

0-076-13

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2569056
BY GERT W BARNES
TO REGISTER THE TRADE MARK**

Captain Grub

IN CLASSES 16, 29, 30 & 43

AND:

**OPPOSITION THERETO UNDER NO. 101935
BY IGLO FOODS GROUP LIMITED**

BACKGROUND

1. On 13 January 2011, Gert W Barnes applied to register the trade mark shown on the cover page of this decision. The application was accepted and published for opposition purposes on 18 February 2011 for the following goods and services:

Class 16 - Paper, cardboard and goods made from these materials, not included in other classes; printed matter; book binding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks. Includes disposable nappies of paper for babies; printed publications.

Class 29 – Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats. Includes prepared meals and snacks whose main ingredients are proper to this class, (e.g. soups and potato crisps).

Class 30 - Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice. Includes prepared meals and snacks whose main ingredients are proper to this class, (e.g. pizzas, pies and pasta dishes).

Class 43 - Services for providing food and drink; temporary accommodation. Includes restaurant, bar and catering services; provision of holiday accommodation; booking/reservation services for restaurants and holiday accommodation.

2. On 17 May 2011, Birds Eye Iglo Group Limited (now, following a change of name, Iglo Foods Group Limited) (“Iglo”) filed a notice of opposition directed against all of the goods and services in Mr Barnes’ application. Although Iglo’s opposition was originally based upon grounds under section 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”), in a letter dated 5 December 2011, Iglo advised the Trade Marks Registry (“TMR”) that it would not be filing evidence and the ground based upon section 5(3) was abandoned. The consequence of Iglo not filing evidence meant that a number of the trade marks upon which it relied and which were subject to proof of use (see below), were struck out. Iglo now relies upon the four remaining trade mark registrations:

CTM no. 9314361 for the trade mark **CAPTAIN** applied for on **13 August 2010** and registered on **10 September 2012** for the following goods and services:

29 - Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs, milk and milk products; Edible oils and fats; frozen prepared meals; instant meals and snack

products; chilled foods consisting predominately of fish; chilled meals made from fish; cooked meals consisting principally of fish; fish cakes; frozen fish cakes; fish fillets; frozen fish fillets; fish fingers; frozen fish fingers; fish products; fish products being fresh; fish products being frozen; fish products being preserved; fish with chips; frozen cooked fish; frozen fish; frozen prepared meals consisting principally of fish; pre-cooked dishes incorporating [predominantly] fish; processed fish; scampi; frozen scampi; steaks of fish; frozen steaks of fish; shelled prawns; chicken; chicken pieces; chicken products; cooked chicken; frozen chicken; deep frozen chicken; dehydrated chicken; fried chicken; frozen fried chicken; prepared meals containing [principally] chicken; pieces of chicken for use as a filling in sandwiches; chicken nuggets; frozen prepared meals consisting principally of chicken; chicken kiev; frozen chicken kiev; garden peas; green split-peas; marrowfat peas; peas, preserved; peas, processed; frozen peas; soya beans; preserved soya beans; frozen soya beans; vegetarian frozen foods; frozen prepared meals consisting principally of vegetables; frozen vegetables; frozen vegetables packed in single portions; sweetcorn [cooked]; sweetcorn [preserved]; sweetcorn [frozen]; burgers; frozen burgers; meat burgers; frozen meat burgers; meat products being in the form of burgers; vegetable burgers; frozen vegetable burgers; steaks of meat; frozen steaks of meat; chilled ready meals; frozen ready meals; individual ready meals; ready cooked meals consisting wholly or substantially wholly of fish; frozen ready cooked meals consisting wholly or substantially wholly of fish; ready cooked meals consisting wholly or substantially wholly of game; frozen ready cooked meals consisting wholly or substantially wholly of game; ready cooked meals consisting wholly or substantially wholly of meat; frozen ready cooked meals consisting wholly or substantially wholly of meat; ready cooked meals consisting wholly or substantially wholly of poultry; frozen ready cooked meals consisting wholly or substantially wholly of poultry; ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready cooked meals consisting wholly or substantially wholly of vegetables; potato snack products in the form of fried pieces; frozen potato snack products in the form of fried pieces; potato snack products in the form of pieces capable of being fried; shepherd's pie.

30 - Coffee, tea, cocoa, rice, tapioca, sago, artificial coffee; Flour and preparations made from cereals, bread, pastry; Honey, treacle; Yeast, baking-powder; Salt, mustard; Vinegar, sauces (condiments); Spices; Ice; sauces for frozen fish; sauces for chicken; frozen pastry stuffed with meat and vegetables; frozen pastry stuffed with vegetables; frozen prepared rice with seasonings and vegetables; bread rolls containing burgers; chilled ready meals; individual ready meals; ready cooked meals; pies containing fish; frozen pies containing fish; pies containing game; frozen pies containing game; pies containing meat; frozen pies containing meat; pies containing poultry; frozen pies containing poultry; pies containing vegetables; frozen pies containing vegetables; savoury waffles; frozen savoury waffles; deep frozen pasta; ready cooked meals consisting wholly or substantially wholly of pasta; frozen ready cooked meals consisting wholly or substantially wholly of pasta.

43 - Services for providing food; Temporary accommodation; catering services; provision of foodstuffs to restaurants; provision of foodstuffs to cafes; provision of foodstuffs to hotels; provision of foodstuffs to establishments that provide food and drink.

CTM no. 9314428 for the trade mark **CAPTAIN BIRDS EYE** applied for on **13 August 2010** and registered on **25 March 2011** for the following goods and services:

29 - Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs, milk and milk products; Edible oils and fats; frozen prepared meals; instant meals and snack products; chilled foods consisting predominately of fish; chilled meals made from fish; cooked meals consisting principally of fish; fish cakes; frozen fish cakes; fish fillets; frozen fish fillets; fish fingers; frozen fish fingers; fish products; fish products being fresh; fish products being frozen; fish products being preserved; fish with chips; frozen cooked fish; frozen fish; frozen prepared meals consisting principally of fish; pre-cooked dishes incorporating [predominantly] fish; processed fish; scampi; frozen scampi; steaks of fish; frozen steaks of fish; shelled prawns; chicken; chicken pieces; chicken products; cooked chicken; frozen chicken; deep frozen chicken; dehydrated chicken; fried chicken; frozen fried chicken; prepared meals containing [principally] chicken; pieces of chicken for use as a filling in sandwiches; chicken nuggets; frozen prepared meals consisting principally of chicken; chicken kiev; frozen chicken kiev; garden peas; green split-peas; marrowfat peas; peas, preserved; peas, processed; frozen peas; soya beans; preserved soya beans; frozen soya beans; vegetarian frozen foods; frozen prepared meals consisting principally of vegetables; frozen vegetables; frozen vegetables packed in single portions; sweetcorn [cooked]; sweetcorn [preserved]; sweetcorn [frozen]; burgers; frozen burgers; meat burgers; frozen meat burgers; meat products being in the form of burgers; vegetable burgers; frozen vegetable burgers; steaks of meat; frozen steaks of meat; chilled ready meals; frozen ready meals; individual ready meals; ready cooked meals consisting wholly or substantially wholly of fish; frozen ready cooked meals consisting wholly or substantially wholly of fish; ready cooked meals consisting wholly or substantially wholly of game; frozen ready cooked meals consisting wholly or substantially wholly of game; ready cooked meals consisting wholly or substantially wholly of meat; frozen ready cooked meals consisting wholly or substantially wholly of meat; ready cooked meals consisting wholly or substantially wholly of poultry; frozen ready cooked meals consisting wholly or substantially wholly of poultry; ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready cooked meals consisting wholly or substantially wholly of vegetables; potato snack products in the form of fried pieces; frozen potato snack products in the form of fried pieces; potato snack products in the form of pieces capable of being fried; shepherd's pie; frozen shepherd's pie; dairy desserts; cream desserts; fruit desserts; soya desserts; dairy puddings; desserts made wholly or principally of dairy products; dairy

products; cream (whipped-); cream (dairy products); flavoured dairy desserts in the form of mousse layered onto flavoured sauce; flavoured dairy desserts in the form of vanilla flavoured mousse with strawberry flavoured sauce; flavoured dairy desserts in the form of chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; desserts made from milk; desserts made from milk and gelatine; desserts made from milk products; desserts made from yoghurt; desserts made wholly or principally of milk products; instant desserts having a milk base; milk based desserts [milk predominating]; milk desserts; yoghurt desserts; fruit puree; egg based foodstuffs; frozen dairy desserts; frozen desserts made wholly or principally of dairy products; milk containing ice cream; artificial milk based desserts; cream preparations containing milk and fruits; dairy products containing milk; desserts in the form of puddings with a milk base; desserts made principally of milk; edible jellies made from milk and vegetable products; food made principally from milk; food preparations consisting wholly or substantially wholly of milk; food preparations containing anhydrous milk fats; food preparations containing soya and milk protein; food preparations having a base of milk; food products consisting principally of skimmed milk solids; foods made from milk products; foods prepared from milk; half-fat milk products; milk based desserts (milk predominating); milk cream; milk jellies; milk products for food; milk protein; milk protein products; preparations made from milk; preparations with a milk base for use as desserts; prepared desserts (milk based); prepared desserts made from milk products with fruit or herbs or pastry additives; prepared desserts made from milk with fruit additives; prepared desserts made from milk with herbs or pastry additives; prepared desserts made from milk with pastry additives; products based on milk; products made wholly or principally of milk; ready prepared desserts consisting of milk with gelatine as a binding agent; ready prepared desserts consisting of milk with starch as a binding agent; artificial milk based desserts; cream preparations containing milk and fruits; cream products; creams containing dairy products; dairy products being half cream and half milk; double cream; edible cream; imitation cream, milk cream; frozen ready meals; frozen dairy desserts; frozen desserts made wholly or principally of dairy products.

30 - Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; Flour and preparations made from cereals, bread, pastry and confectionery, ices; Honey, treacle; Yeast, baking-powder; Salt, mustard; Vinegar, sauces (condiments); Spices; Ice; sauces for frozen fish; sauces for chicken; frozen pastry stuffed with meat and vegetables; frozen pastry stuffed with vegetables; frozen prepared rice with seasonings and vegetables; bread rolls containing burgers; chilled ready meals; individual ready meals; ready cooked meals; pies containing fish; frozen pies containing fish; pies containing game; frozen pies containing game; pies containing meat; frozen pies containing meat; pies containing poultry; frozen pies containing poultry; pies containing vegetables; frozen pies containing vegetables; waffles; frozen waffles; deep frozen pasta; ready cooked meals consisting wholly or substantially wholly of pasta; frozen ready cooked meals consisting wholly or substantially wholly of pasta; dessert preparations in the nature of mousse, all

being preserved by a quick-freezing process; frozen desserts; frozen fruit desserts; frozen mousse desserts; frozen mousse; frozen mousse confections; mousse (sweet); mousse confections; vanilla flavoured mousse; vanilla flavoured mousse with strawberry flavoured sauce; chocolate flavoured mousse; chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; dessert puddings; puddings [desserts]; puddings for use as desserts; preparations for making desserts; prepared desserts [chocolate based]; prepared desserts [confectionery]; caramel; caramel sauce; strawberry sauce; chocolate sauce; sauces for ice cream; chocolate; chocolate based produces; chocolate chips; chocolate curls; chocolate flavoured confectionery; foods with a chocolate base; ice cream; ice cream desserts; ready-to-eat puddings; desserts having a reduced calorie content; desserts; ice desserts; non-dairy frozen dessert products; prepared desserts (chocolate based); prepared deserts (confectionery); confectionery; confectionery (non-medicated); confectionery bars; confectionery containing jam; confectionery containing jelly; confectionery in frozen form; confectionery items (non-medicated); confectionery items coated with chocolate; confectionery products (non-medicated); dairy confectionery; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confections; ice cream confectionery; ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery products; preparations for making confectionery products; prepared desserts (confectionery); frozen dairy confections; strawberry flavoured sauce; caramel flavoured sauce; foodstuffs flavoured with caramel [caramel predominating]; frozen confections in the form of cylindrical rolls consisting of ice cream covered with sponge cake; frozen confections in the form of cylindrical rolls consisting of ice cream covered with jam and sponge cake; dairy ice cream; frozen confectionery containing ice cream; frozen confectionery containing ice cream and jam; fruit ice cream; ice cream bars; ice cream cones; ice cream confectionery; ice cream confections; ice cream gateaux; ice cream products; ice cream sandwiches; ice cream with fruit; ice cream with pastry; ice creams; ice creams containing chocolate; ice creams flavoured with chocolate; imitation ice cream; non-dairy ice cream; soya based ice cream products; substances for binding ice cream; cakes; frozen cakes; sponge cakes; sponge puddings; puddings (desserts); sponge puddings; prepared desserts (pastries); puddings (desserts); bakery confectionery being chilled; bakery confectionery being frozen; confectionery (non-medicated); confectionery bars; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confectionery in the form of lollipops; ice confections; ice cream confectionery; ice cream confections; ingredients for confectionery; mixtures for making frozen confections; mixtures for making ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery in jelly form; non-medicated confectionery products; preparations for making confectionery products; preparations for making ice cream confectionery; prepared desserts

(confectionery); frozen confectionery containing jam; desserts; chilled desserts; desserts having a reduced calorie content; dessert puddings; flavoured desserts; vanilla flavoured desserts; strawberry flavoured desserts; chocolate flavoured desserts; caramel flavoured desserts.

43 - Services for providing food and drink; Temporary accommodation; catering services; provision of foodstuffs to restaurants; provision of foodstuffs to cafes; provision of foodstuffs to hotels; provision of foodstuffs to establishments that provide food and drink.

UK no. 2410668 for the trade mark **CAPTAIN BIRDS EYE** applied for on **10 January 2006** and registered on 4 August 2006 for the following goods:

29 - Meat, fish, poultry and vegetables and products made therefrom; prepared meals; fruit snacks; preserved, dried and cooked fruits and vegetables; drinks consisting of dairy products.

30 - Pizzas; desserts; confectionery; sweets; cakes; biscuits; bread; pasta; sandwiches.

31 - Fresh fruits.

32 - Non-alcoholic drinks; fruit drinks; fruit juices.

CTM no. 9314394 for the trade mark **CAPTAIN IGLO** applied for on **13 August 2010** and registered on **25 March 2011** for the following goods and services:

29 - Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs, milk and milk products; Edible oils and fats; frozen prepared meals; instant meals and snack products; chilled foods consisting predominately of fish; chilled meals made from fish; cooked meals consisting principally of fish; fish cakes; frozen fish cakes; fish fillets; frozen fish fillets; fish fingers; frozen fish fingers; fish products; fish products being fresh; fish products being frozen; fish products being preserved; fish with chips; frozen cooked fish; frozen fish; frozen prepared meals consisting principally of fish; pre-cooked dishes incorporating [predominantly] fish; processed fish; scampi; frozen scampi; steaks of fish; frozen steaks of fish; shelled prawns; chicken; chicken pieces; chicken products; cooked chicken; frozen chicken; deep frozen chicken; dehydrated chicken; fried chicken; frozen fried chicken; prepared meals containing [principally] chicken; pieces of chicken for use as a filling in sandwiches; chicken nuggets; frozen prepared meals consisting principally of chicken; chicken kiev; frozen chicken kiev; garden peas; green split-peas; marrowfat peas; peas, preserved; peas, processed; frozen peas; soya beans; preserved soya beans; frozen soya beans; vegetarian frozen foods; frozen prepared meals consisting principally of vegetables; frozen vegetables; frozen vegetables packed in single portions; sweetcorn [cooked];

sweetcorn [preserved]; sweetcorn [frozen]; burgers; frozen burgers; meat burgers; frozen meat burgers; meat products being in the form of burgers; vegetable burgers; frozen vegetable burgers; steaks of meat; frozen steaks of meat; chilled ready meals; frozen ready meals; individual ready meals; ready cooked meals consisting wholly or substantially wholly of fish; frozen ready cooked meals consisting wholly or substantially wholly of fish; ready cooked meals consisting wholly or substantially wholly of game; frozen ready cooked meals consisting wholly or substantially wholly of game; ready cooked meals consisting wholly or substantially wholly of meat; frozen ready cooked meals consisting wholly or substantially wholly of meat; ready cooked meals consisting wholly or substantially wholly of poultry; frozen ready cooked meals consisting wholly or substantially wholly of poultry; ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready cooked meals consisting wholly or substantially wholly of vegetables; potato snack products in the form of fried pieces; frozen potato snack products in the form of fried pieces; potato snack products in the form of pieces capable of being fried; shepherd's pie; frozen shepherd's pie; dairy desserts; cream desserts; fruit desserts; soya desserts; dairy puddings; desserts made wholly or principally of dairy products; dairy products; cream (whipped-); cream (dairy products); flavoured dairy desserts in the form of mousse layered onto flavoured sauce; flavoured dairy desserts in the form of vanilla flavoured mousse with strawberry flavoured sauce; flavoured dairy desserts in the form of chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; desserts made from milk; desserts made from milk and gelatine; desserts made from milk products; desserts made from yoghurt; desserts made wholly or principally of milk products; instant desserts having a milk base; milk based desserts [milk predominating]; milk desserts; yoghurt desserts; fruit puree; egg based foodstuffs; frozen dairy desserts; frozen desserts made wholly or principally of dairy products; milk containing ice cream; artificial milk based desserts; cream preparations containing milk and fruits; dairy products containing milk; desserts in the form of puddings with a milk base; desserts made principally of milk; edible jellies made from milk and vegetable products; food made principally from milk; food preparations consisting wholly or substantially wholly of milk; food preparations containing anhydrous milk fats; food preparations containing soya and milk protein; food preparations having a base of milk; food products consisting principally of skimmed milk solids; foods made from milk products; foods prepared from milk; half-fat milk products; milk based desserts (milk predominating); milk cream; milk jellies; milk products for food; milk protein; milk protein products; preparations made from milk; preparations with a milk base for use as desserts; prepared desserts (milk based); prepared desserts made from milk products with fruit or herbs or pastry additives; prepared desserts made from milk with fruit additives; prepared desserts made from milk with herbs or pastry additives; prepared desserts made from milk with pastry additives; products based on milk; products made wholly or principally of milk; ready prepared desserts consisting of milk with gelatine as a binding agent; ready prepared desserts consisting of milk with starch as a binding agent; artificial milk based desserts; cream preparations containing milk and fruits;

cream products; creams containing dairy products; dairy products being half cream and half milk; double cream; edible cream; imitation cream, milk cream; frozen ready meals; frozen dairy desserts; frozen desserts made wholly or principally of dairy products.

30 - Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; Flour and preparations made from cereals, bread, pastry and confectionery, ices; Honey, treacle; Yeast, baking-powder; Salt, mustard; Vinegar, sauces (condiments); Spices; Ice; sauces for frozen fish; sauces for chicken; frozen pastry stuffed with meat and vegetables; frozen pastry stuffed with vegetables; frozen prepared rice with seasonings and vegetables; bread rolls containing burgers; chilled ready meals; individual ready meals; ready cooked meals; pies containing fish; frozen pies containing fish; pies containing game; frozen pies containing game; pies containing meat; frozen pies containing meat; pies containing poultry; frozen pies containing poultry; pies containing vegetables; frozen pies containing vegetables; waffles; frozen waffles; deep frozen pasta; ready cooked meals consisting wholly or substantially wholly of pasta; frozen ready cooked meals consisting wholly or substantially wholly of pasta; dessert preparations in the nature of mousse, all being preserved by a quick-freezing process; frozen desserts; frozen fruit desserts; frozen mousse desserts; frozen mousse; frozen mousse confections; mousse (sweet); mousse confections; vanilla flavoured mousse; vanilla flavoured mousse with strawberry flavoured sauce; chocolate flavoured mousse; chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; dessert puddings; puddings [desserts]; puddings for use as desserts; preparations for making desserts; prepared desserts [chocolate based]; prepared desserts [confectionery]; caramel; caramel sauce; strawberry sauce; chocolate sauce; sauces for ice cream; chocolate; chocolate based produces; chocolate chips; chocolate curls; chocolate flavoured confectionery; foods with a chocolate base; ice cream; ice cream desserts; ready-to-eat puddings; desserts having a reduced calorie content; desserts; ice desserts; non-dairy frozen dessert products; prepared desserts (chocolate based); prepared deserts (confectionery); confectionery; confectionery (non-medicated); confectionery bars; confectionery containing jam; confectionery containing jelly; confectionery in frozen form; confectionery items (non-medicated); confectionery items coated with chocolate; confectionery products (non-medicated); dairy confectionery; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confections; ice cream confectionery; ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery products; preparations for making confectionery products; prepared desserts (confectionery); frozen dairy confections; strawberry flavoured sauce; caramel flavoured sauce; foodstuffs flavoured with caramel [caramel predominating]; frozen confections in the form of cylindrical rolls consisting of ice cream covered with sponge cake; frozen confections in the form of cylindrical rolls consisting of ice cream covered with jam and sponge cake; dairy ice cream; frozen confectionery containing ice cream; frozen confectionery

containing ice cream and jam; fruit ice cream; ice cream bars; ice cream cones; ice cream confectionery; ice cream confections; ice cream gateaux; ice cream products; ice cream sandwiches; ice cream with fruit; ice cream with pastry; ice creams; ice creams containing chocolate; ice creams flavoured with chocolate; imitation ice cream; non-dairy ice cream; soya based ice cream products; substances for binding ice cream; cakes; frozen cakes; sponge cakes; sponge puddings; puddings (desserts); sponge puddings; prepared desserts (pastries); puddings (desserts); bakery confectionery being chilled; bakery confectionery being frozen; confectionery (non-medicated); confectionery bars; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confectionery in the form of lollipops; ice confections; ice cream confectionery; ice cream confections; ingredients for confectionery; mixtures for making frozen confections; mixtures for making ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery in jelly form; non-medicated confectionery products; preparations for making confectionery products; preparations for making ice cream confectionery; prepared desserts (confectionery); frozen confectionery containing jam; desserts; chilled desserts; desserts having a reduced calorie content; dessert puddings; flavoured desserts; vanilla flavoured desserts; strawberry flavoured desserts; chocolate flavoured desserts; caramel flavoured desserts.

43 - Services for providing food and drink; Temporary accommodation; catering services; provision of foodstuffs to restaurants; provision of foodstuffs to cafes; provision of foodstuffs to hotels; provision of foodstuffs to establishments that provide food and drink.

3. On 24 August 2011, Mr Barnes filed a counterstatement (subsequently amended) in which the basis of Iglo's opposition is denied.

4. Only Mr Barnes filed evidence. While neither party asked to be heard nor filled written submissions in lieu of attendance at a hearing, both provided submissions in their Notice of opposition and counterstatement/evidence; I will refer to these submissions as necessary below.

EVIDENCE

Mr Barnes' evidence

5. This consists of a witness statement, dated 13 February 2012, from Mr Barnes. As I mentioned above, Mr Barnes' statement consists of a mixture of evidence and submissions. Although it is not appropriate for me to summarise his submissions here, I will keep them in mind and refer to them if necessary below. Exhibit GWB1 consists of what Mr Barnes describes as "an enlarged copy of the business cards that are being used to promote the new restaurant business." The copy of the business card which, as

far as I can tell, is undated, contains, inter alia, the following text: "Captain Grub Restaurant Group It's British! It's real food made fast!" Mr Barnes explains that exhibit GWB2 consists of "promotional signage being used for the new restaurant business". Once again, the extract provided appears to be undated. It contains, inter alia, the following text: "CAPTAIN GRUB RESTAURANT GROUP COMING SOON" and "OPENING SOON In OAKHAM." Exhibit GWB3 is described by Mr Barnes as "a rough draft of the proposed menu for the restaurants." The exhibit, which again appears to be undated, contains a reference to "Captain Grub Menu". Finally, exhibit GWB4 consists of a certificate from Companies House indicating that CAPTAINGRUB LTD was incorporated on 1 September 2010.

6. That concludes my summary of the evidence filed to the extent that I consider it necessary.

DECISION

7. Section 5(2)(b) of the Act reads as follows:

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

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier 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) or 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

9. In these proceedings Iglo is relying upon the trade marks shown in paragraph 2 above, all of which constitute earlier trade marks under the above provisions. Given the interplay between the date on which Mr Barnes' application was published i.e. 18

February 2011 and the dates on which Iglo's remaining registrations completed their registration procedure, Iglo's registrations are not subject to proof of use, as per The Trade Marks (Proof of Use, etc) Regulations 2004.

Section 5(2)(b) – case law

10. In his decision in *La Chemise Lacoste SA v Baker Street Clothing Ltd* -BL O/330/10 (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs QC, expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

The CJEU cases

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] F.S.R. 77; Marca Mode CV v Adidas AG & Adidas Benelux BV [2000] E.T.M.R. 723; Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Case T-6/01; Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH C-120/04; Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) C-334/05 P.

The principles

“(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.”

The average consumer and the nature of the purchasing process

11. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services and then to determine the manner in which these goods and services will be selected by the average consumer in the course of trade. As all of the goods and services at issue in these proceedings will be used by members of the general public, they are the average consumer.

12. As to how the average consumer will select the goods and services at issue, my own experience tells me that as the vast majority of the goods in classes 16, 29 and 30 will be selected from either a shelf in a conventional retail setting or from the pages of a catalogue or website, visual considerations are likely to dominate the selection process. As the complexity and cost of the disparate goods in class 16 will vary from relatively simple/inexpensive (routine items of stationery for example) to relatively sophisticated/reasonably expensive (typewriters for example), the degree of care the average consumer will take when selecting the various goods is also likely to vary, ranging, in my view, from low (routine items of stationery) to relatively high (typewriters).

13. As all of the goods in classes 29 and 30 are foodstuffs of one sort or another, their cost is likely to be relatively low. In addition, as the selection of such goods is likely to be a routine, perhaps, weekly occurrence, the average consumer will, I think, pay a somewhat lower than normal level of attention to the selection of these goods.

14. Turning now to the services in class 43, once again my own experience suggests that visual considerations having encountered the trade mark in, for example, magazines, brochures, and on the Internet are most likely to dominate the selection process. That said, I accept that as, for example, restaurants and caterers are often recommended by word of mouth, oral/aural considerations will also play a part in the selection process. As to the level of attention paid to the selection of, for example, restaurants and caterers by the average consumer, this will, in my experience, vary depending on the nature of the occasion for which they are being selected and will range from no higher than normal to reasonably high. For, example, I doubt that the average consumer would display the same degree of care when selecting a venue to have an impromptu cup of coffee as they would when selecting, for example, a caterer for a wedding. In short, as the cost and importance of the selection increases, so will the degree of care displayed by the average consumer when selecting the services. That leaves (broadly speaking) provision of temporary accommodation and booking and reservation services for restaurants and holiday accommodation. When selecting temporary accommodation the average consumer is likely to be conscious of factors such as cost, location, availability, facilities etc. all of which suggests they will pay a reasonably high degree of attention to their selection. Finally, when selecting booking/reservation services for restaurants and holiday accommodation, the average consumer will be conscious of factors such as the breadth of locations offered, the quality of the information provided (descriptions, customer reviews etc.), special offers (discounts etc) and (more likely) if it is an internet based service, the ease of use of the website concerned, all of which suggests at least a reasonable degree of care on the average consumer's part.

Comparison of trade marks

15. For the sake of convenience the trade marks to be compared are as follows:

Iglo's trade marks	Mr Barnes' trade mark
CAPTAIN (CTM no. 9314361)	Captain Grub
CAPTAIN BIRDS EYE (CTM no. 9314428 & UK no. 2410668)	
CAPTAIN IGLO (CTM no. 9314394)	

16. It is well established that the average consumer is considered to be reasonably well informed, circumspect and observant but 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. In reaching a conclusion on similarity, I must identify what I consider to be the distinctive and dominant elements of the respective trade marks and, with that conclusion in mind, I must then go on and compare the respective trade marks from the visual, aural and conceptual perspectives.

17. In these proceedings Iglo is now relying upon the 4 trade mark registrations mentioned above. As nos. 9314428, 2410668 and 9314394 all contain additional

elements which are not to be found in Mr Barnes' trade mark i.e. BIRDS EYE and IGLO, they are less similar to Mr Barnes' trade mark than no. 9314361 which consists exclusively of the word CAPTAIN. It is this trade mark which, in my view, offers Iglo its best prospect of success and upon which I will base my comparison. If Iglo does not succeed in respect of this trade mark, it will, in my view, be in no better position in relation to the other trade marks upon which it relies.

Distinctive and dominant components

18. As Iglo's trade mark consists exclusively of the word CAPTAIN presented in upper case, there are no dominant elements. As to Mr Barnes' trade mark, this consists of the words Captain and Grub presented in title case. The words Captain and Grub are well known words English language words which have a range of meanings that will be well known to the average consumer. Given the goods and services in classes 29, 30 and 43 for which Mr Barnes seeks registration, the word Grub is likely to be interpreted by the average consumer as a slang word for food.

19. Although in his counterstatement and witness statement Mr Barnes argues that the word Grub is the dominant component of his mark, as far as I am aware, and there is no evidence to the contrary, the word Captain is neither descriptive of nor non-distinctive for any of the goods and services at issue in these proceedings. As to the word Grub, given the meaning I have identified above, it is not, in relation to the goods in classes 29 and 30 and the majority of the services in class 43 a distinctive component. It may, however, be a distinctive component when considered in the context of some (if not all) of Mr Barnes' goods in class 16, for example, paint brushes, typewriters etc. and for some of the services in class 43, for example, temporary accommodation.

20. Notwithstanding that the word Captain appears as the first component of Mr Barnes' trade mark (and is distinctive), it is not, in my view, a dominant component. I reach this conclusion because, in my view, the words Captain and Grub hang together and in so doing are likely to create in the average consumer's mind the image of a character of some sort (most likely fictional). As such, the distinctiveness of Mr Barnes' trade mark lies in the totality it creates, rather than the individual elements of which it is made up. I will bear these conclusions in mind when I approach the visual, aural and conceptual comparison.

Visual/aural similarity

21. In his counterstatement Mr Barnes says:

“14. Because the marks do contain Captain does create some visual similarities”

22. In my view, the presence of the word Captain as the first element in Mr Barnes' trade mark and the only element in Iglo's trade mark, results in the competing trade marks being both visually and aurally similar to a reasonable degree.

Conceptual similarity

23. I have already commented on the conceptual picture Mr Barnes' trade mark is likely to convey to the average consumer i.e. the image of a (most likely) fictional character of some sort. Regardless of the fact that both parties' trade marks consist of or contain the word Captain, in my view, Iglo's trade mark will not create the same conceptual picture in the average consumer's mind. When considered in isolation, the word Captain is, in my view, far more likely to be seen by the average consumer as a reference to a rank or title, for example, a captain in the armed forces or a captain of a sporting team, rather than as a reference to a character (albeit fictional). As a consequence, in my view, Mr Barnes' trade mark will evoke an image in the average consumer's mind whereas Iglo's trade mark will not.

Comparison of goods and services

24. The leading authorities on how to determine similarity between goods and services are considered to be *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117 and *British Sugar Plc v James Robertson & Sons Ltd (Treat)* [1996] R.P.C. 281. In the first of these cases the CJEU accepted that all relevant factors should be taken into account including the nature of the goods/services, their intended purpose, their method of use and whether they are in competition with each other or are complementary. The criteria identified in the *Treat* case were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market.
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

25. In reaching a conclusion I will also keep in mind the decision of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05 i.e.

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

26. In relation to complementary goods and services the comments of the Court of First Instance (now the General Court) in *Boston Scientific Ltd v OHIM* case T-325/06 are relevant:

“82 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 (PiraNAM diseño original Juan Bolaños) [2007] ECR I-0000, paragraph 48).”

27. In its Notice of opposition Iglo said:

“4. [Mr Barnes’ trade mark] covers a range of goods and services in classes 16, 29, 30 and 43. The goods and services in question are all identical and/or highly similar to the goods/services covered by [Iglo’s] trade marks.”

28. Mr Barnes has applied for a range of goods and services in classes 16, 29, 30 and 43. I will, as indicated above, compare Mr Barnes’ goods and services with the goods and services contained in what I consider to be Iglo’s best case i.e. CTM no. 9314361 which is registered in classes 29, 30 and 43.

Class 16

29. Other than providing the bald statement above, Iglo have provided no indication of why it considers Mr Barnes’ goods in this class to be similar to any of its goods and services. While the respective users of the competing goods and services may be the same, this superficial degree of similarity tells one little. In the absence of any submissions from Iglo to explain why it considers the goods/services to be similar, and having considered the nature of the goods/services, their intended purpose, their method of use and whether they are in competition with each other or are complementary, I can find no meaningful areas in which the competing goods and

services coincide. As a consequence, Mr Barnes' goods in class 16 are not, in my view, similar to any of Iglo's goods and services.

Class 29

30. Mr Barnes' goods in this class are as follows:

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats. Includes prepared meals and snacks whose main ingredients are proper to this class, (e.g. soups and potato crisps).

31. As Iglo's registration in class 29 also includes references to meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and milk products, edible oils and fats, the competing goods are identical. In addition, as Iglo's registration in class 29 also contains various references to prepared meals and snacks, for example, "instant meals and snack products", "prepared meals containing...", "individual ready meals", "ready cooked meals consisting...", "potato snack products in the form of...", these goods are either strictly identical (or identical on the principle outlined in *Meric*) to the "prepared meals and snacks" identified in Mr Barnes' specification in class 29. That leaves "fruit sauces" in Mr Barnes' specification to consider. In my view a fruit sauce is, given its physical nature, intended purpose and method of use, highly similar to both "jams" in Iglo's registration in class 29 and "sauces (condiments)" in class 30 of its registration.

Class 30

32. Mr Barnes' goods in this class are as follows:

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice. Includes prepared meals and snacks whose main ingredients are proper to this class, (e.g. pizzas, pies and pasta dishes).

33. Here again, the terms Coffee, tea, cocoa, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices and ice find exact counterparts in Iglo's registration in class 30 and are identical. In addition, as Iglo's registration in class 30 also contains references to prepared meals and snacks, for example, "chilled ready meals", "individual ready meals", "ready cooked meals" and, for example, "savory waffles" these goods are once again either strictly identical (or identical on the principle outlined in *Meric*) to the "prepared meals and snacks" identified in Mr Barnes' specification in class 30. That leaves "sugar", "confectionery" and "ices" in Mr Barnes' specification to consider. Having compared these goods with the goods and services in Iglo's registration, and having applied the case law mentioned above, I

find that if there is any similarity between the competing goods/services it must be at a relatively low level.

Class 43

34. Mr Barnes' services in this class are:

Services for providing food and drink; temporary accommodation. Includes restaurant, bar and catering services; provision of holiday accommodation; booking/reservation services for restaurants and holiday accommodation.

35. As the "services for providing food and drink, restaurant, bar and catering services" in Mr Barnes' application would be encompassed by the phrases "services for providing food" and "catering services" in Iglo's registration in class 43 the services are identical either literally or on the *Merit* principle. In addition, as both the "temporary accommodation" and "provision of holiday accommodation" in Mr Barnes' specification would fall within the phrase "temporary accommodation" in Iglo's registration, these services are also identical on the basis mentioned above. That leaves "booking/reservation services for restaurants and holiday accommodation" in Mr Barnes' specification to consider. Although the provision of restaurant and holiday accommodation services will inevitably include as part of the service the opportunity to make a booking, it is not, in my experience, provided as a separate identifiable service by the undertaking concerned but merely as an adjunct to its principal activity. Simply phoning a restaurant/holiday accommodation provider to book a table/holiday accommodation does not constitute a booking/reservation service. Such a service is likely, instead, to be provided by a third party to a restaurant/holiday accommodation provider, with the average consumer phoning the service provider to make a booking which will be taken on the restaurant's/holiday accommodation provider's behalf. However, notwithstanding the above, the average consumer will, I think, identify a similarity in purpose as the services are being used with the end result of booking a restaurant or holiday accommodation. While the services are not, in my view, competitive, there is an element of complementarity, resulting in a moderate degree of similarity between these services and Iglo's "services for providing food" and "temporary accommodation" in class 43.

Distinctive character of Iglo's earlier trade mark

36. I must now assess the distinctive character of Iglo's trade mark. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services for which it is registered and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and*

Attenberger Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. As Iglo have not filed any evidence in these proceedings, I have only the inherent characteristics of its trade mark to consider. As the word CAPTAIN is a common English language word whose various meanings will be well known to the average consumer, but which neither describes the goods and services for which Iglo's trade mark is registered nor is non-distinctive for such goods and services, it is, in my view, a trade mark possessed of a no higher than normal degree of inherent distinctive character.

Likelihood of confusion

37. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. 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 respective goods and services and vice versa. As I mentioned above, it is also necessary for me to factor in the distinctive character of Iglo's trade mark as the more distinctive this trade mark is the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

38. Given the cumulative nature of the test, there can be no likelihood of confusion when the goods and services are not similar. As I have found that there is no similarity between Mr Barnes' goods in class 16 and Iglo's goods and services, Iglo's opposition to Mr Barnes' goods in class 16 fails.

39. In reaching a conclusion on the likelihood of confusion in relation to the goods and services in classes 29, 30 and 43 of Mr Barnes' application which remain, I must bear in mind that while I have characterised the breadth of similarity with Iglo's goods and services as ranging from identical to relatively low, I concluded that the majority of Mr Barnes' goods and services were either identical to Iglo's goods and services or similar to at least a moderate degree. I must also remember that while I concluded that Mr Barnes' trade mark was likely to send a conceptual message to the average consumer and Iglo's trade mark would not, I also concluded that there was a reasonable degree of both visual and aural similarity between the competing trade marks. I note that in *The Picasso Estate v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) – Case C-361/04, the CJEU said:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

40. However, I also note that in *Nokia Oyj, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* – Case T-460/07 the GC said:

“66. Furthermore, it must be recalled that, in this case, although there is a real conceptual difference between the signs, it cannot be regarded as making it possible to neutralise the visual and aural similarities previously established (see, to that effect, Case C-16/06 P *Éditions Albert René* [2008] ECR I-0000, paragraph 98).”

41. I have already concluded that Mr Barnes' trade mark is likely to send a conceptual message to the average consumer whereas Iglo's trade mark would not. Despite this difference, the degree of visual similarity between the competing trade mark is too great, in my view, to be counteracted by it. This is particularly so given that the visual aspect is of prime importance, the goods will be obtained by self selection and the purchase will involve a somewhat lower than normal degree of attention being paid to it, thereby leading to the average consumer having a higher susceptibility to the effects of imperfect recollection. In those circumstances, there is, in my view, a likelihood of direct confusion i.e. where one trade mark is mistaken for another. This conclusion applies to all of Mr Barnes' goods in classes 29 and 30 (including those I considered to be similar to only a relatively low degree).

42. As to the services in class 43, I concluded that the services at issue were either identical or moderately similar and that the average consumer would (unlike the goods in classes 29 and 30) pay at least a normal level of attention to their selection (and in relation to some of the services at issue this level of attention would increase to reasonably high). Notwithstanding the degree of similarity I have identified in the services, the conceptual message likely to be sent by Mr Barnes' trade mark when considered in the context of an average consumer paying at least a normal level of attention when selecting the services at issue is sufficient, in my view, to “neutralise the visual and aural similarities” between the competing trade marks and points away from the likelihood of either direct or indirect confusion. As a consequence, Iglo's opposition to Mr Barnes' services in class 43 fails.

Summary of conclusions

43. Iglo's opposition succeeds in relation to Mr Barnes' goods in classes 29 and 30, but fails in relation to the goods and services in classes 16 and 43.

Costs

44. As both parties have achieved a measure of success each should bear its own costs.

Dated this 20th day of February 2013

**C J BOWEN
For the Registrar
The Comptroller-General**