

O-233-08

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No. 2434362  
BY CLIVE WING TO REGISTER THE  
TRADE MARK nLite IN CLASS 11**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 95058 BY  
DEN BOER BETON NIEUW-LEKKERLAND B.V.**

## BACKGROUND

1) On 2 October 2006, Clive Wing applied to register the trade mark **nlite**. Following examination, the application was accepted and published for Opposition purposes on 8 December 2006 in Trade Marks Journal No.6662 for the following goods:

**Class 11:** Energy saving lights and lighting equipment.

2) On 8 March 2007, Den Boer Beton Nieuw-Lekkerland BV filed a notice of opposition. This consists of grounds based upon sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (as amended) (the Act). Under section 5(2)(b) the Opponent relies on the following trade mark:

Trade Mark	No.	Application date	Registration date	Class & Specification
IN-LITE	E1301126	7.9.1999	25.11.2002	<b>11</b> - Low-voltage (48 volt alternating current or lower) installations used for garden and landscape lighting, but not including battery operated torches, battery operated flashlights, battery operated lanterns or hand held battery operated lighting units.

3) Insofar as the ground based on section 5(4)(a) of the Act is concerned, the opponent says, *inter alia*, that the mark IN-LITE has been used “..since at least as earlier (sic) as 2000..” and has since that time “...accrued enormous goodwill and reputation”.

4) On 13 June 2007, the applicant, Mr Wing, filed a counterstatement which runs to some four pages and which consist in essence of a denial of the grounds of opposition. I do not propose to summarise Mr Wing’s comments here, but have reproduced extracts from his counterstatement later in this decision.

5) Only the opponent filed evidence in these proceedings. Neither side wished to be heard, nor filed written submissions.

## OPPONENT’S EVIDENCE

6) The opponent filed a witness statement, dated 21 February 2008, by Alex Paleewong who is the Sales Director of, the opponent company. His statement is accompanied by eight exhibits. Ordinarily I would summarise this evidence here. However, given what I consider to be the “clear-cut” outcome of these proceedings, I do not think that on this occasion such a summary is necessary.

## DECISION

7) The grounds of opposition are based upon sections 5(2)(b) and 5(4)(a) of the Act. These read as follows:

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

(a).....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

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, or

(b) .....

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

8) An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

(a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) 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,”

9) In these proceedings under section 5(2)(b) of the Act, the Opponent is relying on the registered trade mark shown in paragraph 2 above, which has an application date of 7 September 1999 which is prior to that of the application for registration i.e. 2 October 2006; it clearly qualifies as an earlier trade mark under the above provisions. The application was published for opposition purposes on 8 December 2006; given the date of registration of the Opponent’s earlier trade mark i.e. 25 November 2002, this earlier trade mark is not subject to The Trade Marks (Proof of Use, etc) Regulations 2004.

10) In determining the question under section 5(2)(b), I take into account the guidance provided by the European Court of Justice (ECJ) in Case C-334/05P *Office for Harmonisation in the Internal Market v Shaker di L.Laudato & C. Sas* (unreported, 12 June 2007) in the following terms:

“33. In this regard, it is settled case-law that the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (see First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1); Case C- 342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 17; and Case C-120/04 *Medion* [2005] ECR I-8551, paragraph 26).

34. Moreover, the existence of a likelihood of confusion on the part of the public must be appreciated globally, taking into account all factors relevant to the circumstances of the case (see *SABEL*, paragraph 22; *Lloyd Schuhfabrik Meyer*, paragraph 18; Case C-425/98 *Marca Mode* [2000] ECR I-4861, paragraph 40; order in *Matratzen v OHIM*, paragraph 28; *Medion*, paragraph 27; and Case C-206/04 P *Mühlhens v OHIM* [2006] ECR I-2717, paragraph 18).

35. According to further settled case-law, the global assessment of the likelihood of confusion, in relation to the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global appreciation of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (see *SABEL*, paragraph 23; *Lloyd Schuhfabrik Meyer*, paragraph 25; *Medion*, paragraph 28; *Mühlhens v OHIM*, paragraph 19; and order in *Matratzen Concord v OHIM*, paragraph 29).

36. It should be added that in order to assess the degree of similarity between the marks concerned, it is necessary to determine the degree of visual, aural or conceptual similarity between them and, where appropriate, to assess the importance to be attached to those various factors, taking account of the category of goods or services in question and the circumstances in which they are marketed (see *Lloyd Schuhfabrik Meyer*, paragraph 27).

...

41. It is important to note that, according to the case-law of the Court, in the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see order in *Matratzen Concord v OHIM*, paragraph 32; *Medion*, paragraph 29).

42. As the Advocate General pointed out in point 21 of her Opinion, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element.”

11) In essence the test under section 5(2)(b) is whether there are similarities in marks and goods and services which would combine to create a likelihood of confusion. In my consideration of whether there are similarities sufficient to show a likelihood of confusion I am guided by the judgment mentioned above. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking into account the degree of similarity in the goods and services, the category of goods and services in question and how they are marketed. Furthermore, I must compare the applicant's mark and the mark relied upon by the opponent on the basis of their inherent characteristics assuming normal and fair use of the marks on a full range of the goods covered within the respective specifications.

12) The goods contained in the application for registration i.e. "energy saving lights and lighting equipment" will be purchased by both members of the general public for use in, for example, the home, garden etc and also by businesses or organisations for use in a commercial setting in, for example, shops, offices, factories, hospitals etc. Insofar as the general public are concerned, the goods are, in my view, most likely to be bought by self selection either off a shelf in a retail setting, from a catalogue, or on-line. Much the same I think applies to the purchase by commercial users, although I suspect that they are more likely to buy from specialist retail outlets servicing the trade, rather than from traditional retail outlets aimed at the general public. That being the case, it is, in my view, the visual and conceptual aspects of the respective trade marks that are likely to be the most important. I do not of course rule out telephone ordering of the goods (although this is, in my view, most likely to occur only after a visual inspection of the goods has already taken place in either a retail setting, in a catalogue or on-line), or that oral recommendations may play a part in the selection process.

13) The level of attention paid to the purchase of lights and lighting equipment is, in my view, likely to vary depending on the nature of the goods concerned and their cost. For example, one is unlikely, in my experience, to spend as much time and effort purchasing a low cost light bulb, as one would spend if one were purchasing a range of co-ordinated lighting installations for use, for example, in the home or garden, and certainly not as much time and attention as one would expect a commercial buyer to spend purchasing lighting for use in a range of commercial environments.

14) That said, even when one is purchasing a low cost light bulb, one has to ensure that it is the correct wattage, fitting etc so it is, in my view, fair to assume that a reasonable degree of care and attention will be paid to the purchase. Insofar as more sophisticated (and consequently expensive) lighting equipment is concerned, whether in a domestic or commercial setting, it would, in my view, be fair to assume that given the need to ensure that the lighting equipment concerned meets a range of user requirements, that in those circumstances a reasonably high level of attention will be paid to the purchase.

15) The respective parties goods at issue in these proceedings are as follows:

<b>Applicant's goods</b>	<b>Opponent's goods</b>
Energy saving lights and lighting equipment.	Low-voltage (48 volt alternating current or lower) installations used for garden and landscape lighting, but

	not including battery operated torches, battery operated flashlights, battery operated lanterns or hand held battery operated lighting units.
--	-----------------------------------------------------------------------------------------------------------------------------------------------

16) In its Statement of Grounds the Opponent contends that:

“The Applicant’s claimed goods are identical and similar to the goods covered by the Opponent’s Earlier Mark. [This Earlier Mark] includes..... All of these goods are identical (in that they encompass the narrower terms claimed in the Applicant’s Mark) or strongly similar to the Applicants goods..... Under the Canon test.....the above listed respective sets of goods share the same natures, the same purposes, the same trade channels and are in direct competition with each other and are therefore strongly similar.”

17) And:

“...Identity is made out in this case because the broad terms in the specification of the Opponent’s Earlier Mark.....encompass the...goods claimed by the Applicant.”

18) In his counterstatement the applicant comments on the respective parties goods in the following terms:

“4. Much more detail required from opposition for proper counter statement. Opposition's products are NOT identical and NOT similar. Oppositions products are not energy saving. All IN-LITE products appear to have luminous efficiency of less than 65 lumens / watt .All nlite products have luminous efficiency of more than 85 lumen/watt.

In fact the main products of nlite are sulphur plasma lights, we have sales and technology partnership with LG Electronics Korea. If products of IN-LITE are in fact similar to nlite then very serious patent infringement has taken place by the opposition. The will be investigated and pursued for clarity by ESP Systems Inc. and LG Electronics Inc. Products of IN-LITE are listed as (48 volt AC or lower) “low voltage” whereas products of nlite mark are very high voltage (4000 volt DC), They are not low voltage and are not Alternating Current.

Note. Earlier this year announcements were made on [www.nlitenment.com](http://www.nlitenment.com) and [www.nlites.co.uk](http://www.nlites.co.uk) that we would be releasing a 12v (low voltage DC) nlite sabre, which would be hand held and battery driven. The announcement was an error made by the web designer and created great confusion amongst our customers who only want very high voltage plasma based light systems which are truly energy efficient. This product has never been manufactured & has never been sold. The product is in fact the 220v AC version modified and is manufactured and sold exclusively to the Aircraft Industry Sector as a "daisy chain" 110v linear fluorescent light system for maintenance inspection inside very large aircraft during refurbishment and repair.

Opposition's statement of "All of these goods are identical” (given physical realty) makes no

sense at all and is an incredulous claim. All of these goods are not identical is correct. "Strongly similar", also quoted by opposition is also refers only to the classification class II energy saving light. The applicant submits that nlite products have been evaluated for their real 'energy saving' functionality by the US dept of defence, the British Army, the civil aviation Authority, Ford motor company. Clive Wing, the applicant, has submitted academic and presentation papers to TSI, these will be published this year. In combination with trials and test, nlite trade make will represent the most powerful and energy efficient high quality lights in the world. To summarise so far, nlite products are technically and philosophically, truly energy efficient, created within a paradigm of functionality and viability.

IN-FASHION, INDOORS and whether a human can actually 'see' the light or not , is quite irrelevant to nlite products.

Key features of nlite products include the effect of UV and 460nm wavelength light on human, animal and plant behaviour and physiology. This is particularly import when considering the balance between energy efficiency and functionality outside (and within) the visible light bandwidth.

"Same nature" and "same purposes" — same nature can be applied to all lighting contextually so meaning of opposition here is not understood by the applicant. Same purposes — also, all lighting has purpose to create and supply light, so I don't know what they mean. If "purpose" means "application" then I hope that the following helps explain *why* "purpose" is very different for nlite product compared with IN-LITE products. All nlite products have a development direction strongly towards high power, high voltage, large scale industrial and commercial energy saving functionality. Customers of nlite products are typically lighting large indoor and outdoor areas such as ware houses and car parks. Probably close to 50% of nlite product customers are using for horticultural applications, mainly commercial greenhouses. IN-LITE products look attractive and in-fashion and seem to be aimed at the office/domestic indoor (aesthetics dominated) and gardening markets. (low AC voltage is very desirable for delivering power from a distance, like a domestic garden)

In fact, nlite mark products are quite unsuitable for lighting a family home or garden. Very few of our products would be considered "attractive" or fashionable enough to feature anywhere else other than large inudtrial/horticulture sites, where purpose is all about delivering the function of the product in a form that reduces the running costs and energy consumption, not what it looks like. Same trade channels, also implies patent infringement by opposition. niite mark unique products are manufactured in UK, Germany, USA, Sweden, Estonia snd China. A majority of nfite products are distributed through an exclusive and listed network of distributors and wholesales, many of *which* are specialised and would never consider purchase or trade with IN-LITE, in-fashion 48volt ac or less product.

nlite distribution and trade channels are listed publicity on [www.nlites.co.uk](http://www.nlites.co.uk) and [www.nlitement.com](http://www.nlitement.com). nlite trade channels are dearly indicated by the type, location *and* typical applications of the nlite product by the listed Traders on our websites. The trade channels are so different that the statement of opposition that "...same trade channels and are in DIRECT competition with each other and are therefore strongly similar" is again incredulous and quite preposterous.

All nlite mark associated companies are willing *and* able to refer any requests, should we ever get any, for IN-LITE type products directly to IN-LITE, thus nlite competing directly with IN-LITE is

not possible and both of the marks differences are bolstered.

5: Broad terms stated gives no indication of the level or magnitude of broadness — As earlier explained, nlite products are, from a scientific, technical and engineering perspective "energy saving". Whereas IN-LITES product are only "socially" and in some cases politically "energy saving" lights and lighting equipment. The applicant wishes to argue that none of the IN-LITE products are, technically, energy saving. The contemporary definition of an "energy saving" light is extremely broad and encompasses replacement of incandescent lighting. nlite specialises in the replacement of energy inefficient, in- fashion lighting technology also used inside many IN-LITE products. The applicants aim is to enlighten the customer that aesthetics are nothing much to do with energy efficiency and that the science of light, in particular, plasma derived light is the dawn of a new age of Science.

However, we have no intention of producing little pretty lights that could replace any of the IN-LITE products. nlite products are typically high voltage lamps which have an output power of 200w to 3kw of light power. We are currently building the first 1.7million lumen Gobot (like a Batman light) for the US. Department of defence and propose to light an entire sulphur refinery owned by Shell, and being built now in Canada. The applicant proposes that the opposition lists, with technically proven efficiency the lumens/watt in scotopic, photopic and Imperial Circadian lumens of their alleged "energy saving" lights.

Furthermore, the applicant proposes a comparison between the energy efficiency of the opposition's lights and the applicant's lights. Particular attention should be given to the L.E.D. lighting of IN-LITES. L.E.D.s are one of the most energy IN-efficient light technologies to be marketed (and yet socially accepted as energy efficient) in this millenium. L.E.D.s typically have an energy efficiency of less than 30 lumens per watt. IN-LITES mark promotes extensively the use of L.E.D.s in more than half of their product range. The applicant sees this as the opposite to enlightenment. IN-LITE is actively bolstering the false and totally untrue notion that LED lighting is energy efficient.

Allowing pretty little L.E.D.s to be allowed in class 11 energy saving lights makes no sense to the applicant as this is usually done only by the technically ignorant who are influenced by commercial advertising rather than hard facts like "electricity bill figures" and system efficiency in lumens per watt. This "Identity" is false for IN-LITE, and the broad terms are just a spin on the truth and reality. INdeed, refusal of the mark nlite on grounds of broad encompassing meaning of IN-LITE, based on what class 11 is, would be a direct suppression and hindrance to the scientific progression of energy saving lights and lighting equipment."

19) Notwithstanding the applicant's detailed comments reproduced above, there can, in my view, be little doubt that on a plain reading of the specification as filed, that the goods contained in the opponent's registration i.e. low voltage installations used for garden and landscape lighting, are wholly contained with the phrase energy saving lights and lighting equipment contained in Mr Wing's application for registration. **The respective goods as filed are, in my view, identical.**



20) It is well established that the relevant consumer is considered to be someone who is reasonably well informed, circumspect and observant, who perceives trade marks as a whole and does not pause to analyse their various details; in addition, he/she rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he/she has kept in his or her mind. I have also to bear in mind the distinctive and dominant components of the respective trade marks.

21) The trade marks of the two parties are as follows:

<b>Applicant's Trade Mark</b>	<b>Opponent's Trade Mark</b>
Nlite	IN-LITE

### **Visual similarity**

22) In their Statement of Grounds, the opponent contends:

“..Visually, the Applicant's and Opponent's Earlier Mark are similar”.

23) In his counterstatement, Mr Wing says:

“Visually -

i. Do not agree. In fact IN-LITE is two words, first one is IN which looks like the word "in" but in BLOCK capital letters.

ii. The horizontal dash or NEGATIVE sign or hyphen is distinct and visually very noticeable separating the 2 words. The hyphen is associating their visual meaning, with each other and at same time visually emphasising that there are 2 words, each with independent meaning, visually. There is no part in nlite which visually resembles or is anything visually like the hyphen in IN-LITE.

iii. LITE is in BLOCK capitals and spelt using the Americanism of the English word "Light". This gives a hard and aggressive “look” to the word LITE and visually, not similarity requires similar geometry and symmetry which 2 words do not have.

iv. Suggestion of IN-LITE and nlite visually being "near-identical" is quite simply ridiculous, even in the same font they need bold text to relate them visually, surely anyone can see this? For the reader this ridiculous statement of being visually near-identical removes any pre-given creditability from anything else that is written by same author. The applicant wishes to take this example of ridiculous claim as a benchmark for the way in which the opposition have underpinned their Statement of Grounds.”

24) In my view, the parties trade marks consist of five and six letters respectively, with only the first letter of the opponent's trade mark differing from that of the applicant. In the opponent's trade mark the six letters are presented as two distinct words, IN and LITE and are represented in upper case separated by a hyphen, whereas the applicant's trade mark is presented as one word in lower case. That said, I note that the totality of the applicant's i.e. the same letters in the same order are included in the opponent's trade mark. Notwithstanding (i) the differences in the first letters of the respective trade marks (which it is well established is an important consideration when comparing trade marks often suggesting an absence of similarity), (ii) the differences in

presentation i.e. one and two words and lower and upper case presentations, in my view, **the respective trade marks share a significant degree of visual similarity.**

### **Oral/aural similarity**

25) In its Statement of Grounds, the opponent states:

“..Phonetically, the applicant’s mark is near-identical to the Earlier Marks”.

26) In his counterstatement, Mr Wing says:

“Phonetically -

i. We do not agree- we would ask for detail of alleged "near-Identical" phonetics. Possibly a sound recording of pronunciation would help prove.

ii. 'In-flight', as in in-flight entertainment is far closer phonetically to IN-LITE IN is distinctive phonetically with emphasis on the “T”. In sounding like part of the word "Inside", or "IN" as IN- FASHION. The word IN is phonetically independent from the next word LITE, that's why they are written as 2 words linked with a hyphen or negative sign.

iii. The mark nlite is Intended to be pronounced similar to nwhite as is in "black'n white". The word nlite is a made-up word that was made in England, it should be pronounced with an English accent, not a Dutch accent. The phonetically acquired meaning of the word requires a cultural understanding of its origin. The English language should not be phonetically and interpretatively limited and restricted by the opinions of Dutch people who are not culturally original English speaking or writing in English.”

27) In my view, Mr Wing’s trade mark would, I think, be articulated as either a single syllable word, nlite or as two syllables, n lite, whereas the Opponent’s trade mark would I think be articulated as two syllable as IN LITE. Whilst as I mentioned above the Opponent’s trade mark starts with a different letter to Mr Wing’s trade mark, overall I **think there is a high degree of oral/aural similarity between the respective trade marks.**

### **Conceptual similarity**

28) In its Statement of Grounds, the Opponent contends:

“..Conceptually neither the Opponent’s Earlier Mark nor the Applicant’s Mark has any meaning which could be used by the consumers to distinguish them...”

29) In his counterstatement, Mr Wing says:

“Conceptually - far more detail needed for a constructive and appropriate counter-statement. Conceptually we disagree totally.

IN-LITE is interpreted as a mark concept for a product or service for indoor or "IN" fashion lights. Nlite is phonetically abbreviated version of the word 'enlighten". It is a mark conceived to represent enlightenment and education when working with this mark. On the Internet the mark nlite features on the web site [www.nliment.com](http://www.nliment.com) , this is the web home and the roots of the mark nlite and

portrays the concept of nlitement and nlite. They are both unashamedly pseudo-Americanisms of the properly spelt and real English words enlightenment and enlighten.”

30) Mr Wing explains how he thinks the opponent’s trade mark would be approached and also to the thinking behind his own trade mark. With all due respect to Mr Wing, I doubt the average consumer of lights and lighting equipment would pause to analyse his trade mark and in so doing unpack the very subtle message he intends it to convey. Similarly, I have no information on how the average consumer would approach the opponent’s IN-LITE trade mark. It may be that as Mr Wing suggests the IN element may be seen as either a reference to suitability for use indoors or as an indication that the goods are considered fashionable; put simply, I just don’t know. In my view the average consumer is likely to treat Mr Wing’s trade mark as an invented word, albeit perhaps that given the presence in the trade mark of the variant spelling of the word LIGHT, that the goods sold under it may be or have some connection with lights or lighting. Similar considerations apply to the opponent’s trade mark i.e. the LITE element may stimulate an association with lights or lighting, but overall I very much doubt the Opponent’s trade mark is likely to create any conceptual picture in the average consumer’s mind. **Overall, I take the view that other than a possible association with lights or lighting, neither parties’ trade mark is likely to trigger any conceptual associations in the mind of the average consumer.**

#### **Likelihood of confusion**

31) When determining whether there is a likelihood of confusion a number of factors need to be considered. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the goods and vice versa. It is also necessary for me to consider the distinctive character of the earlier trade mark as the more distinctive the earlier trade mark (either inherently or as a result of any use that has been made of it) the greater the likelihood of confusion. The distinctive character of the earlier trade mark must be appraised by reference to the goods in respect of which it is registered and also by reference to the way it will be perceived by the relevant consumer.

32) The opponent has provided evidence of use of their trade mark in the form of the witness statement and exhibits mentioned at paragraph 6 above. Although I have not felt it necessary to summarise this evidence, I do note that use in the United Kingdom has been claimed since 1999 with turnover in the period 2001 to 2005 amounting to 940,000 Euros which equates to some 9494 units being sold. As I indicated above, the LITE element of the Opponent’s trade mark is perhaps suggestive of a trade in lights and lighting, but beyond that any meaning the totality of the mark conveys is, in my view, difficult to discern. Therefore, given what I consider to be the inherent distinctiveness of the opponent’s trade mark, and the likely size of the lighting market in the United Kingdom (even if restricted to the market for garden and landscape lighting), this modest level of sales is unlikely, in my view, to improve the opponent’s position to any great extent. That said, the opponent’s trade mark is, in my view, and based on its inherent characteristics alone, deserving of a reasonable penumbra of protection.

33) In summary, I have concluded that: (i) on a plain reading as filed, the goods in Mr Wing’s application and those contained in the opponent’s earlier trade mark are identical, (ii) that there is a significant degree of visual similarity, a high degree of oral/aural similarity, and (beyond the

common element LITE which is likely to be seen as a reference to lights and lighting), no conceptual similarity between the respective trade marks, and (iii) that the opponent's trade mark is deserving of a reasonable penumbra of protection. In addition, I have concluded that given the nature of the goods at issue and the traits of the relevant consumer when purchasing such goods, that the visual and conceptual aspects of the comparison are likely to be the most important, whilst recognising that oral/aural similarity may also be a factor in the purchasing process. Applying the global approach advocated to these findings, the likelihood of direct confusion i.e. that Mr Wing's trade mark will be mistaken for that of the opponent (particularly when imperfect recollection is factored into the equation) is, in my view, a real one, and the opposition based on section 5(2)(b) of the Act succeeds accordingly.

#### **Section 5(4)(a) of the Act**

34) As I said in paragraph 6 above, the decision in this case is, in my view, a straightforward one. Consequently, given my very clear finding based on section 5(2)(b) of the Act, I see no need to consider this ground further.

#### **COSTS**

35) The opposition has been successful and the opponent is entitled to a contribution towards its costs. I order the applicant, Mr Wing, to pay to the opponent the sum of £1,000. 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 11 day of August 2008**

**G W SALTHOUSE**  
**For the Registrar**  
**The Comptroller-General**