

O-174-11

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NOS 2536892  
BY LONGSHOT VENTURES LIMITED TO REGISTER THE SERIES OF TWO  
TRADE MARKS**

**Pixie and Punk**

**AND**



**IN CLASSES 16, 25 AND 28**

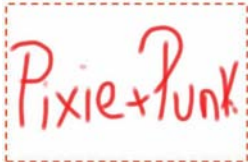
**AND IN THE MATTER OF OPPOSITION  
THERE TO UNDER NO 100444  
BY RAINBOW SPA**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF application No. 2536892  
by Longshot Ventures Ltd to register the series of two trade marks**

Pixie and Punk

**And**



**in Classes 16, 25 and 28**

**and**

**IN THE MATTER OF Opposition thereto under No. 100444  
by Rainbow SPA**

**BACKGROUND**


1) On 22 January 2010, Longshot Ventures Ltd (“Longshot”) applied under the Trade Marks Act 1994 for registration of the above shown marks in respect of the following goods:

**Class 16:** *childrens books*

**Class 25:** *childrens clothing*

**Class 28:** *childrens toys*

2) The application was published in the Trade Marks Journal on 26 February 2010 and on 22 April 2010, Rainbow SPA (“Rainbow”) filed notice of opposition to the application. The single ground of opposition is that the application offends under Section 5(2)(b) of the Act because the application is in respect of marks that are confusingly similar to Rainbow’s earlier mark and in respect of goods that are identical or highly similar to some of the goods covered by its earlier mark. Rainbow relies upon a Community designation of an International registration (IR(EC)). It has not yet been granted protection as it currently under opposition. The relevant details of this earlier mark are:

Mark and relevant dates	Relevant list of goods
IR(EC) 0945033    Date of International registration: 25 June 2007	<b>Class 16:</b> ... printed matter...  <b>Class 25:</b> <i>Clothing items...</i>  <b>Class 28:</b> <i>Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees</i>

3) Longshot subsequently filed a counterstatement admitting that the respective goods are identical or similar to some of its goods, but it denies that the marks are similar.

4) Both sides filed evidence in these proceedings. Both sides ask for an award of costs. The matter came to be heard on 11 May 2011. Rainbow were not represented but provided written submissions in lieu of attendance. Longshot was represented by Kate Széll for Venner Siplely LLP.

### **Opponent's Evidence**

5) This takes the form of a witness statement by Vanessa Ann Broughton Lawrence, a member of the Institute of Trade Mark Attorneys and registered trade mark attorney and partner of A.A. Thornton & Co, Rainbow's representatives in these proceedings. At Exhibit VABL1, Ms Lawrence provides a copy of the details of Rainbow's earlier mark obtained from the OHIM database.

### **Applicant's Evidence**

6) This takes the form of a witness statement by Julia Helena McFarlane, trade mark assistant with Venner Shipley LLP, Longshot's representatives in these proceedings. Ms McFarlane states that on 4 and 5 October 2010, she undertook a number of Internet searches. At Exhibit JHM1 are copies of the results of a search for "pixie books" on the websites of *Waterstones*, *Foyles* and *W H Smiths*. These searches obtained results for a number of books where the word "Pixie" appeared in the name of the title, such as *Pixie O'shaughnessy*, *More About Pixie*, *The Love Affairs of Pixie*, *Nippy the Pixie*, *Enid Blyton's a Book of Pixie Stories* and *Pixie Folklore and Legends*.

7) The results of a similar search for “pixie magazine” are provided at Exhibit JHM2. These results illustrate a *Disney Tinkerbell* magazine featuring a “Pixie puzzles workbook”

8) The results of a search for “pixie clothes” are included at Exhibit JHM3 and illustrates 2060 results. JHM4 provides copies of two websites, the first promoting its “Handmade Pixie Clothes” and the second promoting “Fairy and pixie clothes natural design” such as “pixie suede tops” and “pixie dresses”. A similar search, this time for “pixie clothing” produced 5710 results. The first two pages of these results are produced at Exhibit JHM5. Extracts from specific websites are also provided at Exhibit JHM6. These include “pixie pants”, “pixie skirts” and “pixie tops” being promoted on the website [www.pixiepixie.com](http://www.pixiepixie.com). The origin of this website is unclear but it includes a facility to select “British Pounds” as the “currency”.

9) The website [www.t-shirts.cafepress.co.uk](http://www.t-shirts.cafepress.co.uk) provides details of “pixie t-shirts” and illustrates numerous t-shirts bearing slogans, one of which relates to pixies, namely “I Love Pixies”. A further result from [www.psymusic.co.uk](http://www.psymusic.co.uk) provides a discussion thread originating from someone asking “does anyone know any good sites where i could find pixie style clothing from?”. Under the “links” section on the website [www.fairylandtrust.org](http://www.fairylandtrust.org) is a link to the website [www.paragonpixie.co.uk](http://www.paragonpixie.co.uk) promoted as “Original Pixie clothing for pixies, fairies, nymphs and gnomes of all ages!” Pages from the catalogue available on this website refer to “fleece pixie wrap jumpers”, “cotton pixie picture top”, “cotton reversible pixie belle dress” and “cotton pixie skirt”. An extract from the website [www.blushfashions.com](http://www.blushfashions.com) refers to “Children’s Peter Pixie Costume” and “Pixie Belle Party Dress”.

10) A further search for “pixie games” gave rise to 3960 results, the first page of which is provided at Exhibit JHM7 showing the term appearing on a number of websites. Copies of pages from the websites [www.ehow.com](http://www.ehow.com) and [www.uk-entertainers.co.uk](http://www.uk-entertainers.co.uk) are provided. The first is a page entitled “Pixie Games for Girls” and includes descriptions of a number of party games. The second website promotes the services of “Felicity Fairy & Muddlehead the Pixie” who appear to be children’s party entertainers and provide “Fairy Crafts” and “Pixie Games”.

11) A final search is in respect of the terms “Pixie Dolls” and “Pixies Toys”. Extracts from three websites are provided at Exhibit JHM8. At [www.playmerrilytoys.co.uk](http://www.playmerrilytoys.co.uk) “Fairy and Pixie Dolls” are promoted. At [www.ghostofthedoll.co.uk](http://www.ghostofthedoll.co.uk), a set of pixie dolls are available with names such as “Double Daisy Pixie”, “Pine Pixie” and “Ground Ivy Pixie”. A third website, [www.thetoyreview.com](http://www.thetoyreview.com) reviews “Bratz Fashion Pixies”! The geographical location of the origin of this website is unclear.

## DECISION

### Section 5(2)(b)

12) Section 5(2)(b) reads:

“(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.”

13) 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.”

14) Of potential relevance to a ground of opposition under Section 5(2) are the provisions that relate to proof of use. Section 6A(1) details the circumstances where these provisions apply:

#### **“6A Raising of relative grounds in opposition proceedings in case of non-use**

(1) This section applies where –

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.”

15) Rainbow relies upon one Community designation of an International trade mark. It is not yet protected as it is subject to opposition proceedings at the European Trade Mark Office, the Office for Harmonization in the Internal Market ("the OHIM"). It, therefore, does not qualify as an earlier mark as defined by Section 6 of the Act. The implications of this to the current proceedings is that if I find in favour of Rainbow, any decision will be provisional pending the outcome of the proceedings before the OHIM.

16) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law provided by the Court of Justice of the European Union (CJEU) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] FSR. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] ETMR 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P (LIMONCELLO). 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*,
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, 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.*,
- (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*,
- (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*,
- (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*,
- (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*,

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(h) 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*,

(i) 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 and Adidas Benelux BV*,

(j) 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*.

(k) 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; 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; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM (LIMONCELLO)*

**Comparison of goods**

17) The relevant goods are reproduced below:

<b>Rainbow's relevant goods</b>	<b>Longshot's goods</b>
<b>Class 16:</b> ... printed matter...	<b>Class 16:</b> childrens books
<b>Class 25:</b> Clothing items...	<b>Class 25:</b> childrens clothing
<b>Class 28:</b> Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees	<b>Class 28:</b> childrens toys

18) At the hearing, Ms Széll conceded that the respective goods are identical. Goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the registration or when the goods designated by the registration are included in a more general category designated by the earlier mark (see the guidance of the General Court (“GC”), in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-133/05, at paragraph 29). With this guidance in mind, it is clear that *printed matter* can include *children’s books*, *clothing items* can include *children’s clothing* and *games and playthings* can include *children’s toys*. Therefore, the goods are indeed identical.

### ***The average consumer***

19) As matters must be judged through the eyes of the average consumer (*Sabel BV v. Puma AG*, paragraph 23) it is important that I assess who the average consumer is for the goods at issue. I have found that all of the respective goods are identical and it follows that the average consumer of the respective goods will be the same.

20) The average consumer of the respective goods is those members of the general public who wish to buy children’s books, clothing or toys. For all these goods the level of care exhibited during the purchasing act will be the same as for other consumer products in that it will not involve the highest degree of attention, but neither will it be an unconsidered purchase.

21) In respect of clothing, I am mindful of the comments of Mr Simon Thorley, sitting as the Appointed Person, in *React trade mark* [2000] R.P.C. 285:

“There is no evidence to support Ms Clark’s submission that, in the absence of any particular reputation, consumers select clothes by eye rather than by placing orders by word of mouth. Nevertheless, my own experience tells me it is true of most casual shopping. I have not overlooked the fact that catalogues and telephone orders play a significant role in this trade, but in my experience the initial selection of goods is still made by eye and subsequent order usually placed primarily by reference to a catalogue number. I am therefore prepared to accept that a majority of the public rely primarily on visual means to identify the trade origin of clothing, although I would not go so far as to say that aural means of identification are not relied upon.”


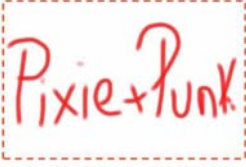
22) The General Court (GC) has continued to identify the importance of visual comparison when considering the purchasing act in respect of clothing (see for example Joined Cases T-117/03 to T-119/03 and T-171/03 *New Look Ltd v OHIM (NLSPORT et al)* [2004] ECR II-3471 at [49]-[50] and Case T-414/05 *NHL Enterprises BV v OHIM (LA KINGS)* [2009] ECR II.). At the hearing, Ms Széll argued that this is particularly the case in respect of children’s clothing as well as



children’s books and toys. I concur with this to a limited extent. In respect of the respective identical goods, the purchasing act will generally be a visual one. However, I do not ignore the aural considerations that may be involved. This is particularly so in respect of books, where the consumer may ask for a book rather than attempting to identify it on the shelf.

**Comparison of marks**

23) For ease of reference, the respective marks are:

Rainbow’s mark	Longshot’s marks
	<p data-bbox="874 712 1086 745">Pixie and Punk</p> 

24) When assessing the extent of similarity between the respective marks, I must do so with reference to their visual, aural and conceptual similarities bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23). Rainbow’s best case resides with a comparison with Longshot’s first mark that has no stylisation (the second mark can be said to put further distance between the respective marks). I will consider what are the dominant and distinctive element’s of the respective marks first. In respect of Rainbow’s mark, the device element that replaces the letter “x” in the word PIXIE is enlarged and appears in the middle of the mark, nevertheless the average consumer will still recognise the mark as being the word PIXIE. Due to its size and position within the mark and the fact that it is of a reasonable level of distinctiveness, the “x” device is a distinctive element of this mark. That said, the letters “pi” and “ie” cannot be ignored as they are fundamental in providing the mark, as a whole, with its identity as the word PIXIE.

25) At the hearing, Ms Széll submitted that the word PIXIE, alone, lacks distinctiveness and therefore is not the dominant and distinctive element of Rainbow’s mark. Whilst the word is certainly not endowed with a high level of distinctive character by virtue of its well understood meaning (I will discuss this further in paragraph 29 below), I am of the view that it is not totally devoid of distinctiveness either. This, combined with the prominence of the word within the mark, results in the word being, if not dominant, certainly not negligible in the sense described in *LIMONCELLO*. I conclude that the distinctive character resides in the combination of the word together with the device element. The consumer will not attempt to divide the mark into its constituent parts.

26) In respect of Longshot's mark, Ms Széll submitted that neither the word PIXIE nor the word PUNK is the dominant distinctive element, but rather the distinctiveness resulted from the combination of all the elements. Rainbow, in its written submissions, argued that the words AND PUNK are merely an adjunct or sub-brand to the word PIXIE. I do not quite agree with either party. The words AND PUNK are clearly not an adjunct but are an integral part of the mark. The two words are of equal size within the mark and are similar in length. They are linked by the word AND. Noting all of this, I conclude that the words PIXIE and PUNK share an equal dominance within the mark. By virtue of their ordinary meanings they are not endowed with a particularly high level of distinctive character, but nevertheless they possess some distinctiveness.

27) Turning to a comparison of the aural, visual and conceptual considerations, I shall consider visual similarities first. Rainbow's mark contains the prominent large "x" device that could be described as a stylised representation of a butterfly or fairy wings. On the right hand side of this device are the letters "pi" and, on the left, the letters "ie". The effect of this presentation is that the mark presents as the word PIXIE, with an enlarged letter "x". On the other hand, Longshot's mark consists of the three words PIXIE, AND and PUNK in ordinary typeface. The device element representing the letter "x" in Rainbow's mark is an obvious point of difference as is the additional words "and Punk" in Longshot's mark. At the hearing, Ms Széll pointed out that there is no similarity in the stylisation of the respective marks. Nevertheless, Rainbow's mark is still clearly the word PIXIE which is also the first word appearing in Longshot's mark. This is a clear point of similarity. Taking all of this into account, I conclude that the respective marks share a moderate level of visual similarity, but I put it no higher than that.

28) From an aural perspective Rainbow's mark will be pronounced as the two syllable word PIK-SEE. Longshot's mark will be pronounced as PIK-SEE-AND-PUNK. The respective marks share the same first two syllables but differ in other respects. Taking this into account, I conclude they share a moderate level of aural similarity.

29) Conceptually, in the absence of any other pointer within the mark, Rainbow's mark will be understood as a reference to "a supernatural being in folklore and children's stories, typically portrayed as small and human-like in form..."<sup>1</sup>. Whilst Longshot's evidence relating to the meaning of the word PIXIE has been criticised by Rainbow, it appears to show a meaning consistent with the dictionary meaning of PIXIE. There is no indication that, in Rainbow's mark, it will be perceived as having any alternative meaning. On the other hand, whilst Longshot's mark may also be understood as a reference to a supernatural being

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<sup>1</sup> "pixie". Oxford Dictionaries. April 2010. Oxford Dictionaries. April 2010. Oxford University Press. 11 May 2011 <[http://oxforddictionaries.com/view/entry/m\\_en\\_gb0636620](http://oxforddictionaries.com/view/entry/m_en_gb0636620)>.

(and also a punk rocker or a worthless person<sup>2</sup>), it may also be perceived as a reference to two characters named PIXIE and PUNK. This is because without the use of the definitive article or an adjective to provide additional context, they may be perceived as proper nouns rather than common nouns. Taking account of the possibility for Longshot's mark to be perceived in two different ways, the latter way having less conceptual similarity to the earlier mark than the former way, I conclude that the respective marks share a moderate level of conceptual similarity.

30) I must factor in all of the above when considering the level of similarity of the respective marks in their entirety. The marks share a moderate level of aural, visual and conceptual similarity. This combines to create a moderate level of similarity overall.

### ***Distinctive character of the earlier trade mark***

31) There is no evidence of use of Rainbow's mark and, therefore, I need only to consider the level of inherent distinctive character of its mark. The word PIXIE does not have a particularly high level of distinctive character, as discussed earlier. However, the replacement of the letter "x" by the device element increases the inherent distinctiveness of the mark and I conclude it has a moderately high level of distinctive character overall.

### ***Likelihood of confusion***

32) I must adopt the global approach advocated by case law and take into account that marks are rarely recalled perfectly with the consumer relying instead on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27).

33) At the hearing, Ms Széll submitted that that as the only common element between the respective marks is the word PIXIE and because this word is not distinctive for the relevant goods, then a likelihood of confusion cannot exist. In doing so, Ms Széll referred me to a number of decisions of the OHIM where she argued the facts of the case and the outcomes supported her submissions. Whilst not bound by the decisions of the OHIM, I have borne these in mind. In addition, Ms Széll also referred to the following guidance of the General Court (GC) in *CK v CK Creaciones Kenya*, Case T-185/07:

“39 Furthermore, according to established case-law, a compound trade mark cannot be regarded as similar to another trade mark which is identical or similar to one of the components of the compound mark,

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<sup>2</sup> "punk". Oxford Dictionaries. April 2010. Oxford Dictionaries. April 2010. Oxford University Press. 11 May 2011 <[http://oxforddictionaries.com/view/entry/m\\_en\\_gb0674100](http://oxforddictionaries.com/view/entry/m_en_gb0674100)>.

unless the component forms the dominant element within the overall impression created by the compound mark. That is the case where that component is likely to dominate, by itself, the image of that mark which the relevant public keeps in mind, with the result that all the other components of the mark are negligible within the overall impression created by it.”

34) I note this, and also that the GC went on to say:

“40 However, it is not appropriate to take into consideration only one component of a complex trade mark and compare it with another mark. On the contrary, such a comparison must be made by examining the marks in question, each considered as a whole (Case C-334/05 P OHIM v Shaker [2007] ECR I-4529, paragraph 41; Case C-193/06 P Nestlé v OHIM and Quick [2007], not published in the ECR, paragraph 35; and MATRATZEN, paragraph 34).”

35) Of relevance here is also the guidance of the GC in *CM Capital Markets Holding, SA v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T- 563/08:

“39. ... Owing to their weak, or even very weak, distinctive character, descriptive elements of a trade mark are not generally regarded by the public as being dominant in the overall impression conveyed by that mark, .... That does not mean, however, that the descriptive elements of a mark are necessarily negligible in the overall impression conveyed by that mark. It is necessary, in particular, to examine whether other elements of the mark are likely to dominate, by themselves, the relevant public’s recollection of that mark ....

45 ..., as regards the word element of the earlier marks, it must be observed that although ... the expression ‘capital markets’, which is descriptive of the services covered by the earlier marks, is not generally likely to dominate the overall impression conveyed by the earlier marks, it is nevertheless a relevant element for the purposes of a comparison of the signs at issue because, inter alia, it is as prominent, visually, as the graphic element.”

36) In respect of Rainbow’s mark, the relevant consumer will remember the word PIXIE. It is the only aural element of the mark and as such, a degree of attention will be focussed upon it. The get-up and device element that replaces the letter “x” does not detract from this. As such, I cannot conclude that the word PIXIE is negligible within the mark, when viewed as a whole. As such, it is right and appropriate that it forms part of my consideration of likelihood of confusion.

37) Having said this, the word PIXIE is clearly not endowed with a high level of distinctiveness, and Ms Széll has urged me to conclude that PIXIE is totally

devoid of distinctive character. Nevertheless, it provides the point of similarity between the marks, and in particular, aural or phonetic similarity. In this respect, I am mindful of Case C- 206/04, *P Mülhens GmbH & Co. KG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, paragraph 21 and Case T-488/07, *Cabel Hall Citrus Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, paragraph 52 where it has been established that whilst phonetic similarity alone may be sufficient to create a likelihood of confusion, such confusion must be established as part of a global assessment and aural similarity is but one of the relevant factors.

38) I have found that the respective marks share a moderate level of aural, visual and conceptual similarity. This combines to create a moderate level of similarity overall. I have also found that Rainbow's earlier mark has a moderately high level of distinctive character and that the relevant goods are identical. I also note that the common element PIXIE appears at the beginning of Longshot's mark. It is established that the first part of words catch the attention of consumers (see joined cases T-183/02 and T-184/02 *El Corte Inglés v OHIM – González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II-965, paragraph 81). As the UK consumer reads from left to right, it can be inferred that this guidance extends to where the first part of the *marks* are the same (as opposed to the first part of a *word*).

39) Taking account of all of the above, and on the balance of probability, despite the respective marks sharing the common aural (and to a lesser degree, the visual) element PIXIE, the differences in get-up, the addition of the words AND PUNK and the low level of distinctiveness in the word PIXIE combine to outweigh this similarity and the fact that identical goods are involved. I, therefore, conclude that there is no likelihood of confusion. In reaching this conclusion, I bear in mind that the common element PIXIE appears at the beginning of Longshot's mark and is the only aural element of Rainbow's mark and that imperfect recollection is a factor. The average consumer will not confuse the marks or assume that the goods provided under the respective marks originate from the same or linked undertaking.

40) This finding is in respect of a comparison between Rainbow's mark and Longshot's word mark. Longshot's stylised mark has additional differences when compared to Rainbow's mark and it follows that a likelihood of confusion is even less in respect of this mark. My findings therefore relate to both of Longshot's marks.

41) In light of this finding, the opposition is rejected in its entirety.

## **COSTS**

42) The opposition having failed, Longshot Ventures Ltd is entitled to a contribution towards its costs. I take account of the fact that a hearing has taken place and that Rainbow filed written submissions in lieu of attendance. I award costs on the following basis:

Considering Notice of Opposition and considering other side's statement	£300
Preparing and filing evidence and considering other side's evidence	£600
Preparing and attending hearing	£600
<b>TOTAL</b>	<b>£1500</b>

43) I order Rainbow SPA to pay Longshot Ventures Ltd the sum of £1500. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 24 day of May 2011**

**Mark Bryant  
For the Registrar,  
the Comptroller-General**