1586964 and CTM 976183. An example of Mr Knight’s usage is on the t-shirt at Annex 5. The orb there is hard to see in the image but appears to have a crescent.

(c) The relevant causes of action

Trade mark infringement

125. The case here is an Art 5(1)(b) case in relation to marks 1341566 and CTM 5558788 when used on clothing and accessories. On clothing the goods are identical and for items like bags they are identical or similar. I will consider Mr Knight’s orb itself as shown in Annex 6, in trade marks 2 437 947 and 2 485 853 and the usage shown in Annex 5.
126. The orb shown in Annex 6 bears a very close conceptual and visual similarity to the claimant’s orb mark. The only difference is that the planet / orb is a block of colour rather than having the dots in the Vivienne Westwood orb. It is a plain infringement when used on clothing or accessories and I will not waste time on the matter further.
127. The orb device potentially furthest from the claimant’s rights is the one in trade mark 2 437 947. It is more stylised than the Vivienne Westwood marks. The orb itself is a red block of colour (no dots) and the ring and crescent are a contrasting blue colour. The flaring of the arms of the Maltese cross are more exaggerated than in the Vivienne Westwood orb. However I bear in mind that the average consumer normally perceives a mark as a whole, does not analyse the details and rarely sees the parties’ marks side by side. These general observations will be true of consumers in this case. The overall impression of the Vivienne Westwood orb device is the combination of the traditional royal orb with a planetary ring like Saturn. In my judgment that is a powerful and striking juxtaposition. It neatly brings together two contrasting ideas (as Mr D’Amario explained) which are not normally put together. Mr Knight described this mark as having a bird like appearance owing to the effect of the crescent. While I can see what Mr Knight is referring to, I do not think it would have a substantial impact on the average consumer. In my judgment the overall impression conveyed to the public by Mr Knight’s mark will be dominated by essentially the same conceptual contrast as comes from the Vivienne Westwood orb. It is a traditional royal orb with a planetary ring like Saturn. Visual differences exist, especially the addition of a crescent moon shape but these do not alter the conceptual impact. In my judgment use of this trade mark 2 437 947 in relation to any of the goods covered by the mark’s specification would infringe the claimant’s trade marks.
128. The orb in the cherub/satyr’s hand in Mr Knight’s registered trade mark 2 485 853 is like the one in Annex 5 with a well defined Saturn ring and a Maltese cross like the Vivienne Westwood Maltese cross. It has no dots. A crescent moon is superimposed in a different way from that in mark 2 437 947. There is no arguable bird effect (for what that is worth). In my judgment this too infringes owing to the conceptual similarity.
129. The orb shown in Annex 5 is not absolutely identical to the one in the Cherub/Satyr’s hand (above) but it is sufficiently similar that the same conclusion must follow. It

infringes. Moreover the whole logo comprising the orb and the words red planet westwood seaman on a shirt in Annex 5 infringes CTM 976183 (which is registered for clothing). The dominant parts of the mark are the orb and Vivienne Westwood in fancy script. The consumer would see Westwood in an identical fancy script and a not noticeably different orb. The extra words “red planet” and seaman would not detract from likely confusion. Indeed given the claimant’s Red Label mark (see next section) confusion may well be enhanced.

130. Mr Knight varies his orbs in various ways but all of his orb devices in the evidence convey the same conceptual impression on the consumer. It is the same striking conceptual juxtaposition created by the claimant’s orb mark. They all infringe when used in relation to clothing, bags and fashion accessories.

Passing off

131. No distinct issue of passing off arises in relation to the orbs alone.

Validity of trade marks

132. Mr Knight’s two registered trade marks 2 437 947 and 2 485 853 are said to be invalid having regard to the use of the Vivienne Westwood orb and its prior registration as a trade mark.
133. Trade mark 2 437 947 consists of (i) the orb device I have addressed and found to infringe marks 1341566 and CTM 5558788 under Art 5(1)(b) (above) and (ii) the words Red Planet in slightly slanted capitals. Both of the claimant’s marks were registered before Mr Knight’s mark. They are for identical goods in class 25. The test for infringement under Art 5(1)(b) is for present purposes the same as the test for validity under s5(2) of the 1994 Act. The real question is whether the addition of “Red Planet” changes anything. In my judgment it does not. The Vivienne Westwood orb has a highly distinctive character intrinsically and even more so as a result of the very extensive use made of it by VW Business. In my judgment to the average consumer the words “red planet” would not negative the likelihood of confusion. There is no reason not to think that red planet indicates a Vivienne Westwood sub-brand. The ring around the claimant’s orb is after all a planetary ring. In my judgment trade mark 2 437 947 is invalid under s5(2) of the 1994 Act.
134. In relation to mark 2 437 947 Mr Knight made the point that the claimant had opposed it but had withdrawn the opposition. He argued that the claimant should not therefore have another bite at the cherry. That point was disposed of by the Court of Appeal in *Special Effects v L’Oreal* [2007] EWCA Civ 1. In that case L’Oreal had opposed Special Effect’s trade mark registration but failed. They then sought to challenge its validity as a defence to an allegation of infringement of the now registered mark. At first instance Sir Andrew Morritt, Chancellor held that L’Oreal could not do that. They were estopped. The Court of Appeal allowed the appeal, holding that L’Oreal could challenge validity. Lloyd LJ, giving the judgment of the court, held that there was no cause of action estoppel nor any issue estoppel. This was because opposition proceedings are inherently not final. So here, even if the claimant (or her Latimo company) had pursued the opposition and lost, she (or Latimo) could still apply to invalidate and no cause of action estoppel nor issue estoppel would prevent it. In my

judgment the claimant cannot be in a worse position in that respect having dropped the opposition.

135. The Court of Appeal did point out that the abuse of process doctrine may of course apply, referring to Lord Bingham in *Johnson v Gore Wood* [2002] AC 1 at 31. L'Oreal's conduct in the *Special Effects* case was held not to amount to an abuse of process and I can see no ground in this case for finding the claimant to be prevented from challenging validity on this basis.
136. Mr Knight's trade mark 2 485 853 consists of another of Mr Knight's orbs (addressed above) in the hands of a satyr with the words red planet jeans. Although the orb is a small part of the overall mark visually, it is a striking device. The orb itself is sufficiently similar to give rise to a likelihood of confusion (see above). Leaving aside the fact that the cherub/satyr is in fact a Vivienne Westwood device anyway, its presence in the hand of the figure does not detract from the conceptual impact of the orb. A reasonably circumspect consumer (leaving aside any knowledge of the cherub/satyr as a mark of the claimant) is likely to regard Mr Knight's mark as one showing a Vivienne Westwood orb in the hand of the cherub. They will take the mark as an indication that this is a house variant of one of the claimant's brands. In other words there is a likelihood of confusion. Just as the words red planet in the previous mark do not negate the likelihood of confusion in that case, so again here in my judgment the words red planet jeans do not either.

Orb - copyright

137. The designs for Mr Knight's various orbs were plainly derived from the claimant's orb and Mr Knight did not contend otherwise. Although they differ from the claimant's orb to a greater or lesser extent in my judgment they each reproduce a substantial part of the claimant's artistic work. All his orbs are copies. However the relevant period under s52 of the 1988 Act as applied by Sch1 paragraph 20 of the Act is 15 years from 1985, i.e. 2000.

Westwood in fancy script – copyright

138. Mr Knight's design shown in Annex 5 below includes an orb (albeit somewhat different in details from the claimant's orb), then the words "Red Planet Westwood Seaman" underneath with Westwood in an essentially identical fancy script to that used by the claimant in her logo. The design was plainly derived from the claimant's design and Mr Knight did not contend otherwise. Although there are clear differences, Mr Knight's version does in my judgment reproduce a substantial part of the claimant's artistic work (the logo registered as registered trade mark No 1586964 and CTM 976183). The placing of a ringed orb (albeit a slightly different one) above the same fancy script "Westwood" amounts to copyright infringement. It is the similarities which matter. The absences (lack of vivienne) and the extras – Red Planet and Seaman - do not detract from the objective similarity.
139. The evidence shows that Mr Knight has another version of this design on a red and white gingham shoulder bag without the orb or the word seaman. I am not prepared to find that this infringes the copyright in the artistic work in question. The evidence does not enter into the question of whether "westwood" alone in the script is original. For all I know it may be simply a pre-existing albeit fancy font. If that is true then a

finding of infringement in this example would give the claimant rights she does not have – to copyright in the word appearing in a pre-existing font.

Red Label

(a) The Claimant's rights

140. The VW Business has had a Red Label line of womenswear since 1992. Mr D'Amario gives evidence that from 2005 to 2010 the VW Business's annual wholesale sales revenue under the Red Label mark rose from £1.2 Million in 2005 to £2.7 Million in 2010. He explains that to consider these figures in terms of retail sales to the public, the numbers can be tripled. One way in which "Red Label" is used is as a logo in which the words Red Label appear in a fancy script along with the Vivienne Westwood orb and with Vivienne Westwood in fancy script, all in red (see Annex 7).
141. Mr Knight pointed out that the claimant is not the only fashion designer to have a red label. The designer Tommy Hilfiger has a registration for HILFIGER RED LABEL in class 25 and there are other red labels too. Again there is no evidence of the impact of these marks on the public in practice but the real point is that the claimant is not claiming in this case rights in the mere words "red label" or "red" out of a wider context. If all Mr Knight was doing was using a mark "Red Planet" I very much doubt the claimant would have grounds to object. But he is not.
142. In my judgment the claimant is entitled to a substantial goodwill and reputation in Red Label when it appears in association with the words Vivienne Westwood and/or the Vivienne Westwood orb.

(b) The conduct complained of

143. Mr Knight frequently uses the term "Red Planet Westwood". He uses it either on its own or with one of his orbs.
144. In addition to the two registered trade marks considered in the previous section, Mr Knight also registered the words "Red Planet Westwood" in class 25 shortly after these proceedings began. That is mark No. 2555661.

(c) Judgment on the relevant causes of action

145. To a member of the public familiar with the claimant's goodwill and reputation in the UK and in particular with the Vivienne Westwood Red Label line of womenswear and the orb comprising a Saturn ring, an encounter with Mr Knight's "Red Planet Westwood" in relation to clothing will be likely to lead that person to think that the garment is one of the claimant's. The public are familiar with the idea that one of Vivienne Westwood's labels – i.e. product lines - is a "red" label. The word planet would either be neutral, representing yet another new Westwood line following Red Label, or would positively enhance the confusion as an allusion to the planetary idea inherent in the claimant's orb. Use of Red Planet Westwood by the defendant amounts to passing off.

146. When Red Planet Westwood is used with one of Mr Knight's orbs (as it is), the likelihood of confusion is enhanced further. The orbs are a highly distinctive feature of the claimant's trading.
147. The fact that there are other red labels in the clothing trade will have little impact on these considerations because Mr Knight's use of red or red planet alone is not what the claimant is complaining about. The conduct complained of involves red planet used with other indicia of the claimant's like "westwood" or the orb.

Validity of trade mark 2 555 661 (Red Planet Westwood)

148. It follows from my conclusion that the words "red planet westwood" used on clothing etc. amount to passing off that Mr Knight's mark 2 555 661 (Red Planet Westwood) in class 25 is invalid under s5(4) of the 1994 Act. When it was registered (2010) its use would be prevented by the law of passing off.

Validity of trade mark 2 437 947

149. Consideration of Red Label also raises a s5(4) attack on trade mark 2 437 947 (the stylised orb with the words Red Planet). The real point against that mark is the orb but it can also be said that since the claimant has rights in passing off concerning the combination of orb plus Red Label, there is a s5(4) point here too. The point is not as strong as some of the others in this case mainly since the words "Vivienne Westwood" are missing. However in my judgment the point is still made out.

Let it Rock

(a) The Claimant's rights

150. In 1971 the claimant's shop on the King's Road was called Let it rock and that mark was used on clothing and swing tags at that time. Between the 1970s and 2004 it appears that the VW Business had not chosen to give prominence to this mark but it is also clear that its association with the claimant remained. No doubt this was a result of the claimant's fame and the fame associated with those early years on the Kings Road. Mr D'Amario exhibited a letter from Claire Wilcox, senior curator at the V&A, confirming the long standing association between this mark and the claimant.
151. From 2004 to 2008 only small quantities of goods were sold by the VW Business bearing the mark Let It Rock (a few thousand pounds per annum). In 2008 the VW Business launched a fragrance branded Let it rock together with associated clothing and accessories. This use was based on the significant heritage and reputation of the mark. UK wholesale sales for '08, '09 and '10 have been about £740,000, £215,000 and £547,000 respectively.
152. In my judgment the claimant has always retained goodwill and reputation in Let it rock. That goodwill has been cemented in recent years by the launch of the fragrance. The example of the fragrance shown in the evidence is a box carrying the mark Let it rock under the house mark (the orb and Vivienne Westwood in fancy script). The stopper of the bottle itself is in the shape of a Vivienne Westwood orb. The packaging also bears a heart logo very similar but not I think identical to the heart used in the claimant's I love crap logo.

153. The claimant's Latimo company filed an application to register Let it rock as a CTM at OHIM (Application No. 005925177). Mr Knight opposed that application. Mr Rawkins deals with this in his evidence. Mr Knight's opposition was rejected and the mark registered but Mr Knight asserted that OHIM had not taken into account evidence he had filed. OHIM then gave a decision revoking its earlier decision. The registration was then revoked, not because OHIM decided it was a well founded opposition but only in order to reopen the opposition proceedings. That will be a matter for OHIM to decide in future. In the meantime the claimant does not rely on this registration (there is none). Mr Knight argued that this meant she should not be allowed to pursue a claim in passing off. I do not accept that. The claimant's passing off claim is independent of the position at OHIM. It will be considered on its merits.

(b) The conduct complained of

154. Mr Knight uses "Let It Rock" on T-shirts (example at Annex 8) and he puts forward Let it Rock as one of his collections. The latter can be seen on his website www.artjunki.co.uk ("Let it rock apparel"). He also has a series of collections: Red Planet Westwood (with an orb), Red Planet Jeans (with his mark 2 485 853), Let it rock and a figure of a seated girl, World's End (with a ram's head) and Too Fast to Live (with a copy of the claimant's Too Fast To Live Too Young to Die logo). On eBay Mr Knight sells a "red planet westwood LET IT ROCK scarf vivienne may". He has also registered a domain name www.letitrock.co.uk.

155. Mr Knight himself provided an image of his Let it rock apparel jeans which have a red label bearing those words.

(c) The relevant causes of action

156. The cause of action is passing off.

157. When used in combination with other famous Vivienne Westwood marks (the word westwood alone, the orb etc.), I have no doubt that his use of "Let it rock" in relation to clothing is another example of passing off by Mr Knight. The public clearly associated it with the claimant and its use by Mr Knight in this way will deceive them.

158. A more difficult question is whether, shorn of any other indication relating to the claimant, the words "Let it rock" on their own would amount to passing off. Mr Knight submitted that the claimant was not the creator of the slogan and does not have sole rights over the slogan and argued that T-shirts bearing those words or similar slogans (Let's Rock, AC/DC's THERE BE ROCK, Kevin Rudolf Let it rock, Let it rock let it roll and so on) were available from other companies. Although the evidence is thin, nevertheless I do not doubt that other businesses use similar slogans. The claimant did not claim to have coined the phrase and even if she had I doubt it would matter.

159. I do not have to decide whether, in an entirely different context from the one appearing in this case, "Let it rock" alone without any other link to the claimant, would amount to passing off. It is not what the defendant is doing. I will not decide that question.

Too fast to live too young to die

(a) The Claimant's rights

160. In 1972 the claimant's shop on the King's Road was called *Too Fast To Live Too Young To Die*. At the same time the claimant created an original artistic work namely:



161. In my judgment copyright subsists in that work. The fact the slogan itself may derive from another source (a biker jacket) is irrelevant.
162. This work is another one in which the question of s10 of the 1956 Act falls to be considered. The claimant submitted that although there was no doubt the work had been created in 1972 and used as the name of the shop, the evidence had not dealt explicitly with the first time the device had been applied to articles so as to fall within s10. As the claimant pointed out, it was not surprising that the evidence did not do this since the point had not been raised in the defence by Mr Knight. The effect of Mr D'Amario's evidence was to suggest that the design had not been applied industrially prior to 2002 and the claimant submitted it was not safe to make an inference to the contrary. I agree. Accordingly, while the claimant accepts that s52 of the 1988 Act applies, that would result in a protection under 31st December 2017.
163. The VW Business has not sold substantial volumes of goods under this mark in recent years. Between 2005 and 2010 the whole figures are from £9,000 to £28,000. Of course even without the other factors these sales themselves would mean that a protectable goodwill existed. However as with Let it rock the real point is that a close association in the public mind between the mark and the claimant has always existed as a result of the claimant's fame and the fame associated with the shop in the 1970s. I have no reason to doubt it. As an example the evidence includes images in magazines in recent years of celebrities wearing t-shirts carrying that logo. Mr D'Amario said the mark was "very well known indeed". Mr Knight did not disagree with that.
164. The logo is the subject of CTM 5805528 which was filed on 2 April 2007 in classes 14, 18 and 25. The mark was registered this summer.

(b) The conduct complained of

165. Mr Knight uses the words Too Fast To Live Too Young To Die as the name for one of his collections and he also uses the logo extensively. He has sold T-shirts bearing the logo (Annex 9) and uses it on his website. On eBay Mr Knight has sold products described as "red planet westwood TOO FAST scarf vivienne may" and "red planet westwood TOO FAST t-shirt vivienne may". The evidence only records these descriptions but it is manifest in the context of this case that these goods bore at least the slogan Too Fast To Live Too Young To Die and, at least on many cases, the logo.
166. The file name of an image of the claimant's logo appearing on the defendant's website was "0058055.gif". Those digits are the first seven digits of the claimant's corresponding CTM registration number. That is plainly no coincidence.

(c) Judgment on the relevant causes of action

167. Mr Knight's use of the logo on t-shirts infringes CTM 5805528 under Art 5(1)(a) (strictly Art 9(1)(a) of the Regulation). It is an identical mark on identical goods. His use of that logo on his websites is in my judgment use in relation to clothing since he promotes his clothing via those websites and that too is infringement under Art 5(1)(a).
168. His use of the words alone amount to passing off. The slogan itself is associated in the public mind with the claimant's and someone encountering its use in relation to clothing will wrongly take it as an indication that the goods are goods of the VW Business.
169. In his submissions arising from the s10/s52 point Mr Knight in effect sought to put in more evidence. He contended that had had used his "too fast" device since early 1990 and he accused the claimant of lying about their use of the device on clothing. I will not admit further evidence in this way. The note I sent to the parties was not an opportunity to reopen the trial, it was a request for submissions on points of principle.
170. Mr Knight's logo is obviously a copy of the claimant's logo. It amounts to copyright infringement.

World's End

(a) The Claimant's rights

171. World's End has been the name of the shop on the Kings Road since 1980 and it continues today. Mr D'Amario explains that the store interior has remained largely unchanged for 30 years. World's End has appeared on labels in garments sold from the shop. The mark is generally combined with the arm and cutlass device. Since 2005 the annual sales of all goods from the shop have never been less than about £½ Million. The VW business set up a website at www.worldsendshop.co.uk in 2008.
172. Plainly the claimant commands a substantive goodwill and reputation in World's End.

(b) The conduct complained of

173. Mr Knight has World's End collection, uses the brand "World's End apparel" and sells T-shirts bearing the words "World's End apparel" and a ram's head device. An example is at Annex 14. The term World's End is also used by Mr Knight in juxtaposition with other of the claimant's marks, for example on www.artjunki.co.uk discussed above. On eBay Mr Knight has sold a product described as "World's end saint artjunki red planet westwood V tee".

(c) Judgment on the relevant causes of action

174. When used in combination with other famous Vivienne Westwood marks (the westwood and/or the orb) as Mr Knight does, I have no doubt that Mr Knight's use of "World's End" in relation to clothing is passing off. The public clearly associated it with the claimant and its use by Mr Knight in this way will deceive them. The presence of the ram's head does not negate that association on the occasions it appears.

175. Whether “World’s End” without any other famous Vivienne Westwood marks amounts to passing off is not an issue which arises for decision.

The arm and cutlass

(a) The Claimant’s rights

176. The claimant first used the Thomas Tew arm and cutlass in 1980 when the shop became World’s End and when the Pirate collection was launched. It has been used ever since both associated with World’s End and, since 1993, with the mark ANGLOMANIA. A logo combining ANGLOMANIA, an arm and cutlass and Vivienne Westwood is registered as the claimant’s CTM 553370. Annual UK sales of goods (clothing and accessories) under this mark rose from £2 Million in 2005 to £16 Million in 2010.
177. Plainly the claimant has a protectable goodwill and reputation associated with the arm and cutlass at least when it is linked to other Vivienne Westwood marks (such as World’s End or Anglomania, “Vivienne Westwood” and/or the orb).
178. Mr Knight produced many examples of other traders selling clothing with the Thomas Tew arm and cutlass device. The evidence does not establish the scale of this activity but equally the claimant did not seek to minimise its significance. This evidence from the defendant was in his “Counterstatement of Claim” before the CMC and the claimant could, if they had wanted to, sought to establish the scale of this trade.

(b) The conduct complained of

179. Mr Knight has sold a t-shirt with an arm and cutlass and the words Saint Artjunkie - Annex 10.

(c) The relevant causes of action

180. There is no trade mark infringement. A prominent element in the CTM is the word Anglomania. Mr Knight does not use it. He does not infringe that CTM.
181. Mr Knight’s t-shirt in Annex 10 with the arm and cutlass carries no other Vivienne Westwood marks (the name, the word westwood alone and/or the orb). The shirt has the mark Saint Art Junkie on it. These facts will serve to reduce the risk of confusion as compared to some of the other instances in this judgment. However the t-shirt takes its place amongst all the other uses of Vivienne Westwood marks by Mr Knight on his websites and that means that someone seeing the t-shirt will encounter it that context. This is one of the claimant’s weaker cases in my judgment but the overall context means that I am satisfied it is passing off too.
182. Again I do not have to decide what the position of this shirt would be out of context.

The Satyr/Cherub

(a) The Claimant’s rights

183. The claimant first used the satyr/cherub on an invitation to the PAGAN I fashion show in 1987. The copy of that invitation exhibited by Mr D’Amario was one of the

documents Mr Knight sought to contend was fabricated. I reject that submission and accept Mr D'Amario's evidence.

184. Mr D'Amario explains that the satyr/cherub mark has been used in the UK on fashion show invitations, fashion show brochures, accessories, fragrances, t-shirts, mugs, shop decorations and promotional stands. The claimant uses the satyr/cherub image in various ways. One of them involves the figure holding a Vivienne Westwood orb. Mr D'Amario evidence contains a number of examples of the use of the mark after 1987, from 1990 and 1991 (invitations), 1998-2000 (fragrances Boudoir, Libertine and Boudoir Sin Garden), 2005 (mens t-shirt), 2006 (brochure for show of Autumn/Winter collection), and 2007 (photographs from London stores in Conduit St and Davies St). Mr D'Amario states that after Vivienne Westwood, the orb and World's End, the satyr/cherub is the mark which has been used for the longest continuous period by the VW Business. A very extensive range of bodywear and accessories using the satyr/cherub were sold in Asia. Actual sales under the mark in the UK in the last 5 years have been small - only a few thousand pounds per annum.
185. Mr Knight put in evidence a cartoon drawing of the character Mr Tumnus (a faun or satyr) from the CS Lewis Narnia stories. It is irrelevant. There is no evidence of any use of that concept as a brand in the UK. Moreover the particular image shown by Mr Knight looks nothing like the satyr/cherub of the claimant.
186. Plainly the claimant has a protectable goodwill and reputation associated with the satyr/cherub, especially when it is holding a Vivienne Westwood orb. That is a highly distinctive image in its own right.

(b) The conduct complained of

187. Mr Knight's registered trade mark No 2 485 853 consists of the satyr/cherub, holding one of Mr Knight's orbs with a crescent and the words red planet jeans. I have already held that this mark is invalid as a result of the claimant's own orb. In addition the claimant contends this mark is invalid under s5(4) of the 1994 Act on the grounds of passing off having regard to her satyr/cherub mark.
188. On eBay Mr Knight has sold goods described as "red planet westwood baby/orb t-shirt by vivienne maye". No clear image of this product exists but from the description I take it to be a t-shirt carrying Mr Knight's satyr/cherub design ("baby") with one of his orbs. There are poor quality small pictures of t-shirts.
189. There is some evidence that Mr Knight used a copy of the satyr/cherub on a garment at the show in Langley Primary School in 1994. It is irrelevant and I need make no finding in relation to it.

(c) The relevant causes of action

190. The major issue is validity of registered trade mark No 2 485 853 filed in 2008. The attack is under s5(4) (passing off). In my judgment this mark is invalid on that ground. Its use is liable to be prevented by passing off having regard to the claimant's goodwill and reputation both in relation to the satyr/cherub itself and the satyr/cherub carrying a Vivienne Westwood orb. The words red planet jeans would not negate the association with the claimant's goodwill.

191. If, which I find more likely than not, the t-shirt described as “red planet westwood baby/orb t-shirt by vivienne maye” on eBay bears an image which is to all intents the same as Mr Knight’s registered trade mark No 2 485 853, then that is another example of passing off by Mr Knight.
192. During trial Mr Knight sought to put in evidence a copy of a photograph dated Jan -07 2000 showing a t-shirt carrying a logo very much like his registered trade mark 2 485 853 (not actually identical). This was intended to help his case by predating the claimant’s use. Whether it did or did not do that, the material was produced far too late in the day, was not properly proved and I refuse to admit this evidence.

I love crap

(a) The Claimant’s rights

193. The I love Crap logo (see e.g. Annex 4) was first used by the VW Business on t-shirts in 2007 under the claimant’s GOLD LABEL line of products. Sales are very small, a few thousands of pounds per year. Although the sales are small the mark has also been publicised widely and images from newspapers in 2007 and 2008 are exhibited by Mr D’Amario. Again it is clear a protectable goodwill and reputation exists in this mark.
194. Although it is hard to see in the image, the logo has a tiny Vivienne Westwood orb on the bottom right.
195. The evidence is that the claimant created the logo as an original artistic work. Obviously souvenirs using “I love (shown as a heart) something” are well known and Vivienne Westwood did not create them. However that does not undermine the originality in the logo and copyright subsists in it. Apart from anything else the drawing of the heart itself gives the logo originality.

(b) The conduct complained of

196. Mr Knight sells a t-shirt bearing a logo which is essentially the same as the claimant’s (Annex 11). The heart is rather more “spattered” than the claimants logo.
197. On eBay Mr Knight has sold goods described as “red planet westwood I LOVE CRAP t-shirt by vivienne may”. No image of this product exists but I take it to be a t-shirt carrying Mr Knight’s spattered heart I love crap logo, just as Annex 11.

(c) Judgment on the relevant causes of action

198. In his first counterstatement in August 2010 (signed with a statement of truth) Mr Knight gives evidence that he first used the slogan I love crap in 1998. It is clear that this assertion relates to the slogan itself and not to the logo with the particular heart emblem (as he calls it). The claimant did not challenge this evidence and I accept it. It is irrelevant to passing off and irrelevant to copyright infringement in the artistic work (no claim to literary copyright is made).
199. During the trial Mr Knight sought to hand in a sheet of paper which was intended to prove that the computer file representing Mr Knight’s spattered I love crap logo dated

from 2001. This was intended to prove he could not have infringed copyright. It was far too late in the day, not properly proved and I refuse to admit this evidence.

200. As regards passing off, Mr Knight's T-shirt in Annex 11 carries no other mark (neither Vivienne Westwood marks nor Saint Art Junkie etc.). On the eBay site Mr Knight sells t-shirts like this under and by reference to the other marks associated with the claimant (not least the words Westwood and Vivienne). Thus the purchaser encounters the t-shirt in that context. This is one of the claimant's weaker cases in my judgment but the overall context means that I am satisfied it is passing off. Again I do not have to decide what the position of this shirt would be out of context and I decline to do so.
201. As regards copyright, the concept of Mr Knight's design is plainly the same as the claimant's however the two designs differ in substantial ways as artistic works: the letters I and CRAP are not the same and the heart drawings are quite different. Both drawings say "I [heart] crap" to the reader but this is not a literary copyright case and "I [heart] something" is common currency anyway. The layout of having "I [heart]" on top and the something below is also not original. Given everything else in this case, I have little doubt that Mr Knight's design was derived from the claimant's however in my judgment there is insufficient objective similarity between the two works to amount to copyright infringement. I reject that part of the claimant's case.

The Lips

(a) The Claimant's rights

202. The image of Sara Stockbridge's lips is another mark used by the VW Business on things like invitations, brochures and publicity but with actual sales of a few thousands of pounds worth of goods. As with the other marks in a similar category I am sure that a protectable goodwill and reputation exists albeit in the context of the general Vivienne Westwood branding.

(b) The conduct complained of

203. Mr Knight uses an identical image on clothing- Annex 12.

(c) Judgment on the relevant causes of action

204. As regards passing off, Mr Knight's T-shirt in Annex 12 carries no other marks (neither Vivienne Westwood marks nor Saint Art Junkie etc.). The T-shirt appears amongst all the other uses of Vivienne Westwood marks by Mr Knight on his websites and that means that someone seeing the T-shirt will encounter it that context. This is one of the claimant's weaker cases in my judgment but the overall context means that I am satisfied it is passing off. Again I do not have to decide what the position of this shirt would be out of context and I decline to do so.

AR, Active Resistance to Propaganda

(a) The Claimant's rights

205. The VW Business started using the AR logo and "Active resistance to propaganda" for the Spring/Summer 206 show. Again these marks have been used in publicity

materials. A small level of sales have taken place directly under the marks (£45,000 worth in 2006, tailing off to about £4,000 in 2008 and just under £3,000 in 2010).

206. The manifesto was published in 2007. To accompany the launch the domain name www.activeresistance.co.uk was registered. The media coverage the manifesto attracted was significant.
207. Again I find that the claimant does own a protectable goodwill and reputation associated with the AR logo and *Active Resistance to Propaganda* mark as well as the *Active Resistance to Propaganda* Manifesto. In my judgment the repute of the marks and their association with the claimant are much more substantive than the very low sales level would lead one to believe.
208. The AR logo itself was created by the claimant and the original drawing of it will be an original artistic work in which copyright subsists. It is a fairly simple design but that is no reason for it not to attract copyright.

(b) The conduct complained of

209. Mr Knight sells a t-shirt carrying an AR symbol essentially identical to the claimant's AR symbol, the words "Active resistance to propaganda" in block capitals and "Manifesto" in fancy italics underneath as well as the claimant's own crowned skull and crossbones logo (Annex 13).
210. Mr Knight handed up a sheet of paper which he said proved that a file on his computer which represented an AR logo dated from 2002 and therefore predated the claimant. I admitted this document. It is irrelevant. The device in the document shows a completely different design from the claimant's altogether. It has the letters A and R and the words Anarchy Revolution. The A and the R are side by side (but not with a common vertical) and written in a fancy curly script not at all like the claimant's logo.

(c) Judgment on the relevant causes of action

211. The AR logo on Mr Knight's t-shirt is obviously a copy of the claimant's AR logo. It is nothing to do with Mr Knight's old AR Anarchy Revolution document. The only common feature is the letters themselves. The claimant of course does not have a monopoly in two letters of the alphabet. She does however have the right to stop copying of her artistic works. The AR device is one such and Mr Knight has copied it.
212. The claimant's clothing business has a protectable goodwill in AR and the slogan *Active Resistance to Propaganda* and as part of that the claimant promotes a related *manifesto*. These elements are distinctive. Mr Knight's t-shirt exploits the connection between these marks of the claimant and clothing and amounts to passing off.

Destroy

(a) The Claimant's rights

213. Emblazoned with the word DESTROY in large jagged letters and with its collection of a symbol for the Anti-Christ, a Nazi swastika and The Queen's head on a postage

stamp, the DESTROY t-shirt was an iconic design. Its association with the punk movement in general and Jonny Rotten of the Sex Pistols in particular only served to enhance the claimant's reputation as an avant garde designer. It is clear that the public still recognise the image and associate it with the claimant many years afterwards. There is evidence that two DESTROY t-shirts were sold at auction in 1999.

214. To be exact the DESTROY t-shirt had two main versions - one with the swastika and one without.
215. The VW Business does not use the DESTROY image today. However Mr D'Amario expressed the view that the sale of a product today bearing the DESTROY mark (by which he means the design on the t-shirt even though the VW Business do not use it as a mark anymore) would cause the public to believe that the seller is connected with the VW Business.
216. In my judgment, in terms of the law of passing off, the correct analysis is that although the VW Business today does not have an existing business exploiting the DESTROY design, nevertheless a clear reputation remains in the public mind associating this image (or mark) with the claimant and her business. The claimant still has a residual goodwill today albeit the sales ended many years ago.
217. The claimant did not maintain its copyright claim in relation to the DESTROY design and I need not deal with it.

(b) The conduct complained of

218. Mr Knight created a design consisting of an inverted Christ on the Cross with a swastika under the word DESTROY. The proof of that is that he applied to register the design as a trade mark in 2008 but the application was refused. The image is at Annex 15.
219. On his eBay shop Mr Knight sells a T-shirt carrying an inverted Christ on the Cross (with no swastika nor "Destroy"). See Annex 16. The description used for this t-shirt is "Saint Artjunkie westwood jesus tee scared saints". From the eBay materials dated 02/09/2009 it can be seen that Mr Knight has also sold t-shirts described "Red Planet Westwood DESTROY LOGO T-SHIRT vivienne may". There is no evidence what this was like but one might guess it was like the design in the failed trade mark application (Annex 15).

(c) Judgment on the relevant causes of action

220. Mr Knight's t-shirt which simply carries an inverted crucifix is described when he sells it as "Saint Artjunkie westwood jesus tee scared saints". When the public encounter the t-shirt in the context of other links to the claimant (in this case the word westwood), they will in my judgment associate the product with the claimant. This is passing off.
221. Elsewhere in the eBay materials (dated 02/09/2010) it can be seen that Mr Knight has sold a t-shirt described as "red planet westwood DESTROY LOGO T-SHIRT Vivienne may". There is no image of this available but I cannot imagine it is

anything other than a t-shirt bearing Mr Knight's version of the claimant's DESTROY design, i.e. the one Mr Knight sought to register as a trade mark. That too will amount to passing off.

The defendant's conduct as a whole

222. During the trial I asked Mr Knight what his submission was in answer to the claimant's case that his conduct taken as a whole amounted to passing off. His answer was simply to come back to one of the specific points and argue the detail again. In my judgment Mr Ward is right that the defendant's overall approach should be considered. As can be seen from the analysis above on the specific points, on many occasions Mr Knight puts together a number of words and images which are derivative of the claimant and which are, in my judgment, associated with the claimant today. It is striking that three of the names the claimant has used for her shop over the years appear in amongst Mr Knight's materials. The word Westwood appears frequently and Mr Knight uses his orbs.

223. I will take a general example which would in any event give rise to questions of trade mark infringement but I will put those aside. Mr Knight sells a red and white gingham shoulder bag. In evidence is an eBay page whereby a third party identified on eBay as "desertdriverose" offers the bag for sale. Apart from other information like price etc., the eBay page has four pictures of the product, a two line heading and some text at the bottom. The four pictures show that the front of the bag carries a large copy of the Too Fast To Live Too Young To Die device, at the lower left of the front of the bag and clearly visible is one of Mr Knight's orbs. Embroidered somewhere on the bag are the words "Red Planet WESTWOOD" with Westwood in the claimant's fancy script. The two line heading on eBay reads "Vivienne Westwood Too Fast to Live Shoulder Bag" and "Punk Rockabilly Sex Pistols McLaren Designer". In the text at the bottom of the eBay page desertdriverose has written:

'Too Fast To Young To Die' Vivienne Westwood's famous design"

Shoulder Bag made out of fabric

I had this given to me as a present a long time ago but I only took it out two or three times

I don't know who made this, or which shop it was bought at.

I am not claiming it is made by Vivienne Westwood, but it has her famous design

Size 33cm or 13 inch wide

35cm or 14 inch high

Red and White gingham

In very good condition"

224. The fact that desertdriverose states "I am not claiming it is made by Vivienne Westwood" does not excuse it. In my judgment one cannot avoid the inevitable inference of passing off arising from the use of this combination of the claimant's marks just by pretending to negate the likelihood of deception in this way. In any case the sentence as whole ends "but is has her famous design", which is I think a reference to the Too Fast To Young To Die device. What desertdriverose has done with one of Mr Knight's products demonstrates what is possible once goods bearing the marks Mr Knight uses are put into circulation.

225. In a passing off case the presence or absence of evidence that customers have in fact been deceived can play an important role. In this case there is evidence from eBay comments of two instances in which one of Mr Knight's customers thought they had bought genuine Vivienne Westwood goods and were annoyed to discover they had been misled. This is supportive of passing off. Mr Knight's comment on eBay about one of those customers was that they had not read his description correctly. In my judgment they had simply done what any average consumer would do when confronted with Mr Knight's systematic exploitation of the claimant's marks. They had thought the goods were Vivienne Westwood products.
226. Mr Knight's approach to trading involves him using versions of many of the claimant's marks. Some are identical and some are somewhat different from the original but not greatly so. These combinations all serve together to reinforce the message that the goods are connected with the claimant. In my judgment Mr Knight's business as a whole amounts to an exercise in passing off his own goods as and for those of the claimant or the VW Business.

Article 5(2) of the Directive

227. The marks VIVIENNE WESTWOOD (CTM 5089719), the orb (UK No 1341566 and CTM 5558788), the orb and Vivienne Westwood in fancy script (UK No 1586964 and CTM 976183) clearly have a reputation of the kind necessary to satisfy Art 5(2) of the Directive. Even if I am wrong that there is a likelihood of confusion under Art 5(1)(b) (above), in each case the acts of the defendant which I considered in relation to Art 5(1)(b) infringement would clearly give rise to an association with the claimant's mark. That use takes an unfair advantage of the distinctive character of the claimant's marks because it misappropriates the enormous cachet attached to them.
228. Whether Mr Knight's activity is detrimental to the distinctive character is less clear. Mr Ward relied on the poor quality of the defendant's websites and submitted that this established a relevant detriment because it is for the mark owner to decide on the type of channels which are associated with her goods. There is no real evidence that the defendant's websites are of a poor quality; the only basis for that would be a matter of impression for me. I am not prepared to make a finding to that effect. However in my judgment the detriment point does not depend on a subjective assessment of the defendant's websites. It is, it seems to me, for the mark owner to decide on the type of channels which are associated with her goods. Mr Knight's are different from her websites (better or worse) and that is sufficient for Art 5(2).
229. Does CTM 5805528 (the Too Fast To Live Too Young To Die device) have a reputation of a kind sufficient to satisfy Art 5(2)? The sales are extremely small but Mr D'Amario's evidence was that the mark is very well known indeed. The CJEU's *PAGO* test requires it to be "known by a significant part of the public concerned by the products or services covered by the mark". If the only relevant factor was the level of sales then in my judgment the test would not be satisfied. However it seems to me that this mark is known by a significant part of the public. The fact that they know the mark because of its long association with the claimant and her clothing and fashion business rather than as a result of the actual level of sales does not mean that it is wrong to say that they know the mark. It is registered inter alia in class 25 for clothing and those are the products for which Vivienne Westwood is famous. The public will associate the mark with clothing. The phrase in *PAGO* "known by ... the

public concerned *by the* products ... covered by the mark” (emphasis added) appears to assume that the reputation will be acquired as a result of sales of products covered by the mark but I do not read it as a criterion intended to exclude a case like this one. In any case although the sales are small, actually the repute all arises from clothing one way or another (it was the name of the clothes chop).

230. On the basis that this CTM satisfies the threshold reputation test under Art 5(2), then it follows that a case of infringement under Art 5(2) is made out for the same reasons in relation to unfair advantage and detriment as I have addressed for the Vivienne Westwood and orb marks.
231. No issue under s5(2) arises in relation to CTM 553370 (Anglomania) for the same reason that I have rejected a case under 5(1)(b). Use of the arm and cutlass alone is not sufficiently close to the CTM to be relevant.

Domain names

232. Mr Knight has also registered the following internet domain names:
- a) www.toofasttolivetoyoungtodie.co.uk
 - b) www.toofasttolivetoyoungtodie.com
 - c) www.2fasttolive.co.uk
 - d) www.redplanetclothingcompany.co.uk
 - e) www.letitrock.co.uk
233. The nature of the slogan “Too Fast To Live Too Young To Die” and the state of the evidence before me means that I can say with confidence that registration of domain names (a) and (b) amounts to passing off on the same basis as *BT v One in a Million* [1999] FSR 1 (CA). Mr Knight made no attempt to suggest that the slogan (apart from its biker origin in the 1970s) was commonly used by other traders today in any context. Someone encountering either of the two websites with the full slogan in their name (albeit the word “too” has been rendered “to”) would think they were encountering a website associated with the claimant. The same goes for the shorter domain name (c) 2fasttolive which is obviously a contracted reference to the same striking slogan.
234. In *BT v One in a Million* the Court of Appeal also held that the sites in question infringed under s10(3). Accordingly the same applies here in relation to Mr Knight’s domain names (a) to (c) derived from “too fast to live ...etc”. They satisfy s10(3) / Art 5(2).
235. Although the claimant’s case against domain (e) is stronger than as against domain (d), in my judgment mere registration of domain names (d) and (e) would not satisfy either limb of *BT v One in a Million*. However given Mr Knight’s business as a whole and his approach to the claimant’s marks, it is quite clear that the words “red planet” and “let it rock” are used by Mr Knight as part of his overall passing off and contribute materially to them. The relief to be granted should include those domains too.

Conclusion

236. The defendant is engaged in trade mark infringement and passing off. In some cases he has also infringed the claimant's copyright. The action has been substantially successful.

Postscript

237. In accordance with the usual practice, a draft judgment was circulated to the parties in advance of handing down. Mr Knight raised a large number of complaints about the judgment in an email dated 18th March, but received on 20th March. I read them carefully, but in my judgment subject to two points they are an attempt to re-argue the case.

238. The first point relates to a gingham bag addressed above. The gingham bag is one of Mr Knight's goods. The evidence includes a copy of a page offering it for sale. The draft judgment erroneously attributed that eBay page to Mr Knight. The claimant pointed out the same point. Although the bag is Mr Knight's, the eBay page is not. Correcting the mistake does not alter my substantive findings and the error was corrected.

239. Second, the draft judgment stated that Mr Knight had submitted that the domain name disputes in this case should be heard by ICANN and not this court. I declined to stay that aspect of the case. The domain names had not been the subject of oral argument at the hearing, but they form part of the claimant's case against Mr Knight. I had understood that Mr Knight had made such a submission in his written materials and therefore it had to be dealt with. Mr Knight's email states that I have lied in the judgment because it was not mentioned at the hearing. The paragraph Mr Knight objects to stated:

Mr Knight submitted that the domain name disputes should be heard by ICANN and not this court. The fact that ICANN has a dispute resolution service does not deprive this court of jurisdiction to deal with trade mark infringement and passing off. I decline to stay that aspect of the case.

240. The paragraph did not state that Mr Knight made the submission at the hearing and I did not think he had. The claimant did not point out any error here but I have reviewed the written materials and cannot find a written submission from Mr Knight on the point either. Accordingly I removed this issue from the section dealing with domain names. Correcting the error does not alter my substantive findings.

Annexes

Annex 1 (Destroy)



Annex 2 (LIPS)



Annex 3 (AR, Active Resistance to Propaganda)



The correct image is the colour image on the left. However it does not print clearly in black and white. The image on the right was created for the judgment to show a clearer contrast in black and white.

Annex 4 (I Love Crap)



Annex 5 (Mr Knight's Red Planet Westwood Seaman t-shirt)



Annex 6.(One of Mr Knight's orbs with no crescent)



Annex 7 (Vivienne Westwood in fancy script with orb and Red Label)



Annex 8 (A Let it Rock t-shirt from Mr Knight)



Annex 9 (A Too Fast To Live Too Young to Die t-shirt from Mr Knight)



Annex 10 (Mr Knight's arm and cutlass t-shirt)



Annex 11 (Mr Knight's I love Crap t-shirt)



Annex 12 (Mr Knight's LIPS vest)



Annex 13 (Mr Knight's AR Active Resistance to Propaganda Manifesto t-shirt)



Annex 14 (Mr Knight's World's End Apparel t-shirt)



Annex 15 (Mr Knight's Destroy image)



Annex 16 (Mr Knight's inverted Christ t-shirt)



Annex 17 (Mr Knight's registered trade mark 2 437 947)

