

O/207/12

TRADE MARKS ACT 1994

**CONSOLIDATED PROCEEDINGS IN THE MATTER OF APPLICATIONS
2503340 AND 2503307
BY CCS DIRECT LLC FOR THE RESPECTIVE TRADE MARKS:**

(CS)

AND

CCS

AND

**RESPECTIVE OPPOSITIONS THERETO (NOS 99024 AND 99023)
BY CENTRAL PARK LABELS GMBH**

The background and the pleadings

1) Application 2503340 was filed by CCS Direct LLC (the “Applicant”) on 25 November 2008 in respect of the following mark:



Application 2503307 was also filed by the Applicant on 25 November 2008 in respect of the plain letters: **CCS**.

Both marks were published in the Trade Marks Journal on 6 February 2009. Various goods and services in classes 25, 28 & 35 are sought to be registered, but for both marks the opposition is only against:

Class 25: Shoes and boots.

Class 35: Retail and online store services and mail order catalogue services connected with sports equipment, namely related footwear.

2) Central Park Labels GmbH (the “Opponent”) opposes the registration of both the above applications in respect of the above goods and services. Its oppositions were filed on 30 April 2009 and are based on a ground under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). A single earlier mark is relied upon, namely International Registration (“IR”) 769008, as shown below:



The IR is protected in the UK in respect of various goods in classes 18, 25 & 28, but only the following is relied on:

Class 25: Footwear.

3) The IR designated the UK for protection on 11 October 2001, protection subsequently being conferred on 2 August 2002. The consequences of these dates are that: i) the Opponent’s mark constitutes an earlier mark in accordance with section 6 of the Act, and ii) the earlier mark is subject to the proof of use conditions contained in section 6A of the Act, protection being conferred more than five years before the publication of the Applicant’s mark. The relevant period during which use must be proved is 7 February 2004 to 6 February 2009.

4) The Applicant filed counterstatements denying that the marks are similar to the Opponent’s earlier IR 769008 (“the earlier mark”). The Applicant denies that the Opponent’s earlier mark gives any rights in “CPS” per se separate from the

form of the mark in which it has been registered. Furthermore, the Applicant submits that even if the respective marks are compared on the basis of the three letters used in the marks, they differ sufficiently for there to be no likelihood of confusion. The Applicant does not deny that footwear encompasses shoes and boots. However, the Applicant denies that retail and online store services and mail order catalogue services connected with sports equipment or with footwear are similar services to footwear per se. The Applicant asked the Opponent to provide proof of use of its earlier mark in respect of the goods on which the Opponent bases its opposition, namely “footwear”.

5) Following the filing of the respective counterstatements the proceedings were consolidated. The Opponent filed evidence. Both parties filed written submissions in lieu of attendance at a hearing.

The evidence

The Opponent’s evidence – witness statement of Susanne Weber

6) Ms Weber states that she has worked since 1 June 2006 in the Employee Distribution department of Central Park Shoes Vertriebs GmbH (“CPSV”), and is fully authorized to make her statement on behalf of the company. She explains that, although there is no formal licence agreement between CPSV and the Opponent, the two companies work closely together and have the same shareholders, and that CPSV is authorized by the Opponent to use the trade mark CPS (stylized) in the UK in respect of its footwear. Extracts from the German Commercial Register are attached as **Exhibit SW1**. Unfortunately, an English translation seems to have been provided only in respect of the extract referring to the Opponent. However, the extracts appear to show that the Opponent and CPSV share the same general manager and that their headquarters are based in the same place.

7) By way of background Ms Weber states that Central Park International Corporation (“CPIC”), a licensee of the Opponent, exported footwear under “the CPS (stylized)” trade mark into the UK in 2003; 4,800 pairs of shoes were sold in one batch to Original Shoe Company Limited, a British shoe retailer. It should be noted that this consignment took place before the relevant period for proof of use. **Exhibit SW2** contains copies of a commercial invoice, certificate of origin, export certificate and bill of lading relating to this consignment. It also includes copies of proforma invoices and a purchase order relating to one of the orders covered by the commercial invoice. These contain references to “Sock logo: CPS” under the heading “Description”. **Exhibit SW3** contains undated photographs of shoes bearing the earlier mark. Ms Weber states that these photographs show examples of the “CPS (stylized) footwear” which CPSV produces, and which “would be representative of those sold to Original Shoe Company Limited in 2003”.

8) Ms Weber states that in 2007 representatives of CPSV attended the national fashion exhibition in the UK known as MODA FOOTWEAR, and in 2008 CPSV exhibited there. Amongst other products, it exhibited footwear bearing the CPS (stylized) trade mark. The undated photographs in **Exhibit SW3** are again relied upon as showing “representative examples” of footwear bearing the CPS (stylized) trade mark, such as would have been exhibited. General information on MODA FOOTWEAR is attached as **Exhibit SW4**. **Exhibit SW5** shows an invoice charging CPSV for stand space at MODA FOOTWEAR 17-19 February 2008.

9) **Exhibit SW6** consists of an undated letter from Mr Colin Struthers to Mrs Bender-Jacobi, who is described by Ms Weber as CPSV’s lawyer. The letter appears to have been solicited for the proceedings and thus is to be treated as hearsay evidence, as per Tribunal Practice Note (“TPN”) 5/2009. Because the letter is undated, it is not clear to what extent the activities it refers to may have fallen within the relevant proof of use period. It is written on headed paper bearing the name “Central Park Shoes UK” beneath a logo identical with that used by CPIC on its documentation in **Exhibit SW2** and on the English-language pages from the “Central Park Shoes” website submitted in **Exhibit SW9**, but which is not the earlier mark relied on by the Opponent in these proceedings. Mr Struthers explains that “Central Park Shoes UK” represents Central Park Shoes in the UK, having “*been involved with the brand/product*” for over 2 years, and having a team of 4 in its UK offices/showroom. It offers sales and design for “*the CPS product*” and shows and develops samples “*with the CPS branding*” to UK customers “*who then place orders with there [sic] own branding, although sometimes it may be that they would buy from us using the CPS branding/logo*”. It performs a representative function at the Moda Int Footwear show in the UK.

10) **Exhibit SW7** comprises photographs with a signboard showing Central Park Shoes UK as a business in “The Croft: Business Park”, and internal and external shots of the premises used by Central Park Shoes UK. None of the photographs show the earlier mark. Ms Weber states that the photographs were taken at the latest on 23 December 2009. It should be noted that this date falls outside the relevant proof of use period.

11) **Exhibit SW8** shows an advertisement for a merchandiser position at Central Park Shoes. Ms Weber says this is an extract from “*Draper’s magazine, a well-known publication in the fashion field*”. It does not show the earlier mark, and Ms Weber says it was published on 23 December 2009 at the latest. It should be noted that this date falls outside the relevant proof of use period.

12) **Exhibit SW9** comprises print-outs of English-language pages from the “Central Park Shoes” website. On one of the print-outs the letters CPS appear in plain capitals between pictures of shoes, though not in the stylized form of the earlier mark relied on by the Opponent in these proceedings. The print-outs are dated 8th September 2010, and therefore record the state of the website after the

relevant proof of use period. Ms Weber states that CPSV and its affiliates remain committed to creating a market for “CPS (stylized) branded footwear” in the UK, as evidenced by the establishment in 2009 of what she terms “the UK subsidiary”.

The proof of use provisions

13) As stated earlier, the proof of use provisions apply to the Opponent’s earlier mark. The use conditions are set out in section 6A(3) of the Act as follows:

“...The use conditions are met if –

- (a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.”

14) Section 100 is also relevant; it reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

15) When considering whether genuine use has been shown, I bear in mind the leading authorities on the principles to be applied namely: the judgments of the Court of Justice of the European Union (“CJEU”) in *Ansul BV v Ajax Brandbeveiliging BV* [2003] R.P.C. 40 (“*Ansul*”) and *Laboratoire de la Mer Trade Marks C-259/02* (“*La Mer*”). The position¹ was helpfully summarized by Ms Anna Carboni, sitting as the Appointed Person, in BL O-371-09 *SANT AMBROEUS*:

“42. The hearing officer set out most of the key extracts from *Ansul* and *La Mer* in his decision, so I shall not reproduce them here. Instead, I try to summarise the “legal learning” that flows from them, adding in references to *Silberquelle* where relevant:

(1) Genuine use means actual use of the mark by the proprietor or a third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely “token”, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

¹ Which also took into account the guidance set out in *Silberquelle GmbH v Maselli-Strickmode GmbH* Case C495/07, [2009] ETMR 28

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] - [23].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no *de minimis* rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25].”

16) The relevant period for my assessment is the five year period ending on the date of publication of the Applicant’s marks, namely: 7 February 2004 to 6 February 2009. The Opponent is required to prove that during this period, and in relation to the relevant goods (footwear), there was genuine use by it, or with its consent, of the earlier mark relied on in these proceedings.

17) The only evidence referring to use of the earlier mark in the UK explicitly within the proof of use period is the statement in paragraph 8 of Ms Weber's witness statement: "*My company's representatives in 2008 exhibited footwear bearing the CPS (Stylised) trade mark (representative examples of which are, again, shown at Exhibit SW3) as well as other products*". **Exhibit SW3** consists of undated photographs. I take Ms Weber to mean that these photographs are illustrative of the kinds of shoes bearing the earlier mark which were exhibited in 2008 and of the way in which they would have borne the mark. However, no further evidence is provided on the actual shoes exhibited, how many of them bore the earlier mark, or what proportion this represented of all the shoes exhibited by CPSV at the exhibition. Nor is any information provided, for example, about sales, orders or interest generated among UK buyers in purchasing shoes specifically bearing the earlier mark. No information is given as to the manner of presentation and how they were presented at the event. This is not a strong start for establishing genuine use.

18) In his letter in **Exhibit SW6** Mr Colin Struthers explains that Central Park Shoes UK represents "Central Park Shoes" in the UK, having been "*involved with the brand/product*" for over 2 years. However, his letter is undated. It seems likely that it was solicited by CPSV for the purposes of these proceedings at the time when Ms Weber was preparing her witness statement, dated 29 July 2011. If so, the work of Central Park Shoes UK for CPSV in the UK could have extended for "*over 2 years*" and still have been outside the relevant proof of use period. This is also consistent with the references in paragraphs 10 and 13 of Ms Weber's witness statement to the establishment in 2009 of what she refers to as "*a subsidiary in the UK, called Central Park Shoes UK*". In any event, since Mr Struthers' letter is undated it cannot establish that any of the activities it refers to took place within the relevant proof of use period. I should add that as this was apparently a new type of activity it does little to shed light on what may have been happening during the relevant period.

19) No evidence has been provided of a single sale of footwear specifically bearing the earlier mark during the proof of use period. Proof of use need not necessarily consist of proof of sales; preparations to put goods or services on the market might suffice: *Ansul*, [37]. However, I do not consider that evidence that some footwear bearing the earlier mark was among footwear displayed at a single exhibition during the proof of use period is sufficient to establish genuine use in such circumstances, particularly since no information is supplied as to the manner in which the shoes were exhibited or what interest was generated. **Exhibits SW2 and SW3** and Ms Weber's witness statement (paragraphs 4-7) provided evidence that footwear bearing the earlier mark was included in a consignment of footwear to a British shoe retailer before the proof of use period. However, even if this represented genuine use in 2003, use at the exhibition 5 years later will not have maintained it. The use referred to by Mr Struthers cannot count as genuine use for the purposes of this decision, as it was not made during the relevant period.

20) For the reasons given above I have come to the view that the evidence supplied by the Opponent does not establish that genuine use has been made of the earlier mark within the proof of use period. As a result, the Opponent's earlier mark has failed to meet the use conditions, and thus cannot be relied upon to oppose the Applicant's marks. The opposition therefore fails.

21) Whilst the above finding is, strictly speaking, all that is required, I will nevertheless give my views on whether, had genuine use been established in respect of footwear, there would have been a likelihood of confusion.

Section 5(2)(b)

The law

22) Section 5(2)(b) of the Act reads:

"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."

23) In reaching my decision I have taken into account the guidance provided by the Court of Justice of the European Union ("CJEU") in a number of judgments: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77, *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, Case C-3/03 *Matrazen Concord GmbH v GmbGv Office for Harmonisation in the Internal Market* [2004] ECR I-3657 *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05). In *La Chemise Lacoste SA v Baker Street Clothing Ltd* (O/330/10) Mr Geoffrey Hobbs QC, sitting as the Appointed Person, quoted with approval the following summary of the principles which are established by these cases:

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has

the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of the goods and services

24) In making an assessment of the similarity of the goods/services, all relevant factors relating to the goods and services in the respective specifications should

be taken into account. In *Canon Kabushiki Kaisha v. Metro- Goldwyn-Mayer* the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

25) Whether goods/services are complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), will depend on whether there exists a close connection or relationship such that one is important or indispensable for the use of the other. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-325/06 it was stated:

“It is true that goods are complementary if there is a close connection between them, in the *sense that one is indispensable or important for the use of the other in such a way that* customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48).”

26) Finally, when comparing the respective goods/services, if a term clearly falls within the ambit of a term in the competing specification then identical goods/services must be considered to be in play (see *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-133/05) even if there may be other goods/services within the broader term that are not identical.

27) In Class 25, the Applicant’s specification of “shoes and boots” falls within the ambit of the Opponent’s registration for “footwear”. The goods are therefore identical. The Opponent contends that the Applicant’s “Retail and online store services and mail order catalogue services connected with sports equipment, namely related footwear” in Class 35 are similar to its “footwear” in Class 25. I note that in Case T-116/06 *Oakley Inc v OHIM (“Oakley”)* the General Court held that retail services for goods have a complementary relationship with the goods retailed and are therefore similar. The goods and the service must, therefore, be held to be similar.

The Average Consumer

28) According to the case-law, the average consumer is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). The degree of care and attention the average consumer uses when selecting goods or service providers can, however, vary depending on what is involved (see, for example, the judgment of the General Court in *Inter-Ikea Systems BV v OHIM* (Case T-112/06)).

29) In the case of footwear the average consumer will be a member of the public at large. The purchase of footwear is unlikely to be a highly considered process since it is purchased relatively frequently and, although cost can vary, it is not, generally speaking, a highly expensive purchase. That being said, the goods may be tried on and are likely to be inspected for colour, size, style etc., all of which will increase the potential exposure to the trade mark. The purchasing process is, therefore, a normal, reasonably considered one, no higher or lower than the norm. It has been held by the General Court (see, for example, *New Look Ltd v OHIM* – Joined cases T-117/03 to T-119/03 and T-171/03) that the purchase of clothing is predominantly a visual act, although, aural similarity should not be ignored completely. These observations apply to footwear. Not just in shops, but in the case of mail order catalogue services too, the purchasing process will be predominantly visual. Telephone orders, for example, would be given on the basis of visual selection from a catalogue.

Distinctiveness of the earlier mark.

30) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark (based either on inherent qualities or because of use made), the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). My observations in relation to genuine use are indicative of my views here. Even taking into account evidence relating to periods before and after the relevant period of use, the evidence falls well short of establishing that the earlier mark (even if it had been genuinely used) is entitled to an enhanced degree of distinctiveness. In terms of the earlier mark's inherent characteristics, the letters CPS in themselves have an average degree of distinctiveness in relation to footwear. Taking the stylisation element into account, I consider the earlier mark to be reasonably distinctive. The Opponent submitted that three-letter marks are not prevalent in the shoe sector. In support of this contention Annex B to its submissions comprises web-shots showing brand listings from the websites of ASOS, House of Fraser and Amazon. Such information should have been filed as evidence if the Opponent wished it to be considered. Having said that, even if it had been filed as evidence it would not have materially altered my assessment of the mark as being of a reasonable degree of distinctiveness.

Comparison of the Marks

31) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The visual, aural and conceptual similarities of the marks must be assessed by reference to their overall impressions, bearing in mind their distinctive and dominant components. Both parties drew my attention to a number of decisions which they submitted presented analogous aspects to the present case with regard to the comparison of marks. I have borne them in mind, but must, of course, reach my decision in this case on its own particular facts and on the marks that are before me. The marks to be compared are:

The earlier mark	The applied for mark 2503307	The applied for mark 2503340
		

32) Visually, although I consider the stylisation of the letters of the earlier mark to play a role, the earlier mark resolves into the letters CPS, which in my view forms its dominant element. There are points of similarity with the applied for letter mark **CCS**. It should be noted that although the letter mark can, notionally speaking, be used in a variety of fonts, it is a step too far to consider that a normal and fair use will include use in the same manner of presentation as the earlier mark. In terms of comparing the earlier mark and the applied for letter mark, both begin with C and end in S. However, in a mark consisting of only three letters, one letter can (depending on the letters involved) make a significant difference, and I think that this is the case here. The unorthodox and partial representation of the letter P in the earlier mark will tend to attract attention to it, increasing its distinguishing force. The repetition of the letter C at the beginning of the applied for mark provides an obvious visual difference. These points of difference counteract the similarities, so that overall there is only a low degree of similarity between the earlier mark and the Applicant's letter mark.

33) The stencil-like presentation of the Applicant's stylised mark and its additional bracket characters create a kind of vertical motif which contrasts with the smooth emphasis of horizontal lines in the earlier mark, thus providing further points of dissimilarity.

34) Aurally, there are points of similarity between the marks, all of which will be pronounced as individual letters. All begin with C and end in S. The middle letters P and C rhyme. However, CCS begins with a repeated, identical sibilant sound, whereas in CPS the sibilant C is followed by the plosive P, forming a different pattern of pronunciation. Aurally, there is a moderate degree of similarity between the marks.

35) Neither of the sets of letters in the marks have any conceptual content which would be perceived by the average consumer and, therefore, there is neither a conceptual difference nor similarity.

Likelihood of confusion

36) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

37) The goods and services specified in the applications are identical or similar to the goods covered by the earlier mark. The earlier mark is reasonably distinctive. However, the marks applied for have a low degree of visual similarity and a moderate degree of aural similarity. There is no conceptual content to be taken into account. Bearing all this in mind, together with my assessment of the average consumer and the predominantly visual nature of the purchasing process, and having regard to the interdependency principle, I do not consider that there is a likelihood of confusion. This is so even bearing in mind the concept of imperfect recollection. The differences between the marks are acute enough for the average consumer to differentiate between them even when identical goods are considered. Therefore, even if the earlier mark had been genuinely used, there would have been no likelihood of confusion.

Costs

38) CCS Direct LLC is the successful party and is entitled to a contribution towards its costs. I hereby order Central Park Labels GmbH to pay CCS Direct LLC the sum of £1,100. This sum is calculated as follows:

Preparing statements and considering the other side's statements – £300

Considering evidence submitted by Central Park Labels GmbH – £400.²

Written submissions – £400

² This is below the scale minimum, but reflects that the Applicant did not file evidence itself.

39) The above sum should 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 18th day of May 2012

**Martin Boyle
For the Registrar,
The Comptroller-General**