

**O-144-18**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK APPLICATION 3083723  
IN THE NAME OF RAM RECORDS LIMITED  
FOR THE TRADE MARK:**

**RAM Records**

**AND**

**OPPOSITION THERETO (UNDER No 404325)  
BY LOCAL BOY'Z LIMITED**

## **Background and pleadings**

1. The details of the mark the subject of these proceedings are as follows:

Mark:	<b>RAM Records</b>
Filing date:	28 November 2014
Publication:	13 February 2015
Applicant:	Ram Records Limited <sup>1</sup>
Goods/services:	<b>Class 9:</b> Vinyl-pressed records, pre-recorded cassettes, tapes, compact discs, pre-recorded compact discs, digital music (downloadable) provided from MP3 web sites, digital music (downloadable) from the Internet.  <b>Class 25:</b> Clothing, footwear, headgear.  <b>Class 41:</b> Audio entertainment services, club entertainment services, entertainment in the form of recorded music, entertainment services provided at night-clubs, providing digital music (not downloadable) for MP3 Internet web sites, providing digital music (not downloadable) from the Internet, digital music (not downloadable) provided from MP3 web sites on the Internet, digital music (not downloadable) provided from the Internet.

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<sup>1</sup> The mark was actually filed by Scott Bourne and Andy Clarke, but they assigned it to Ram Records Limited on 31 October 2016, with an effective date of assignment of 21 December 2015.

2. Registration of the mark is opposed by Local Boy'z Limited ("the opponent"). Its grounds of opposition are founded on sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"), relying on the following two trade marks:

UK Registration 1158991 for the mark **RAM** which was filed on 6 August 1981 and registered shortly thereafter. The mark is registered in class 25 in respect of: "[a]rticles of clothing for men, youths and boys; but not including articles of sports clothing"

UK Registration 2010306 for the mark **RAM** which was filed on 8 February 1995 and registered on 1 May 1998. The mark is registered in class 25 in respect of: "[a]rticles of clothing, none being intended for sale through sporting outlets."

3. Given their filing dates, both marks constitute earlier marks in accordance with section 6 of the Act. Both marks were registered well in excess of five years before the publication of the applicant's mark, with the consequence that the earlier marks must meet the use conditions set out in section 6A of the Act if they are to be relied upon. To that extent, the opponent made a statement of use in relation to all of the goods for which the marks are registered.

4. The opponent states that the word "RAM" is wholly contained within the applicant's mark and that because the word "Records" is descriptive, the comparison between the marks should be made on the basis of RAM v RAM which is, therefore, identical. It argues that the goods are identical or highly similar. It argues that there is a likelihood of confusion under section 5(2)(b). In relation to section 5(3), the opponent claims a reputation for all of the goods for which the marks are registered. Although it repeats (essentially) the wording of the Act in so far as its basic claims are concerned, from the rest of the information in its pleadings, the opponent's case appears to be focused on unfair advantage, and, also, detriment to its reputation on the basis of damage that could be caused if the applicant's goods and services were of an inferior quality.

5. The applicant filed a counterstatement denying the grounds of opposition and putting the opponent to proof of use. It denies that the correct comparison is between RAM and RAM and therefore denies that the marks are identical. It is denied that the

goods are identical or highly similar, highlighting, for example, that there is no similarity between the opponent's class 25 goods and the goods/services of the applicant in classes 9 and 41. It denies that there is a likelihood of confusion and highlights that there have been no instances of confusion despite what it says is the concurrent use of the marks. In relation to section 5(3), it denies the existence of a reputation and the heads of damage relied upon. One final point I note from the counterstatement is that an issue was taken about the opponent's ownership of the earlier marks, a point I will return to shortly.

6. Both sides filed evidence. The opponent also filed a set of written submissions. A hearing took place before me on 2 March 2018 at which the applicant was represented by Ms Jane More O'Ferrall of Haseltine Lake. Due to the inclement weather conditions at the time, the hearing took place via telephone conference. The opponent chose not to attend the hearing. The day before the hearing the opponent's representatives, Lane IP Limited, wrote to the tribunal indicating that it simply relied on the evidence and submissions it had previously provided.

### **Preliminary point – the opponent's locus in these proceedings**

7. In its counterstatement, the applicant questioned the locus of the opponent to bring these proceedings given a chain of transfer that resulted in the assignee (in 2012) of the mark subsequently being dissolved. In response, the opponent provided the following information about the chain of title:

The assignment of the earlier marks from Tamarind International Limited to Local Boy'z Limited (company registration no. 07153843) took place on 3 July 2012.

Local Boy'z Limited (company registration no. 07153843) changed its name to Local Boy'z Essex Limited on 26 February 2015.

Local Boy'z Essex Limited ceased trading and a new company under the name of Local Boy'z Limited (company registration no. 09017320) took over the trading activities from 1 March 2015. The marks were also assigned at this time.

Therefore, at the time of filing the Notice of Opposition (13 April 2015) and at the time of filing the Notice of Opposition (13 May 2015) the earlier marks were, and remain, in the name of Local Boy'z Limited.

8. Absent any reason to doubt the veracity of the above, or any counter-evidence from the applicant, the Tribunal indicated that the above information was satisfactory and that the opposition should proceed. The applicant did not seek to challenge that view. Given this, I am satisfied that the opponent had (and still has) the required locus to oppose on the basis of the earlier marks identified. I also note from the counterstatement that one of the applicant's points was whether the opponent can assert that it owns a relevant reputation, however, a reputation is tied to the mark, so if a reputed mark is assigned, the assignee will be able to rely on that reputation also.

### **The evidence**

9. Rather than provide a stand-alone evidence summary, I will, instead, draw from the evidence when it is relevant to do so. For the record, the witnesses are:

- For the opponent, Mr Stephen Mucklow, a director of the opponent. He gives evidence about the claimed use and reputation of the earlier marks.
- For the applicant, Mr Andrew Clarke, a director of the applicant. He gives evidence about the use of the applied for mark.
- For the applicant, Ms More O'Ferrall, who works at Haseltine Lake. She gives evidence about the nature of the opponent's biggest claimed customer, Sports Direct and its relationship with Heatons, the opponent's other claimed customer.
- For the opponent (in reply), Ms Natalie Salter, who works at Lane IP Limited. She gives some factual evidence in reply to the evidence of Ms More O'Ferrall and some reply submissions to the evidence of Mr Clarke.

## The proof of use provisions

### Legislation and leading case-law

10. Both grounds of opposition are dependent on the earlier marks meeting the use conditions set out in section 6A of the Act, which read:

“(3) 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 [.....]”

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered [.....]

(5) .....

11. Section 100 is also relevant, which 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.”

12. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Anor*, [2016] EWHC 52, Arnold J. summarised the case-law on genuine use of trade marks:

“217. In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] FSR 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed

Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28 at [42] of the jurisprudence of the CJEU in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159 and Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759 (to which I added references to Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237). I also referred at [52] to the judgment of the CJEU in Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16 on the question of the territorial extent of the use. Since then the CJEU has issued a reasoned Order in Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd* (O/528/15).

[218] ...

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(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 to distinguish the goods or services from

others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving 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. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

### **The relevant period**

13. The relevant period for the assessment is the five year period ending on the date of publication of the applicant’s mark. Consequently, the relevant period is: 14 February 2000 to 13 February 2015.

### **The evidence of use**

14. Mr Mucklow’s evidence sets out the opponent’s use of the earlier marks. Given the chain of title described earlier, any use in the relevant period must have been made by the now dissolved company as opposed to the current opponent. Nothing turns on this, the marks have either been genuinely used or not. Given that both earlier marks are for the word RAM, I will refer to them in the singular.

15. Mr Mucklow goes into some detail about the process involved in getting the goods to market, from their design to subsequent sale. He highlights that when the proprietor (at that point in time) took ownership of the mark (in the middle of 2012), there would have only been two and a half years left of the relevant period. There is no mention of the previous proprietor (Tamarind International Limited) having used the mark.

16. The first phase in the process described by Mr Mucklow can be characterised as internal use. This relates to the creation of CAD drawings for the products in 2012 and subsequent internal meetings to discuss “the design concept and brand guidelines”. Exhibit SM1 consists of a meeting agenda dated 20 September 2012, which, under the heading “general”, one of the items for discussion is “RAM Golf Brand”. Exhibit 2

contains various CAD drawings. Of the five pages provided, three are headed as “Men’s core golf range Autumn/Winter 2013.” Mr Mucklow highlights that Autumn/Winter 2013 is within the relevant period. He adds that goods for different seasons are created well in advance of the season, although he says nothing specific about the RAM goods. The goods shown in the drawings are: sweaters, trousers, shorts, jackets, caps, a vest like top (tank-top), polo shirts, belts and pullovers. On each of the first three pages, at the top of the page, are the words RAM GOLF APPAREL, with the word RAM slightly stylised with a circle surrounding the R.

17. The clothing items depicted in the document sometimes feature the word RAM (as described above) but sometimes just the R in a circle. On the first three pages, in the bottom right hand corner, there is the logo for the Sports Direct business. The last two pages of the five do not contain the Sports Direct name. They are headed RAM COLLECTION – OVERVIEW (without any form of stylisation). Additionally, the logo as described above is used, but without the words GOLF APPAREL. The goods here are limited to check knitted sweaters, plain polo shirts, plain trousers, printed polo shirts, plain knitted sweaters, plain knitted vests and plain shorts.

18. The next phase described by Mr Mucklow involves discussing the products with prospective customers/retailers and then obtaining sample products. Mr Mucklow states that once the opponent is happy with the artwork, prospective customers would be approached to discuss the vision for the brand and see if they were interested in receiving samples. Samples would then be shown for approval. It is stated that “the artworks, samples, branding concepts” were presented between March 2014 and October 2014 (within the relevant period) to a number of potential customers including Sports Direct and a business in Ireland and the UK (ten stores in Northern Ireland) called Heatons. Exhibit 3 contains two annual reports for the retailer Sports Direct, from which it is highlighted the very large number of stores they operate out of in the UK. I note from the 2014 annual report that the business describes itself as:

“The UK’s leading sports retailer by revenue and operating profit, and the owner of a significant number of world-famous sport, fashion and lifestyle brands”

19. Exhibit SM4 consist of an email, dated 7 October 2014, addressed to individuals who are said to be contacts in Heatons, asking when they would be in a position to “send us the orders” with RAM Golf being one of the ranges they had previously mentioned. Exhibit SM5 contains an email (from May 2014) to a buyer at Sports Direct (sean.nevitt@sportsdirect.com) in which Mr Mucklow wishes to have a catch-up with the buyer on a number of matters, one of which is identified as “Ram Golf Promo”.

20. Mr Mucklow then identifies the next phase as the receipt of orders. Exhibit SM6 consists of an email from the buyer at Heatons (sportsbuyer1@heatonsstores.com) placing an order for Ram goods. A total of 3060 products are ordered consisting of polo shirts, trousers, knitted sweaters and knitted vests. It is added that Sports Direct also ordered 40,000 products (polo shirts, vests, trousers and shorts) but no email or order form is provided for this, nor the date on which the order was placed. However, exhibit SM7 does contain an order (dated 7 October 2014 – within the relevant period) placed with the proprietor’s manufacturer in Bangladesh for what is said to be over 40k products and where Sports Direct is identified as the ultimate customer.

21. Exhibit SM8 contains a number of email exchanges between the then proprietor and its manufacturer that took place between October 2014 and February 2015. In short, the proprietor was ensuring that the goods were of the required quality, with certain production samples being approved, or not, as the case may be. Mr Mucklow states that this caused delays in getting the final product samples to its customers, so the customers must have been involved in the approval process also. I note from one of the earlier emails that the proprietor requests the help of the manufacturer in ensuring that good quality is produced in order to secure “more orders”. Mr Mucklow states that when the samples are approved, the order is then fulfilled. It is stated that samples would have been sent to Sports Direct and Heatons prior to the end of the relevant period. Mr Mucklow states that:

“Whilst a purchase usually order [sp] represents a provisional booking which may be subject to change, it is clear from other exhibits .... that immediate steps were taken to finalise and produce samples of the products ordered”

22. Exhibits 9 and 10 contain a subsequent sales invoice (from April 2015) and payment invoice (from June 2015) relating to the Sports Direct order which, Mr Mucklow states, corresponds to the order it had placed during the relevant period (the details of which are seen in exhibit SM7). Exhibit 11 contains shipping information showing that the order was sent to the UK.

23. Exhibit SM12 contains a table of sales figures. The first row covers the period May 2015 to April 2016 (not October 2016 as Mr Mucklow states). The total value is £615k. It is stated that these dates represent the completion of the orders, when the then proprietor received the monies. It is stated that the orders for these sales were placed in September 2014. The second row of figures (again for £615k) relates to the period December 2015 to October 2016 for which it is stated that these orders were placed in March 2015. Although it is accepted that this is outside the relevant period, it is stated that discussions and negotiations would have taken place before then and in the relevant period in relation to these orders. Mr Mucklow concludes by stating that the then proprietor, in the two and a half year period of the relevant period in which it owned the mark, focused on creating the product and getting it to market.

24. I also need to consider the impact of Ms More O’Ferrall’s evidence. Her first point is that the two customers of the opponent are related. She provides an exhibit in JMOF1 of an extract from the Guardian dated 5 September 2015 which shows that Sports Direct is to buy-out Heatons, but at that point it already owned 50% of the shares. It is further explained that of the 10 Heatons stores in Northern Ireland, they each had a Sports Direct section or outlet. It is therefore summarised that, insofar as the goods would have been sold by Heatons in Northern Ireland, they would have been for subsequent sale through their Sports Direct section. I note that in response, Mr Mucklow states that this is not relevant because at the end of the relevant period the companies were still separate.

25. Ms More O’Ferrall’s exhibit JMO2 is an extract from the website of Sports Direct showing that it has outlets in many countries outside of the UK. Exhibit JMO3 is a Google.co.uk search report for the term *sportsdirect ram*. She highlights that the results include references to goods in outlets which are obviously outside of the UK, although this does not apply to all of the results. She adds that when conducting this

search she did not notice any branded RAM goods available for purchase. Mr Mucklow states that, again, this is not relevant as his earlier evidence shows a large number of stores (418) in the UK during the relevant period and he states that many businesses have outlets in other countries.

### **Analysis of evidence**

26. It is clear from the evidence that no sales of any goods were made to end consumers during the relevant period. Neither is there any evidence that the goods were promoted or marketed to end consumers during the relevant period. Consequently, the only potential use is with the opponent's trade customers, the retailers Sports Direct and Heatons.

27. There is no reason to doubt the veracity of the evidence in terms of the desire to get the goods to market. However, internal use (such as at the design stage or at internal meetings) does not itself constitute genuine use, although, it could go the genuineness of any subsequent use made.

28. I accept that during the relevant period the opponent (or more accurately its predecessor in title) had discussions with potential customers (at the very least with Sports Direct and Heatons) about the brand and whether they would wish to place some orders for the goods. I also accept that both Sports Direct and Heatons both placed some form of order for the type of goods set out in the evidence. I say "some form of order" because Ms More O'Ferrall submitted that what was placed was not a firm order and was more akin to an expression of interest. She highlighted that Mr Mucklow himself used the words "provisional booking". However, as Mr Mucklow states, the final invoice and sales invoice sent to Sports Direct (albeit after the relevant period) corresponds to the original order placed by Sports Direct within the relevant period. Also, as Mucklow states, although there were some delays in getting the goods produced and approved, the process still moved forward immediately. It seems to me that the orders placed within the relevant period by Sports Direct and Heatons should be regarded as formal orders, albeit ones which were subject to the approval of production line samples. As Mucklow accepts, these orders could be subject to change, but, at least in terms of Sports Direct, there was no change.

## Genuine use

29. The question that immediately arises from this is whether the placing of two orders during the relevant period by trade customers constitutes genuine use. As I have already stated, the use is not just internal. Further, I am satisfied that the use is neither token nor sham use aimed solely at maintaining the trade mark registration. The proprietor of the mark at the relevant time was clearly trying to create a market share. Further, it is not a prerequisite that the use is with end users. The decision of the Court of Appeal in *La Mer* (following its return from the CJEU) is instructive:

“Trade marks are not only used on the market in which goods bearing the mark are sold to consumers and end users. A market exists in which goods bearing the mark are sold by foreign manufacturers to importers in the United Kingdom. The goods bearing the **La Mer** mark were sold by Goëmar and bought by Health Scope Direct on that market in arm's length transactions. The modest amount of the quantities involved and the more restricted nature of the import market did not prevent the use of the mark on the goods from being genuine use on the market. The Court of Justice made it clear that, provided the use was neither token nor internal, imports by a single importer could suffice for determining whether there was genuine use of the mark on the market.”

30. Sports Direct (the customer) is clearly a UK business (as described in its annual report) and the goods it ordered were subsequently (albeit after the relevant period) shipped to the UK. That it may have outlets in other countries does not prevent it from being a UK customer of the opponent. Ms More O’Ferrall drew a distinction with *La Mer* on the basis that in *La Mer* there was an actual sale during the relevant period, something which did not occur in the subject proceedings. However, whilst I accept that the sales invoice was not issued and paid until after the relevant period, I am satisfied that the transaction that did take place during the relevant period represents real commercial activity aimed at creating a share in the relevant market. The transaction with Heaton's is less clear because it is an Irish customer, so, the goods may be flowing in the wrong direction even if it also has outlets in Northern Ireland. Nevertheless, I am satisfied that genuine use has been made.

31. In terms of such use, whilst some of it is in a stylised form and, arguably, may not be considered a form of use that qualifies under section 6A(4) (although the applicant has not argued as such), there is also use of RAM in plain font (as per the registered form of the mark) in some of the CAD drawings which would have been shown to the customers and used alone in various emails, order forms etc.

### **The fair specification**

32. There are two issues in relation to this. One relates to the fair specification to reflect the use made and how that should be worded. The second relates to the limitations that have been applied to the earlier marks and whether, in fact, the goods on which use has been made fall within the specification. The broadest specification is for the second mark, a specification which reads:

“Articles of clothing, none being intended for sale through sporting outlets.”

33. Ms More O’Ferrall submitted that the goods were intended for sale through sporting outlets (Sports Direct and, if applicable, the Sports Direct outlets inside Heaton’s), therefore, any use that had been made was in respect of the very thing that had been excluded. This, on face value, is an attractive argument. However, the exclusion itself does nothing to change the inherent nature of the goods for which the mark is registered. It is simply an attempt to indicate where the goods cannot be sold. Further, the exclusion is vague: what is meant by “intended” and what is meant by a “sporting outlet”? Further again, the specification would not now be accepted as it clearly falls foul of the guidance set out by the CJEU in the *Postkantoor* decision (C-363/00). For these reasons, and despite Mr More O’Ferrall’s submissions to the contrary, I consider that the exclusion should have no material effect on the specification of goods.

34. In terms of the fair specification, in *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

35. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations



of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46”.

36. It is clear that the goods involved are of the type worn by golfers and are clearly marketed as such. Ms More O’Ferrall highlighted that in some of the emails to the manufacturer, a call was made for greater movement in the fabric, which is fair to assume was for the purpose of ensuring suitability for golfers. Whilst such items could be worn for general casual purposes also, I accept that the average consumer is likely to characterise the goods as golf clothing. This, in my view, represents a fair specification of goods on which I will base my assessments under sections 5(2)(b) and 5(3). I will begin with the latter.

### **Section 5(3)**

37. In relation to section 5(3), this reads:

“5-(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of Community trade mark, in

the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

38. The leading cases are the following CJEU judgments: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the later mark would cause an average consumer to bring the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark’s ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a

change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious likelihood that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

## **Reputation**

39. The reputation hurdle is, essentially, a knowledge threshold. The mark must have become known to a significant part of the relevant public. Put like this, the opponent's claim is bound to fail. This is because there is no evidence of any sales being made to the general public before the date of filing of the contested mark. There is no evidence of any other mechanism by which the mark would have become known. The opponent has singularly failed to establish that its marks benefit from the requisite reputation. The ground is dismissed.

## **Section 5(2)(b)**

40. Section 5(2)(b) of the Act states that:

“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,

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

41. The following principles are gleaned from the judgments of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 be dominated by one or more of its components;

(f) however, it is also 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 greater 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 creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

## Comparison of goods/services

42. Goods and services may be considered identical if one term in a specification falls within the ambit of something in the competing specification, as per the guidance provided by the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05 (“*Meric*”):

“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 trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

43. In terms of similarity, when making a comparison of goods/services, all relevant factors relating to them should be taken into account. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the Court of Justice of the European Union (“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.”

44. Guidance on this issue has also come from Jacob J where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

“(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.”

45. In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v 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).”

46. In relation to complementarity, I also bear in mind the guidance given by Mr Daniel Alexander QC, sitting as the Appointed Person, in case B/L O/255/13 *LOVE* where he warned against applying too rigid a test:

“20. In my judgment, the reference to “legal definition” suggests almost that the guidance in Boston is providing an alternative quasi-statutory approach to evaluating similarity, which I do not consider to be warranted. It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together. I therefore think that in this respect, the Hearing Officer was taking too rigid an approach to Boston.”

### Classes 9 and 41

47. The applicant seeks registration for the following goods and services:

**Class 9:** Vinyl-pressed records, pre-recorded cassettes, tapes, compact discs, pre-recorded compact discs, digital music (downloadable) provided from MP3 web sites, digital music (downloadable) from the Internet.

**Class 41:** Audio entertainment services, club entertainment services, entertainment in the form of recorded music, entertainment services provided at night-clubs, providing digital music (not downloadable) for MP3 Internet web sites, providing digital music (not downloadable) from the Internet, digital music (not downloadable) provided from MP3 web sites on the Internet, digital music (not downloadable) provided from the Internet.

48. The earlier mark covers golf clothing in class 25 only. The opponent’s written submissions focus on similarity on the basis that music shops etc might sell t-shirts etc and that there is a consequent link between music and clothing.

49. Whilst I accept that music stores may sell clothing such as t-shirts (although they are unlikely to sell golf clothing), it does not follow that the goods are similar. The nature, purpose and methods of use are very different. The users may be the same, but that is a very general point. The channels of trade only overlap in one scenario (although not in relation to golf clothing), but even then it is not clear in how close a



proximity they will be sold to each other. The only possible argument is on the basis of complementarity. However, the goods/services can hardly be said to be important or indispensable for the use of each other. Whilst I bear in mind Mr Alexander's guidance as to not being too rigid in the assessment, I do not regard that there is a real complementary relationship between music and clothing, or entertainment services and clothing. The claim is dismissed in relation to the goods and services in classes 9 and 41.

### Class 25

50. The opponent also seeks registration in class 25 for the following goods:

#### **Class 25: Clothing, footwear, headgear.**

51. Clothing includes golf clothing so is identical on the basis of *Meric*. Any attempt to draw any form of distinction between golf clothing and, say, casual items of clothing is bound to fail because, as I have stated earlier, golf clothing can be worn for casual purposes and would include items such as polo shirts, sweaters etc. The goods are identical.

52. Footwear and headgear are themselves items of clothing and, therefore, are identical on the same basis as above. Even if that is too broad an interpretation, it is clear that items of footwear (such as shoes) and headgear (such as caps) are highly similar to golf clothing in terms of purpose, users and channels of trade, and they also have a complementary relationship. Thus, the goods would still be highly similar.

#### **Average consumer and the purchasing act**

53. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc*,

*Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

54. The goods I have found to be similar are in the clothing field, including golf clothing. Such items are not, generally speaking, greatly expensive. Some care will be taken in respect of style, colour, fitness for purpose etc. I consider that this equates to a reasonable, no higher or lower than the norm, level of care and consideration. The goods will be perused in traditional bricks and mortar retail establishments and their online equivalents. The goods and the marks used in relation to them may be seen in advertisements and on websites. This means that the visual impression of the marks may take on more significance, but the aural impact of the marks should not be ignored from the assessment completely.

### **Distinctiveness of the earlier mark(s)**

55. 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). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other

undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

56. What I said earlier in relation to reputation applies equally here. Although the tests are different, the absence of any use that the average consumer would have become aware of means that there can be no enhancement of distinctive character. In terms of the inherent qualities of the marks, the word RAM is a well-known word with a variety of meanings, albeit none which give any suggestive or allusive nods to the goods of interest. I consider RAM would strike the average consumer as a fairly unusual word in relation to clothing. I consider the earlier marks to have at slightly higher than normal degree of inherent distinctive character, but not of the highest level.

### **Comparison of marks**

57. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

58. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are:

## **RAM**      v      **RAM Records**

59. In terms of overall impression, the RAM mark has just one element so that is the only thing that contributes to its overall impression. In terms of RAM Records, the opponent stated in its statement of case that because Records is descriptive, it should effectively be ignored. This, as the applicant submits, is not the correct approach. First, Records is not descriptive in relation to clothing. Second, that word combines with RAM to create something as a whole that is likely to be perceived as a record company called RAM. The effect of this is that RAM may be given more significance than the word Records in the overall impression. That it has greater significance is supported by the fact that it is also at the start of the mark, although Records still makes a reasonable contribution given its role in the mark as a whole.

60. Visually, the marks coincide on the basis of the common element RAM, the whole of one mark, the beginning of the other. There is, though, a difference on account of the addition of the word Records. I consider this equates to a medium level of visual similarity, a finding which follows through in terms of the aural comparison.

61. Conceptually, the word RAM has a number of meanings. Whatever meaning the average consumer will focus on when seeing RAM alone, they are likely to see the

same meaning behind that word when encountering RAM Records. As RAM will be seen as the name of the record company, I consider this means that there is a high degree of conceptual similarity based on the word RAM.

### **Likelihood of confusion**

62. 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.

63. The first point I deal with relates to the applicant's defence of confusion free concurrent trading. In Mr Clarke's evidence he sets out the activities of the applicant under the mark. Put simply, he states that in addition to music related goods in class 9, the applicant has sold goods such as hoodies, t-shirts and sweaters since the late 1990s. An example is given of a 25th year anniversary (of Ram Records) t-shirt that was sold in 2017. Mr Clarke states that this is all without any instances of confusion coming to his attention. However, the difficulty with this point is that there had been no concurrent trade before the relevant date because, as discussed earlier, the mark had not been exposed to the average consumer. Consequently, the defence must fail in relation to this point. I should add that even though post-relevant date confusion free parallel trade could be indicative of there being no likelihood of confusion, the degree to which the marks have actually been exposed to the same consumer is not known and, so, again, this would tell me little.

64. Confusion can be direct (which effectively occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same, but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related). In terms of indirect confusion, this was dealt with by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 where he noted that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

65. I need only consider the goods in class 25 because without similarity (as per my finding in classes 9 and 41) there can be no likelihood of confusion. In terms of class 25, the goods are identical, or if not highly similar. RAM is the part of the applied for mark which takes on more significance, even though Records still plays a role in the

overall impression. Imperfect recollection needs to be added to the mix. When this is taking into account, I consider that there is a likelihood of direct confusion because the word RAM will form the primary conceptual hook of both marks with the result that the absence/presence of Records may be misremembered or misrecalled. There is a likelihood of confusion.

66. Even if I am wrong on direct confusion, I consider the common presence of RAM, in relation to the identical (or highly similar) goods at issue, will signify to the average consumer that the goods are the responsibility of the same or related undertaking. The word RAM is an unusual one and the consumer, particularly in circumstances where RAM has greatest relative weight, would assume that no one else is responsible for it.

### **Conclusion**

67. The opposition succeeds against the class 25 part of the application. However, subject to appeal, the application may proceed to registration in respect of:

**Class 9:** Vinyl-pressed records, pre-recorded cassettes, tapes, compact discs, pre-recorded compact discs, digital music (downloadable) provided from MP3 web sites, digital music (downloadable) from the Internet.

**Class 41:** Audio entertainment services, club entertainment services, entertainment in the form of recorded music, entertainment services provided at night-clubs, providing digital music (not downloadable) for MP3 Internet web sites, providing digital music (not downloadable) from the Internet, digital music (not downloadable) provided from MP3 web sites on the Internet, digital music (not downloadable) provided from the Internet.

### **Costs**

68. The applicant has been the more successful party and is entitled to an award of costs. My assessment, from the published scale, is set out below. My assessment is reduced from what I may otherwise have awarded if the applicant had been wholly successful. I also bear in mind that the opponent pursued a clearly untenable claim

under section 5(3). Ms More O'Ferrall also mentioned attempts to settle, but there is no evidence before me to suggest that the opponent has been unreasonable in its conduct in not settling, thus, this has not caused me to alter my assessment:

*Considering the statement of case and preparing a counterstatement - £250*

*Considering evidence and submissions and filing evidence - £700*

*Written submissions in lieu of a hearing: - £300*

69. I order Local Boy'z Limited to pay Ram Records Limited the sum of £1250 within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 7<sup>th</sup> day of March 2018**

**Oliver Morris**

**For the Registrar**

**the Comptroller-General**