

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2017806
BY BANTAM DOUBLEDAY DELL PUBLISHING GROUP, INC.
TO REGISTER A MARK
IN CLASS 16**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 45214
BY PICKERING & CHATTO LIMITED**

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2017806
BY BANTAM DOUBLEDAY DELL PUBLISHING GROUP, INC.
TO REGISTER A MARK IN CLASS 16**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 45214
BY PICKERING & CHATTO LIMITED**

BACKGROUND

1. On 18 April 1995, Bantam Doubleday Dell Publishing Group, Inc. of 1540 Broadway, New York, United States of America applied to register the mark shown below in Class 16.



2. The application was examined and subsequently accepted and published on the basis of honest concurrent use from 1950 with registration Nos. 1013676, 1552719 and 1552721 for the following specification of goods: "Books".

3. On 28 August 1996, Pickering & Chatto Limited of 180 Fleet Street, London, filed notice of opposition. The opponents express the basis of their attack in the following terms:

"1. The opponents are the registered proprietors of trade mark registration No: 1552719, advertised at page 817 of Trade Marks Journal No: 6062, in Class 16. The opponents are also the registered proprietors of trade mark registration No: 1552720, advertised at page 694 of Trade Marks Journal No: 6061, in Class 41. The opponents are also the applicants in respect of trade mark application No: 1552721 in Class 42.

2. The opponents' trade mark is an entwined dolphin and anchor device, and has been used by the opponents and their predecessors in title continuously since 1828, that is to say, for more than 160 years. The opponents and their predecessors in title have, in

particular, used their dolphin and anchor trade mark in respect of books.

3. The trade mark forming the subject of the application in suit consists of an entwined dolphin and anchor device, and differs from the opponents' trade mark only in that (a) it includes a small capitalised letter D, (b) the device is cruder and less clearly defined and (c) the dolphin lies on an anticlockwise helix as opposed to the opponents' trade mark where the dolphin lies on a clockwise helix".

Arising from these facts, the opponents object to the application on the following basis:

"Registration of the trade mark of the application in suit would be contrary to the provisions of Section 3 of the Trade Marks Act 1994, in particular contrary to the provisions of Section 3(3) of the Trade Marks Act 1994.

Registration of the trade mark of the application in suit would be contrary to the provisions of Section 5 of the Trade Marks Act 1994.

Use by the applicants of the trade mark of the application in suit constitutes, or would constitute, an infringement of the opponents' aforementioned registered trade marks in accordance with Section 10 of the Trade Marks Act 1994.

Use by the applicants of the trade mark of the application in suit constitutes, or would constitute, an offence under Section 92 of the Trade Marks Act 1994".

4. On 10 December 1996, the applicants filed a counterstatement. Other than to admit the existence of the opponents' registered and pending trade marks, the counterstatement is, in essence, a denial of the various grounds of opposition. Reproduced below are the applicants' comments at paragraphs 9 and 10 of their counterstatement:

"9. The applicants have used the mark applied for in the United Kingdom over many years in relation to books and claim the benefit of Section 7 of the Act.

10. The opponents have acquiesced in the use of the mark applied for by the applicants and are estopped from objecting to registration thereof. By an agreement in writing dated 13 October 1994 made between the opponents and the applicants, the opponents, inter alia, acknowledged the co-existence of the respective trade marks of the parties over many years without confusion".

5. Both parties filed evidence in these proceedings and both sides ask for an award of costs. The matter came to be heard on 20 November 2001. The applicants were represented by Mr Christopher Morcom of Her Majesty's Counsel instructed by Wildbore Gibbons; the opponents were represented by Miss Denise McFarland of Counsel instructed by Edward Evans Barker.

OPPONENTS' EVIDENCE

6. This consists of a statutory declaration by William Rees Mogg, Lord Rees-Mogg, of Hinton

Blewitt dated 17 November 1997. Lord Rees-Mogg explains that he has read the statutory declaration of Jolyon Hudson dated 1 February 1994 (attached as exhibit WRM1 to his declaration) adding that he was a Director of Pickering & Chatto Limited (company registration No: 218674) for a period of approximately 12 years from 1980 to 1992. He goes on to say that he is currently a Director of Pickering & Chatto Limited (company registration No: 2706352). He adds that from his own knowledge he is able to confirm the correctness of the statements made by Mr Hudson in his declaration mentioned above and endorses, confirms and adopts them for the purposes of these proceedings.

7. Exhibit WRM1 consists of a copy of a statutory declaration dated 1 February 1994 by Jolyon Symes Hudson accompanied by eighteen exhibits. The declaration was originally filed by the opponents in these proceedings in support of various applications for registration in the United Kingdom. In his declaration Mr Hudson explains that he is the Manager of Pickering & Chatto Limited a position he has held since 23 October 1992, adding that he has been involved in the field of activity of his company for seventeen years. Mr Hudson confirms that he is authorised to make his declaration on his company's behalf adding that the information in his declaration comprises information known to him personally and information extracted from the records of his company and its predecessors in title. The following facts emerge from Mr Hudson's declaration:

- S that the trade marks (for which registration was being sought) were first used in the United Kingdom by his company's predecessors in title in 1828 and that the trade marks used by the company have been used continuously since that date;
- S that the trade marks have been used in respect of printed matter, books, antiquarian books, incunabula, catalogues, pamphlets, leaflets, brochures, manuscripts, letters, literary materials, publishing, book valuations, stationery, book selling and ancillary goods and services.

8. Mr Hudson then goes on to provide a detailed history of the creation and development of the opponent company and exhibits to support the facts including copies of pages taken from a book entitled "William Pickering, Publisher: a Memoir and a Hand-List of his Editions", by Geoffrey Keynes, F.R.C.S., published in 1924 are provided. The purpose of this exhibit is to establish the link between the late William Pickering and the use by him of various devices depicting a dolphin and anchor.

9. He also exhibits copies of catalogues, newsletters and leaflets dating from 1878, 1889, 1922, 1982 and during the period 1982 to 1993, all of which feature prominently the dolphin and anchor device.

10. Mr Hudson explains that his company and their predecessors in title have regularly advertised their business. Exhibit SJH15 consists of copies of pages taken from the periodical "The Book Collector". Mr Hudson observes that the advertisements provided range from 1956 to 1993 and that in each case the advertisements include (amongst other things) the opponents' dolphin and anchor trade mark.

11. Turnover in respect of antiquarian books provided under the trade marks in the period 1980 to 1992 is provided, with total turnover during the period amounting to some £6.5m. Mr Hudson adds that approximately £40k a year is spent in producing and distributing its monthly catalogues with an additional £150 per year spent on advertising in relevant periodicals. He adds that his company regularly attends book fairs in the United Kingdom and overseas and provides details of the various fairs attended (which include London, Edinburgh, Tokyo, San Francisco, Cologne, Milan and Los Angeles). Exhibit SJH16 is a copy of the list produced by the opponents for the Cologne book fair in 1993 in which the dolphin and anchor mark appears.

12. Mr Hudson states that his company and its predecessors in title have operated throughout the United Kingdom, and lists the following organisations (amongst others) as customers: the British Library, the National Library of Wales, the National Library of Scotland, Cambridge University Library, Lambeth Palace and Windsor Castle. Exhibit SJH17 consists of copy invoices sent to the British Library in the period January 1978 to April 1989 all of which bear the anchor and dolphin device. Exhibit SJH18 consists of a bundle of stationery and other material such as writing paper, a credit note, a postage label, a compliment slip, a specimen of the company seal, an adhesive label, a bookmark and a carrier bag all of which Mr Hudson notes bear the anchor and dolphin trade mark.

13. Lord Rees-Mogg in his statutory declaration then turns his attention to the applicants' counterstatement. Exhibit WRM2 to his declaration is a copy of the Agreement dated 13 October 1994 between Pickering & Chatto Limited and Bantam Doubleday Dell Publishing Group Inc referred to in the applicants' counterstatement. Lord Rees-Mogg comments on this Agreement (in so far as they are relevant) are reproduced below:

“At paragraph 10 of the applicants' counterstatement it is asserted that the opponents have acquiesced in the use of the mark applied for by the applicants and are estopped from objecting to registration thereof. It is further asserted in that paragraph that by the Agreement in writing dated 13 October 1994 the opponents acknowledge the co-existence of the respective trade marks of the parties over many years without any confusion. Referring now to the Agreement dated 13 October 1994 that forms exhibit WRM2, I point out that paragraph 11 makes it absolutely clear that agreement is limited to the United States of America, its territories and possessions. As such, any statements made in that Agreement are limited to the United States of America and have no relevance to the United Kingdom. The statement at paragraph E that the parties marks have co-existed for many years in clearly distinct marketplaces patronised by sophisticated consumers without any actual confusion relates to the United States of America and its territories and possessions and does not refer to the United Kingdom. This is so clearly the case as to need no corroboration. Were the point to be in doubt however I need merely refer to the final sentence of paragraph 3 of the 13 October 1994 Agreement whereby the applicants in respect of the trade mark of the application in suit undertake that all future applications “for the Doubleday mark and/or any mark confusingly similar thereto” will specifically exclude “antiquarian books” and/or “antiquarian book services” and/or “catalogues relating to such”. The specification of goods of the trade mark of the application in suit reads simply “books”“.

APPLICANTS' EVIDENCE

14. This consists of an affidavit by Harriette Dorsen dated 23 December 1998. Ms Dorsen explains that she is Senior Vice-President and General Counsel of Random House Inc., formerly called Bantam Doubleday Dell Publishing Group, Inc. She states that she has been associated with Doubleday since 1987 adding that the information in her affidavit comes either from her own knowledge or from the records of her company.

15. Exhibit HKD1 to Ms Dorsen's affidavit consists of a copy of the statutory declaration of Marianne Velmans dated 26 January 1996 which was filed in support of the application in suit at the ex-parte examination stage. Ms Dorsen confirms that the facts attested to in Ms Velmans' evidence are either within her own personal knowledge or have been verified by her and she asks for this evidence to be considered in support of the applicants' claim to entitlement to registration under the "honest concurrent user" provisions of the Trade Marks Act.

16. In her statutory declaration of 26 January 1996, Ms Velmans explains that she is Publishing Director of Doubleday who are a division of Transworld Publishers Limited and a subsidiary of Bantam Doubleday Dell Publishing Group Inc. She states that she has held her current position since 1988.

17. Having confirmed that the information in her declaration comes either from her own knowledge or from company records and that she is authorised to speak on the applicants' behalf, Ms Velmans explains that she has 23 years experience of the publishing industry. She comments that prior to taking up her current position she ran the London office of the applicants and was involved in the importation of books from the United States of America. The following facts emerge from Ms Velmans' declaration:

- S that books bearing the trade mark and published by the predecessors in trade to Bantam Doubleday were first sold in the United Kingdom in the 1950s and that books bearing the trade mark have been sold in the United Kingdom continuously since that date;
- S that in 1989 her company began publishing books bearing the trade mark in the United Kingdom;
- S that the approximate annual turnover of books sold in the United Kingdom in the period 1990-1995 amounted to some £5.2m which represented approximately 838,000 books;
- S that in the period 1990-1995, approximately £650k was spent promoting books sold under the trade mark in the United Kingdom;
- S that books sold under the trade mark have been sold throughout the United Kingdom and a list of the principal town and cities is provided;
- S exhibits MV1 and MV2 consist respectively of: a catalogue dated January to June

1991 which, says Ms Velmans, shows use of the trade mark in relation to new titles and a selection of promotional material (of varying dates) which relates to books sold under the trade mark in the United Kingdom.

18. Ms Dorsen then comments on the declaration of Lord Rees Mogg. She does so in the following terms:

"4. The absence of any likelihood of confusion is borne out by the fact that, to the best of my knowledge and belief, there has been no actual instances of confusion between the respective marks in over 40 years of concurrent use.

5. This fact was recognised at the time of the agreement between the parties dated 13 October 1994 which is referred to in Doubleday's counterstatement in these proceedings and a copy of which is exhibited to William Rees-Mogg's declaration as exhibit WRM2. As William Rees-Mogg points out, the terms of the agreement itself are limited to "the United States of America, its territories and possessions". However, the facts recited in the preamble to the agreement, in particular the statement that "the parties" marks have co-existed for many years in clearly distinct market places patronised by sophisticated consumers without any actual confusion" was understood by the parties to be universally true. The agreed absence of any confusion in any market place anywhere in the world was in the contemplation of the parties at the time the agreement was concluded."

OPPONENTS' EVIDENCE-IN-REPLY

19. This consists of a statutory declaration by Michael Bilewycz dated 1 July 1998. Mr Bilewycz explains that he is a trade mark agent working for the firm of Edward Evans & Co (now Edward Evans Barker) who are the opponents' professional representatives in these proceedings. Mr Bilewycz's observations on the affidavit of Ms Dorsen in so far I consider them relevant, I take into account in my decision.

OPPONENTS' ADDITIONAL EVIDENCE

20. This consists of a further statutory declaration dated 16 July 1999 by the same Jolyon Symes Hudson mentioned above. Mr Hudson confirms that the information in his declaration is either known to him personally or has been extracted from the records of his company. Mr Hudson refers to the declaration of Ms Velmans where she says "books bearing the trade mark and published by the predecessors in trade to Bantam Doubleday were first sold in the United Kingdom in the 1950s and books bearing the trade mark have been sold in the United Kingdom continuously since that date. In 1989, my company began publishing books bearing the trade mark in the United Kingdom".

21. Mr Hudson explains that in order to check the accuracy of these statement he carried out research at the British Library. He states that under Section 15 of the Copyright Act 1911, publishers have a legal obligation to send one copy of each of their publications to the Legal Deposit Office of the British Library within one month of publication.

22. Mr Hudson states that exhibit 2JSH1 to his declaration is a printout of all the publications of Doubleday Bantam to be found in the British Library for the period 1986 through 1991. He comments that for each of the years 1986 to 1988 the British Library has no books published by London Doubleday from which he assumes that prior to 1989, Bantam Doubleday did not publish books in the United Kingdom. That said, Mr Hudson states that there is one entry for 1988 bearing the name London Doubleday, this turns out to be a later printing of a book originally published by Sydney Doubleday in 1988. He goes on to say that the other books revealed by his search for the period 1986 through 1988 are published variously by Sydney Doubleday, Toronto Ontario Doubleday and Garden City Doubleday. He adds that he examined some of the books listed in the British Library printout for the period 1986 through 1988 but was unable to find any use of the D/anchor and dolphin device which forms the subject of the application in suit.

23. Exhibit 2JSH2 to his declaration is a copy of a catalogue issued by the Doubleday company dated Fall 1984. Mr Hudson observes that although there are imprints variously entitled Anchor Press and Dolphin Press, the catalogue shows no use of the trade mark forming the application in suit. In light of this research, Mr Hudson suggests that little or no consideration should be given to the assertions made by Ms Velmans in her statutory declaration mentioned above.

24. Mr Hudson provides some observations on the manner in which the respective parties use their trade marks an issue originally commented on by Ms Dorsen of the applicants in her affidavit shown above. Exhibit 2JSH4 to his declaration is a copy of his company's catalogue entitled "1994 New Titles and Complete Backlist" which he notes prominently features his company's trade mark on the back cover. Mr Hudson also notes that the entire catalogue consists of new books rather than second-hand or antiquarian books.

APPLICANTS' EVIDENCE-IN-REPLY TO OPPONENTS' ADDITIONAL EVIDENCE

25. This consists of a statutory declaration and two affidavits. The statutory declaration is by Fiona Cameron and is dated 24 March 2000. Ms Cameron explains that she is a trainee trade mark agent employed by Wildbore & Gibbons who are the applicants' professional representatives in these proceedings. The information in Ms Cameron's declaration comes from her own knowledge and she confirms that she is authorised to make her declaration on the applicants' behalf.

26. Ms Cameron explains that the purpose of her declaration is to respond to the claim made by Mr Hudson in paragraph 4 of his declaration of 16 July 1999, i.e. "I examined some of the books listed in this British Library printout for the period 1986 through 1988 and was not able to find any use of the D/Anchor and dolphin device forming the subject of the application in suit". In order to investigate this claim, Ms Cameron explains that she attended the Reading Rooms of the British Library on 17 February 2000 and on subsequent days thereafter. She adds that she took with her a copy of the Doubleday imprints 1986-1991 printout which Mr Hudson said he obtained from the British Library.

27. Once at the British Library Ms Cameron says she undertook a search of its online

catalogue containing material relating to the humanities and social sciences published since 1975, together with newly-acquired earlier material. Her search she says revealed 889 entries published by Doubleday. Ms Cameron then ordered books appearing on the Doubleday imprints 1986-1991 printout mentioned above and examined them for use of the mark the subject of the application in suit.

28. Ms Cameron explains that as she was only able to order 15 books in any one day she was not able to complete a comprehensive study of all the books listed on the printout mentioned. She was however able to examine 36 of the books listed. Exhibit FC1 consists of photocopies of the spines, title pages and in some instances the front covers and copyright pages of books listed on the printout mentioned that are held in the British Library's collection. Ms Cameron observes that the anchor and dolphin device is clearly visible.

29. Ms Cameron observes that in his declaration Mr Hudson does not mention books published between 1989 and 1991. She explains that of the 36 books listed on the printout that she examined, 29 of the books bore the anchor and dolphin device mark, two of which were published in 1988, the remaining 27 were published between 1989 and 1991.

30. Ms Cameron concludes her declaration by explaining that her search of the British Library's collection also revealed use of the anchor and dolphin device mark on books published between 1992 and 1994. She says that these years were included in her search because the application in suit was not filed until April 1995. The British Library's online catalogue had, says Ms Cameron, 107 entries under Doubleday that were published in London between 1992 and 1994. Exhibit FC2 consists of photocopies of the spines and title pages of a selection of these books with Ms Cameron noting that the anchor and dolphin device mark is clearly visible.

31. The first affidavit dated 23 March 2000 is by Paul Feffer of 60 Sutton Place, New York, United States of America. Mr Feffer explains that he is presently retired. However from September 1955 to May 1986 he was President and Chief Executive Officer of Feffer and Simons, Inc. He confirms that the information in his affidavit comes from his own knowledge.

32. Mr Feffer explains that Feffer and Simons was a company involved in the international sales and distribution of books. He says that the company would fulfill orders for books published by American publishers placed by foreign booksellers and distributors, and that for a long period of time the company was the exclusive distributor outside of the United States and Canada for virtually all the major American publishers, including Little Brown, Simon and Schuster, Harcourt Brace, Random House and Doubleday. In 1962, Feffer and Simons was acquired by Doubleday.

33. Mr Feffer goes on to say that in the late 1960s, through the early 1980s, Feffer and Simons imported books from the United States into the United Kingdom through its subsidiary Transatlantic Book Service, Inc (TABs) of which he was Chairman. TABs says Mr Feffer sold books to bookshops, libraries and schools in the United Kingdom. From his experience at TABs over this twenty year period, Mr Feffer says that he is aware that TABs imported Doubleday books with the colophon of the anchor and dolphin. This colophon appeared he says on almost all the Doubleday books imported by TABs into the United

Kingdom during this period. He concludes his affidavit in the following terms:

“It was also my understanding, based upon my experience at Feffer and Simons, that Doubleday books containing this colophon were imported into the United Kingdom since at least the 1950s, if not earlier”.

34. The second affidavit dated 13 April 2000 is by Roland Algrant of 245 East 19th Street, New York, United States of America. Mr Algrant states that he is Senior Vice President of HarperCollins Publishers, Inc. He confirms that the information in his affidavit comes from his own knowledge.

35. Mr Algrant explains that from 1960 to 1986 he was Executive Vice President of Feffer and Simons, Inc adding that he managed all of the business operations of the company’s subsidiary Transatlantic Book Service, Inc (TABs) from the late 1960s to the early 1980s. He confirms the company’s role explained above by Mr Feffer. Mr Algrant adds that among the books that the company exported from the United States to the United Kingdom, were books sold under the Doubleday imprint. Mr Algrant says that he remembers that almost all of those books also displayed the logo consisting of an anchor and dolphin. Consequently, he says that he can state that this logo was used on books sold in the United Kingdom from as early as the late 1960s and adds that it is his understanding and belief that such use extended as far back as at least the 1950s.

OPPONENTS’ FURTHER ADDITIONAL EVIDENCE

36. This consists of a witness statement dated 22 November 2000 by the same Jolyon Symes Hudson mentioned above. Mr Hudson confirms that these opposition proceedings have been filed on behalf of Pickering & Chatto Limited (Company number 2706352) whose registered office is at 21 Bloomsbury Way, London. Mr Hudson also confirms that this is the same company which entered into the agreement dated 13 October 1994 with Bantam Doubleday Dell Publishing Group, Inc.

37. Mr Hudson states that further to his declaration of 16 July 1999, he has carried out further research at the British Library into those books published by Bantam Doubleday in the United Kingdom which bear the anchor and dolphin device. Exhibits JSH6 and JSH7 consist of the results of searches carried out at the British Library Reference Collections which are held at the St Pancras building in London and the Document Supply Collections at Boston Spa.

38. Mr Hudson then explains that each of the searches is divided into yearly sections and that he searched from 1986 to 1991. He adds that each section contains the following information: the search criteria which identifies any book for a given year with the word Doubleday in the imprint; a summary list of all the books for a given year and finally details such as the shelfmark, author, title, publisher and date and if available the ISBN number, subject, edition etc.

39. Mr Hudson concludes his witness statement in the following terms:

“5. My search has revealed that for example:

(a) There is no copy in the British Library of the work “The Half Light” by Jacqueline Kent (which appears at pages 1-2 of the Exhibit FC1 to Fiona Cameron’s Declaration of 24 March 2000) which has a London imprint of 1988;

(b) “Great Lives” by Simon Boughton (page 3 of the Exhibit to Fiona Cameron’s Declaration) is dated c1988 (not 1988 as stated in the Exhibit FC1) and is a USA imprint. The British imprint is published by Kingfisher Books in 1987 and was later published by Readers Digest. A copy of the Kingfisher Books British edition is held at the British Library; and

(c) The books which appear at pages 12 and 14 were printed in the USA.

6. I have not found any book in the British Library which suggests that the applicant has published any books with a British imprint prior to 1989”.

APPLICANTS’ EVIDENCE-IN-REPLY TO OPPONENTS’ FURTHER ADDITIONAL EVIDENCE

40. The final statutory declaration dated 17 April 2001 is by the same Fiona Cameron mentioned above. Ms Cameron confirms that she has read Mr Hudson’s witness statement of 27 November 2000 and the exhibits thereto. The substance of her declaration is reproduced below:

“In reply to evidence exhibited in my first declaration, Mr Hudson states at paragraph 6 of his witness statement that he was unable to find “any book in the British Library which suggests that the applicant has published any books with a British imprint prior to 1989”. However, I did not suggest that any or all the books listed in FC1 of my first declaration bore a British imprint. I merely said, and I confirm, that books published by the applicant company have been deposited at the British Library and bear the anchor and dolphin device mark as applied for by the applicant. This is entirely consistent with the evidence which has been given on behalf of the applicant, as to sales of books bearing the trade mark in question, in the United kingdom”.

41. That concludes my review of the evidence filed in these proceedings.

DECISION

42. In her skeleton arguments and at the Hearing, Miss McFarland confirmed that the opponents’ principal objections to the application in suit were to be found under Sections 5(2)(b) and 5(4)(a) of the Act. Given that no evidence has been filed to support the ground of opposition based on Section 3 and as Miss McFarland did not seek to address me on this aspect of the opponents’ pleaded case at the Hearing, the opposition in so far as it is based on Section 3 of the Act is dismissed. The objections based on Sections 10 and 92 of the Act were not pursued before me and cannot in any event form a basis for refusal of the application by the Registrar. In so far as the objection under Section 5(4)(a) of the Act is concerned, at the Hearing Miss McFarland said:

“.....It almost falls away, the 5(4)(a) in the sense that 5(4)(a) does not add anything to that, but the ground is not being abandoned”.

43. This suggests to me that although Miss McFarland was not prepared to abandon the objection completely, she was of the view that the opponents’ objection based on Section 5(2)(b) of the Act may well be determinative of these proceedings. I propose to proceed on this basis. As the trade marks on which the opponents rely are not identical the matter falls to be considered under subsection (b) of Section 5(2) of the Act which reads as follows:

“5.- (2) A trade mark shall not be registered if because -

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

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

44. An earlier right is defined in section 6 of the Act, the relevant part of which states:

“6.- (1) In this Act an ‘earlier trade mark’ means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks;”.

45. In my consideration of a likelihood of confusion or deception, I take into account the guidance provided by the European Court of Justice (ECJ) in **Sabel BV v. Puma AG** [1998] R.P.C. 199, **Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc** [1999] E.T.M.R. 1, **Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.** [2000] F.S.R. 77 and **Marca Mode CV v. Adidas AG** [2000] E.T.M.R. 723.

It is clear from these cases that:-

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v. Puma AG* page 224;
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG* page 224, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* page 84, paragraph 27.
- (c) the average consumer normally perceives a mark as a whole and does not

proceed to analyse its various details; *Sabel BV v. Puma AG* page 224;

- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v. Puma AG* page 224;
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* page 7, paragraph 17;
- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG* page 8, paragraph 24;
- (g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG* page 224;
- (h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG* page 732, paragraph 41;
- (i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* page 9 paragraph 29.

46. The opponents are the registered proprietors of three registrations in Classes 16, 41 and 42 (full details of which can be found in the Annex to this Decision). All pre-date the application in suit and in so doing qualify as “earlier trade marks” within the meaning of Section 6(1) of the Act. At the Hearing Mr Morcom said:

“In my submission, which I hope you will accept, if they [the opponents] cannot succeed under Class 16, they cannot succeed on the other ones because any likelihood of confusion must be less in cases of services. I would suggest you can safely concentrate on the Class 16 registration”.

47. I agree with Mr Morcom’s submissions in this regard and for the purposes of this decision will compare the application in suit with the opponents’ registration in Class 16. For convenience the two marks are reproduced below:

Applicants' mark:



Opponents' mark:



48. The opponents' registration is protected for a range of goods in Class 16 which includes books. The application in suit proceeded to publication on the basis of Honest Concurrent Use since 1950 for a specification of goods limited to books. It is self evident therefore that the respective goods are identical. In so far as the respective trade marks are concerned, in her affidavit of 23 December 1998, Ms Dorsen (of the applicants) made the following comment:

“.....The marks may be conceptually similar.....”

49. That seems to me to be a sensible concession. Both trade marks consist of a device of an anchor on which a device of what appears to me at least to be a fish of some kind is shown entwined; both parties appear to accept that it is intended to be a representation of a dolphin, although for my own part I am not sure that the average member of the public would immediately reach this conclusion. The trade marks differ in a number of respects. For example, the applicants' trade mark is drawn with less precision than the opponents', it includes the dolphin device in a different orientation to the opponents' trade mark and it also includes a capital letter D at the top of the device of an anchor. Notwithstanding these various differences and keeping in mind the characteristics of the average consumer (who is deemed to be reasonably well informed and reasonably circumspect and observant but who rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them they have kept in their mind) combined with the fact that I must consider notional and fair use of both marks as per **REACT** trade mark [2000] RPC 285, I have little hesitation in concluding that the respective trade marks are similar.

50. In my view the trade marks are both visually and conceptually similar (the latter point is already conceded by the applicants). Visually the trade marks share more similarities than differences - both are, in my view, overwhelmingly anchor and fish devices. In addition, the opponents' trade mark is, in my view, an inherently distinctive trade mark. The case law of the ECJ informs us that 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. Although the opponents' trade mark has been used for a long period and the sales under it are

likely to result in significant public recognition, given the highly distinctive character of their trade mark per se, the latter point does not add anything of significance for the purposes of comparison under Section 5(2)(b) of the Act. Aurally, it is difficult to know quite how the respective device trade marks will be referred to. As indicated above 'anchor and fish'/'fish and anchor' are possibilities, alternatively if the "non anchor" element is discerned as a device of a dolphin (which is of course a mammal) then 'anchor and dolphin'/'dolphin and anchor' are also possible descriptions. The possibility of aural confusion is arguably less important when one is comparing figurative trade marks, as is the case here. Suffice to say that even on the basis of aural use the marks are, in my view, similar. Given therefore that the goods at issue are identical and as I have found that the respective trade marks are visually aurally and conceptually similar that would ordinarily be an end to the matter and the opposition would succeed. However, in considering the matter globally as I am required to do, I must remember that the applicants have filed evidence of use of their trade mark in an effort to claim the benefits of the honest concurrent user provisions of Section 7(1) of the Act which reads as follows:

“7. - (1) This section applies where on an application for the registration of a trade mark it appears to the registrar-

(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,

but the applicant shows to the satisfaction of the registrar that there has been honest concurrent use of the trade mark for which registration is sought.

(2) In that case the registrar shall not refuse the application by reason of the earlier trade mark or other earlier right unless objection on that ground is raised in opposition proceedings by the proprietor of that earlier trade mark or other earlier right.

(3) For the purposes of this section “honest concurrent use” means such use in the United Kingdom, by the applicant or with his consent, as would formerly have amounted to honest concurrent use for the purposes of section 12(2) of the Trade Marks Act 1938.

(4) Nothing in this section affects-

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal), or

(b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds, where no consent to registration).

(5) This section does not apply when there is an order in force under section 8 below”.

51. The provisions of Section 7 of the Act were considered by the Hearing Officer in C.D.S. Computer Design Systems Ltd v Coda Ltd (0-372-00) dated 6 October 2000. In that decision the Hearing Officer said:

“First of all I note that this provision of the Act does not derive from Council Directive No 89/104/EEC of 21 December 1998 to approximate the laws of the Member States relating to trade marks. It is thus a piece of home spun legislation which can only be interpreted as complementing rather than conflicting with the Directive. I say that because Article 5 of the Directive (the equivalent of Section 5 of the Trade Marks Act) requires a trade mark to be excluded from the register if it conflicts with an earlier trade mark or other earlier right. However, the fifth recital to the Directive gives Member States latitude as to the stage at which such relative grounds are to be taken into consideration. The fifth recital states:

Whereas Member States also remain free to fix the provisions of procedure concerning the registration, the revocation and invalidity of trade marks acquired by registration; whereas they can, for example, determine the form of trade mark registration and invalidity procedures, decide whether earlier rights should be invoked either in the registration procedure or in the invalidity procedure or both and, if they allow earlier rights to be invoked in the registration procedure, have an opposition procedure or an ex officio examination procedure or both; whereas Member States remain free to determine the effects of revocation or invalidity of trade marks;

In relation to all applications for registration under the Act, the Trade Marks Registry must examine them against the provisions of Sections 3 and 5 and undertake a search under the provisions of Section 37 for that purpose. If, and when, as a result of the search an earlier trade mark or earlier right is identified which is considered to be the same or similar in respect of both the trade mark and the specification of goods and services, then the Trade Marks Registry must raise an objection to the application for registration. However, if the applicant is able to show, to the satisfaction of the Trade Marks Registry, that there has been honest concurrent use of the trade mark the subject of the application with the earlier mark, under the provisions of Section 7, and with due regard to the fifth recital, the application may be accepted and published. Where the concurrent use has not been in respect of all of the goods or services for which the application is sought to be registered, the acceptance will be for those goods where there has been honest concurrent use. If there is no opposition to the application for registration either from the owner of the earlier right against which the applicant for registration claims honest concurrent use or any third party, then the application will in due course be registered. However, if opposition is filed then the registrar must determine whether the grounds for refusal upon which the opposition is based are made out. If the opposition is based upon Section 5 then the provisions of the appropriate subsections must be considered. The fact that honest concurrent use has been shown at the examination stage cannot overcome the objection.

If, for example, the trade mark the subject of the application for registration and the

trade mark the subject of the earlier right were identical, and the specification of goods or services of the application was identical to the specification of the goods or services covered by the earlier trade mark, then refusal must follow under Section 5(1), which bars absolutely the registration of identical trade marks in respect of identical goods or services (unless the proprietor of the earlier trade mark consents to the registration of the later trade mark). But in relation to Section 5(2) the respective trade marks or respective specifications of goods or services may only be similar and the fact that there has been actual use of the trade mark in suit concurrently with the earlier trade mark, may be relevant in determining whether there is a likelihood of confusion.

In the circumstances and for the reasons above I reject Mr Hacon's submission that because the proprietor of the earlier trade mark against which the applicant for registration has claimed honest concurrent use has opposed the application, the provisions of section 7(2) make the refusal mandatory. However, as I have already said, the mere fact that there has been honest concurrent use is not a defence, which in itself will save an application, but it is one of the "relevant" factors which should be taken into account in determining whether there is a likelihood of confusion.

52. Therefore the fact that there has been concurrent use of the trade mark in suit alongside the trade marks on which an opposition is based will not in itself save the application. But it is one of the relevant factors which should be taken into account in determining whether there is, or is not, a likelihood of confusion. Such a consideration can, of course, only apply if sufficient information is available to satisfy the tribunal that, as a result of the parallel use that has taken place, the relevant public appears to be able to distinguish between the goods or services of the parties and that confusion is, therefore, unlikely.

53. In this case both parties have provided information of the uses they have made of their trade marks, I need therefore to consider the nature and volume of this parallel use and the bearing it has on whether there is a likelihood of confusion.

54. I note first that the opponents' evidence makes clear that there is no 'Agreement' between the parties in this jurisdiction. I am not prepared to infer that because of an Agreement between the parties covering the United States of America that the opponents have accepted that confusion in the United Kingdom will not occur.

55. Mr Hudson on behalf of the opponents describes the use made of their trade mark which has resulted in sales of £1/2m each year between 1980 and 1992. That, I think, is a significant sum and coupled with the promotional activities indicates to me that the trade mark has established its place in the market place for books. I must then focus on the applicants' claim to parallel use of their trade mark with that of the opponents. This is evidenced in the statutory declaration of Marianne Velmans and the affidavits of Paul Feffer and Roland Algrant. A summary of this evidence is provided above, but the main points arising from Ms Velmans's declaration are:

- that books bearing the trade mark the subject of the application in suit and published by the applicants' predecessors in trade were first **sold** (my emphasis) in the United

Kingdom in the 1950s;

- that books bearing the trade mark have been **sold** (my emphasis) in the United Kingdom continuously since that date;
- that in 1989 her company began **publishing** (my emphasis) books bearing the trade mark in the United Kingdom;
- that in the period 1990-1995 her company sold £5.2m worth of books in the United Kingdom; this amounted to some 838,000 books;
- that £650k has been spent promoting books sold under the mark; that books bearing the mark have been sold throughout the United Kingdom.

56. In support of the above, Ms Velmans provides the following pieces of documentary evidence:

Exhibit MV1

- a Doubleday catalogue on which the following text appears: Doubleday London New Titles - January to June 1991; I note that the dolphin and anchor device appears on the front and rear covers of this catalogue.

Exhibit MV2

This exhibit consists of various pieces of what are described as “promotional materials” these are as follows:

- what appears to be a promotional leaflet for a book. The dolphin and anchor device (accompanied by the word Doubleday) appears on the rear of the leaflet which originates sometime before 1 October 1994;
- a promotional leaflet for a book entitled “Invisible Crying Tree” by Tom Shannon and Christopher Morgan. The dolphin and anchor device (accompanied by the word Doubleday) appears on the front of the leaflet which appears to originate in February 1996;
- a promotional leaflet for a book entitled “Beach Music” by Pat Conroy. The dolphin and anchor device (accompanied by the word Doubleday) appears on the first and second page of the leaflet which appears to originate in February 1996.

57. The main points arising from the affidavits of Messrs Feffer and Algrant are as follows:

Mr Feffer

- that he was President and CEO of Feffer and Simons Inc from September 1955 to May 1986;

- that Feffer and Simons Inc was a company involved in the international sales and distribution of books;
- that in 1962, Feffer and Simons was acquired by Doubleday;
- that in the late 1960's through the early 1980s Feffer and Simons imported books from the United States into the United Kingdom through it Subsidiary Transatlantic Book Service, Inc. TAB sold books to bookshops, libraries and schools in the United Kingdom;
- he confirms that TAB imported Doubleday books bearing the anchor and dolphin device, which he says appeared on almost all the Doubleday books imported by TAB into the United Kingdom.

Mr Algrant

- that from 1960 to 1986 he was Executive Vice President of Feffer and Simons, Inc and that he managed all of the business operations of the company's subsidiary Transatlantic Book Service, Inc (TABs) from the late 1960s to the early 1980s;
- he comments that among the books that the company exported from the United States to the United Kingdom, were books sold under the Doubleday imprint. Mr Algrant says that he remembers that almost all of those books also displayed the logo consisting of an anchor and dolphin;
- he says that this logo was used on books sold in the United Kingdom from as early as the late 1960s.

58. The opponents in their evidence sought to question the extent of the applicants' claim to use of the trade mark in suit in the United Kingdom since the 1950s and a good deal of the evidence filed in these proceedings was directed to this point. In particular, the Library searches conducted by Mr Hudson (for the opponents) and Ms Cameron (for the applicants). In the applicants' view so crucial was the result of these various searches, that a request was made to cross-examine Mr Hudson on the results of his various searches at the substantive hearing. Following an interlocutory hearing, the registrar made an appropriate order for Mr Hudson to appear. At the commencement of the substantive hearing I commented as follows:

“..... Mr Morcom, is cross examination necessary? Can I tell you where I am coming from. You are claiming that the applicants and the opponents have used the respective trade mark in the market place since 1950. There is some dispute as to the results of the research undertaken by Mr Hudson. Is that going to advance the cause significantly even if Mr Hudson indicates that there is some flaw in the results? I say that because it seems to me, looking at the papers, the strongest argument of honest concurrent use is broadly from 1989 onwards?

59. Notwithstanding these questions, Mr Morcom still felt it was appropriate to continue with

the cross-examination of Mr Hudson, who was then re-examined by Miss McFarland. In the event the cross examination of Mr Hudson served no purpose and was of no assistance to me in reaching a decision in these proceedings. In my view, parties to disputes before the Registrar should think very carefully before seeking cross examination and requiring persons to go through the rigours of that process. Given the low cost nature of proceedings before the registrar, cross examination should, in my view, only be sought when it is clear that the result of the cross examination of a witness or declarant will actively assist the Hearing Officer in reaching a decision. That was not the case here. I do not propose to say anything further about the cross examination of Mr Hudson, preferring instead to focus on Counsel's submissions on the use made by the applicants of their trade mark. In adopting this approach (and in the context of the claim to parallel use since 1950), I am comforted by the comments of Mr Morcom when he said:

“.....Obviously, I am going to concentrate on the date 1989 onwards, but I simply want to refer to the rest by way of background and there was real commercial use if unquantified”.

And:

“What you have is some use, albeit on a fairly small scale but none the less commercial scale, over a long period leading to the commencement of publishing in the form of printing things in this country in 1989”.

60. At the Hearing, Miss McFarland was critical of the evidence filed by the applicants in support of their claim to parallel use. The evidence filed was, in her view, broad brush and lacking in any real detail. Mr Morcom did not concentrate to any great extent on the period prior to 1989. He fairly accepted that no documentary evidence had been provided for the years prior to 1989. That said, he urged me to consider the affidavits of Messrs Feffer and Algrant in the context of the evidence as a whole and in so doing to reach the conclusion that there had been continuity of use from at least the 1960s through the 1970s and 1980s leading up to 1989 when publication in this country began. Mr Morcom concluded his submissions in the following terms:

“ Sir, for those reasons, we submit, that the applicants (sic) have not done what they have to satisfy you that there is a real tangible likelihood of confusion amongst a substantial number of members of the public who are reasonably well informed and circumspect. On the basis of the case law, of course, they must fail. I do not want to repeat myself. The evidence of its continuous use, really can the opponents be taking our use seriously because they have not at any stage sent a cease and desist letter saying “you are not entitled to registration. Stop it now”. Passing off. I have made my submission in my skeleton. Taking, particularly the earlier date, there is no possibility of establishing the necessary misrepresentation and if Section 5(2) does not avail, the opponents cannot possibly succeed on passing off”.

61. At the Hearing I made it clear to both parties that the material on which I was being asked to base a judgement as to what impact the mark the subject of the application in suit might have had on the public prior to 1989 was very scant. So much so, that I find it impossible to

reach a view on that basis. That said, I accept that Messrs Feffer and Algrant both attest to the fact that during the late 1960s to the early 1980s the applicants (through Feffer and Simons and Transatlantic Book Service, Inc) imported book from the United States to the United Kingdom for onward sale to bookshops, libraries and schools. Both declarants attest to the fact that the anchor and dolphin appeared on “.....almost all the Doubleday books.....” (Feffer) and “....almost all of these books.....” (Algrant). However as Miss McFarland pointed out, there is no indication of where? when? what? to whom? and in what circumstances? the trade mark the subject of the application was used. Whilst I agree with Mr Morcom that it is unlikely that invoices from the 1950s, 60s and 70s would still be available, when an applicant is seeking to rely on parallel use to displace a, prima facie, finding under Section 5(2)(b), as here, it is, incumbent upon them to provide the best possible documentary evidence to support such a claim. In the absence of the where? when? what? to whom? and in what circumstances?, I do not feel that I can give a great deal of weight to the evidence of Messrs Feffer and Algrant.

62. I go on to consider the position from 1989 when the applicants say they began publishing books in the United Kingdom. As mentioned above, in opposition proceedings under the Trade Marks Act 1994 the applicants' use of their trade mark is one of the relevant factors which can be taken into account in determining whether there is, or is not, a likelihood of confusion. And in doing so I believe that the where? when? what? to whom? and in what circumstances? approach is the correct process to go through. The factors identified in the **PIRIE** case [1933] RPC 147 which dealt with Honest Concurrent Use under the old law are not in my view, wholly appropriate for the determination of the issue. For example that case contemplated registration of the later application in the face of the earlier right even where confusion might result. Such a situation is not possible under Section 5(2)(b), absent the consent of the holder of the earlier right.

63. There was, I should note, no question about the honesty of the applicants' use of their trade mark and no disagreement that there were no reported instances of confusion. What then of the applicants' use since 1989? The application in suit was filed in April 1995. This means that the applicants have (potentially) between five and six years of parallel use to call upon.

64. Miss McFarland criticised Ms Velmans's declaration. In Miss McFarland's view the wording Ms Velmans uses in her declaration namely “The approximate annual turnover figures of books sold in the United Kingdom” and “my company has spent the following approximate sums annually in promoting books in the United Kingdom” were vague, imprecise and did not unequivocally link the figures provided to goods sold/promoted under the trade mark the subject of the application in suit. In Mr Morcom's view, when read in context Ms Velmans was quite obviously talking about use under the trade mark in suit. While Miss McFarland cautioned me against making inferences, it is my view that when read in the context of her evidence as a whole it is far more likely than not that Ms Velmans is seeking to refer to use made of the trade mark the subject of the application in suit. But I think Miss McFarland's further criticisms of Ms Velmans's declaration and the associated exhibits are I think, well founded. Given the clear similarities between the parties' trade marks and the identity of goods, one would have reasonably expected to see far more compelling evidence of the where? when? what? to whom? and in what circumstances? In that connection I note the

views of Mr Justice Jacobs in *Laboratories Goemar SA v La Mer Technology Inc* (unreported) where he said:

"Those concerned with proof of use should read their proposed evidence with a critical eye - to ensure that use is actually proved - and for the goods or services of the mark in question. All the t's should be crossed and all the i's dotted."

65. Also the comments of Mr Geoffrey Hobbs QC acting as the Appointed Person in *CORGI* trade [1999] RPC 549 where he said:

"I appreciate that the registrar is frequently required to act upon evidence that might be regarded as less than perfect when judged by the standards applied in High Court proceedings. Even so, it is necessary to remember that there is a distinction to be drawn between inference and conjecture."

66. The only pieces of documentary evidence provided by the applicants to show the trade mark the subject of the application in use prior to the date of application are the Doubleday catalogue (dating from 1991) and what appears to be a promotional leaflet for a book (dating from 1994). The other two pieces of promotional material are both after the material date (dating from February 1996) and, like the 1994 promotional leaflet, in use, the device mark the subject of the application in suit is used with the word DOUBLEDAY. The evidence from the British Library searches similarly show use of the word and device together. Thus the only documentary evidence I have of the trade mark in suit being used alone is the Doubleday catalogue dating from 1991.

67. In the context of the extent of use in time and quantity the applicants have made of their trade mark, I am prepared to accept that they have published books in the United Kingdom since 1989 with turnover in the period 1990-1995 amounting to some £5.2m equating to approximately 838,000 books. I am also prepared to accept that in the period 1990-1995 they spent approximately £650k promoting these books. However, despite the volumes of evidence filed, which I have been at pains to summarise, I have had great difficulty in establishing exactly what trade mark the applicants have used in this context. Their own evidence suggests that while (on occasion) the device mark is used solus (see the catalogue dated 1991), the use shown is that of the device is used together with the word DOUBLEDAY. In the absence of better particulars, I am not in a position to judge if the trade mark the subject of the application in suit has in fact been used in parallel with the opponents' trade mark since 1989 in relation to the goods for which registration is sought, namely books, or whether another composite trade mark the (device and the word DOUBLEDAY) has been used. The assertions in the applicants' evidence are not sufficient. That being the case, and in the context of the global assessment which I am required to make, I can not conclude that there will be no likelihood of confusion between the respective parties trade marks as a result of the use the applicants have made of the trade mark the subject of the application in suit. Consequently the opposition based on Section 5(2)(b) of the Act succeeds.

68. I have already commented on the ground of opposition based on Section 5(4)(a) of the Act earlier in this decision. At the Hearing while Miss McFarland was not prepared to completely abandon the ground, she did not pursue it to any great extent and (I think)

accepted that if she was unable to succeed on the basis of her opposition based on Section 5(2)(b) of the Act, she was unlikely to succeed on the basis of Section 5(4)(a). As my decision under Section 5(2)(b) effectively decides these proceedings, I do not propose to comment further on the objection based on Section 5(4)(a) of the Act.

69. The opponents have been successful in these proceedings and are entitled to an award of costs. I note that during the course of these proceedings there have been a number of interlocutory hearings. I have reviewed the reasons for these hearings together with their various outcomes. In so far as the interlocutory hearing of 5 October 2000 was concerned, at the substantive Hearing before me, Mr Morcom said: "Maybe it was more or less a draw on the interlocutory hearing". However having reviewed the interlocutory hearings of 12 November 1998, 14 January 2000 and the aborted interlocutory hearing of 15 March 2001, it appears to me that on two occasions the applicants in these proceedings have been required to consider filing evidence in reply to requests to file additional evidence made by the opponents. I also note that on both occasions, evidence has in fact been filed. In view of this, I have reduced the award by £400 and order the applicants to pay to the opponents the sum of £435. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 15 day of February 2002.

**M KNIGHT
For the Registrar
The Comptroller-General**

Registration Nos: 1552719, 720, 71

Mark:



Appl Date: 4 November 1993 (all registrations)

Class 16

Paper; cardboard; printed matter; books; antiquarian books; secondhand books; periodicals; newspapers; catalogues; manuals; diaries; reports; pamphlets; leaflets; brochures; book jackets; dust covers; stationery; book plates; bookmarks; manuscripts; letters; drawings; autographs; prints; engravings; etchings; paintings; photographs; lithographs; maps; charts; globes; cards; postcards; greetings cards; posters; all included in Class 16.

Class 41

Publishing; publication of books; publication of texts; educational services relating to books, the history of books, the value of books and the care of books; provision of talks, seminars and lectures relating to books, the history of books, the care of books and the value of books; all included in Class 41.

Class 42

Professional consultancy services in relation to books, and their history, value and provenance; consultancy services in relation to the authentication of texts and manuscripts; arranging for the preparation and the printing of catalogues; advising on book collections; advising book collectors; advising libraries, insofar as such advisory services relate to the authentication of texts and manuscripts; all included in Class 42.