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Our ref OPP 71464/Trade Marks Law/AF
Date 11 April 2007

Please quote our complete reference on all correspondence

The Case Work Examiner for these proceedings is: Jayne Francis (01633) 814103

Dear Sirs

**NOTIFICATION OF A TOTAL REFUSAL OF PROTECTION BASED ON AN
OPPOSITION BY THE UNITED KINGDOM PATENT OFFICE IN ACCORDANCE
WITH ARTICLE 5 OF THE MADRID PROTOCOL**

RE: International Registration number :899828
For the mark :X-431
Holder of the International Registration :LAUNCH TECH CO., LTD
Opposition number :71464

I must advise you that following receipt of an opposition to the above Trade Mark, it is necessary to issue this formal provisional refusal letter. This provisional refusal covers all of the goods and services of the International Registration.

Please find attached a copy of the Form TM7 (Notice of Opposition) that was received by the United Kingdom Trade Mark Registry.

We also attach:

Copies of the marks referred to in the statement of case.
Form TM8, for any reply to this opposition to be filed.
Form TM33 for an agent/ address for service in the United Kingdom to be appointed.
A copy of an extract from the United Kingdom Trade Marks Act 1994.

If the holder of the International Registration wish to file a counterstatement, they should complete the attached form TM8 and return it together with the counterstatement within **3 months** of the date of this letter. This period cannot be extended, except in the circumstances described below. The holder should note that failure to file a form TM8 and counterstatement will result in the provisional refusal being upheld in accordance with article 10 of the Trade Marks International Registration Order 1996(as amended).

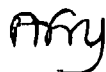
If both parties to this dispute wish to negotiate and want to enter a 'cooling off period' then the time for filing the Form TM8 can be extended for a further nine months by the filing of A Form TM9c.

The Form TM8 and counterstatement should be received on or before **11 July 2007** unless a cooling off period is entered into by the parties.

The holder of the International Registration must provide us with an address for correspondence in the United Kingdom on the attached TM33 within this 3 month period. If one is not provided within this time the refusal will be made final.

The Patent Office actively encourages parties to mediate as a swifter and less costly alternative to litigation. If you feel that this option is of interest, the Office can either provide a member of its own team of accredited mediators, each with extensive experience of dealing with intellectual property disputes, or can provide a list of other mediation providers. The Patent Office (London and Newport) can be used as a venue in either case. For more information, please visit the website, or contact commercialsearches@ipo.gov.uk, telephone 01633 811010.

Yours faithfully



Ann Fry
LAW SECTION ASSISTANT CASEWORK EXAMINER

Form TM7

Official fee £200 due with this form

J278292/ 001 000192 TM07.....
10APR07 200.00 CHEQUE

Notice of opposition and statement of grounds



The Patent Office
Trade Marks Registry
Cardiff Road, Newport
South Wales NP10 8QQ

Please read the guidance notes below about filling in this form

1 Trade Mark number	M899828	(Class) Class 9
2 Full name of the applicant or registered proprietor.	LAUNCH TECH CO., LTD.	
3 Full name and address (including postcode) of the opponent.	X.peer.de GmbH Brackenstrasse 3 D-38159 Vechelde Germany	LAW SECTION 10 APR 2007 RECEIVED
4 Name and address (including postcode) of the agent (if any).	J A Kemp & Co 14 South Square Gray's Inn London WC1R 5JJ	
5 Are there any related proceedings currently with the Registry or the courts? If so, give application, registration or opposition number		
6 Under what sections of the Trade Marks Act are you opposing this application?	5(2)(b), 5(3)	
7 Declaration	I believe that the facts stated in this notice and in the attached statement of grounds are true.	
Your signature		
Your name in BLOCK CAPITALS	J A KEMP & CO.	
Date	5 April 2007	
8 Name and daytime phone number of the person we should contact in case of query.	Monica A Marshall 0207 405 3292	
Your reference	Y.10985 - MAM/SK	
Number of sheets attached to this form.	This is sheet 1 of 19	

Notes You must attach a separate sheet for each earlier mark you rely on.

If there is not enough space for your answers to any section, you may use extra blank sheets.

Number every extra sheet and say in question 8 above how many sheets you have used.

(REV/July04)

Form TM7

Form TM7

Sheet 2 of 5

Use this sheet if you are basing your opposition on section 5(1) or 5(2) of the Trade Marks Act.
 Tick which section you are relying on and give details of the earlier mark.
 You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Statement of grounds for opposition based on section 5(1) or (2) of the Trade Marks Act 1994.

- ☐ 5(1) identical with an earlier mark and for identical goods or services as the earlier mark.
- ☐ 5(2)(a) identical with an earlier mark and for similar goods or services as the earlier mark.
- ☒ 5(2)(b) similar to an earlier mark and for identical or similar goods or services as the earlier mark

Details of earlier trade mark

Number: 838808

Is it a UK, Community or International mark? International

Representation of the mark:

X4-LIFE (Figurative)

What goods or services (including their class) are covered by this mark?
 See attached statement.

State which goods or services in the application you say are identical or similar to those covered by the earlier mark
 See attached statement.

Statement of use

If the earlier mark has been registered for five years or more before the publication of the mark you are opposing, state which goods or services the earlier mark has been used on in that time, or state why the mark has not been used in that time

Not applicable.

Form TM7

Form TM7

Sheet 3 of 5

Use this sheet if you are basing your opposition on section 5(1) or 5(2) of the Trade Marks Act.
 Tick which section you are relying on and give details of the earlier mark.
 You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Statement of grounds for opposition based on section 5(1) or (2) of the Trade Marks Act 1994.

- ☐ 5(1) identical with an earlier mark and for identical goods or services as the earlier mark.
- ☐ 5(2)(a) identical with an earlier mark and for similar goods or services as the earlier mark.
- ☒ 5(2)(b) similar to an earlier mark and for identical or similar goods or services as the earlier mark.

Details of earlier trade mark

Number 827214

Is it a UK, Community or International mark? International

Representation of the mark

X4-TECH (figurative)

What goods or services (including their class) are covered by this mark?
 See attached statement.

State which goods or services in the application you say are identical or similar to those covered by the earlier mark
 See attached statement.

Statement of use

If the earlier mark has been registered for five years or more before the publication of the mark you are opposing, state which goods or services the earlier mark has been used on in that time, or state why the mark has not been used in that time

Not applicable.

Form TM7

Form TM7

Sheet 4 of 5

Use this sheet if you are basing your opposition on section 5(3) of the Trade Marks Act and give details of the earlier mark. You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Statement of grounds for opposition based on section 5(3) of the Trade Marks Act 1994.

☒ 5(3) Identical with or similar to an earlier mark with a reputation.

Details of earlier trade mark

Number 038808

Is it a UK Community or International mark? International

Representation of the mark:

X4-LIFE (figurative)

What goods or services (including their class) are covered by this mark?
see attached statement.

State which goods or services you say this mark has a reputation for.
see attached statement.

State which goods or services in the application you say would take unfair advantage of or be detrimental to the distinctive character or reputation of the earlier mark.
see attached statement.

Why do you say this?
see attached statement.

Statement of use

If the earlier mark has been registered for five years or more before the publication of the mark you are opposing, state which goods or services the earlier mark has been used on in that time, or state why the mark has not been used in that time.

Not applicable.

Form TM7

Form TM7

Sheet 5 of 5

Use this sheet if you are basing your opposition on section 5(3) of the Trade Marks Act and give details of the earlier mark. You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

Statement of grounds for opposition based on section 5(3) of the Trade Marks Act 1994.

☒ 5(3) identical with or similar to an earlier mark with a reputation

Details of earlier trade mark

Number 827214

Is it a UK, Community or International mark? International

Representation of the mark:

X4-TECH (figurative)

What goods or services (including their class) are covered by this mark?
see attached statement.

State which goods or services you say this mark has a reputation for
see attached statement.

State which goods or services in the application you say would take unfair advantage of or be detrimental to the distinctive character or reputation of the earlier mark
see attached statement.

Why do you say this?
see attached statement.

Statement of use

If the earlier mark has been registered for five years or more before the publication of the mark you are opposing, state which goods or services the earlier mark has been used on in that time, or state why the mark has not been used in that time.

Not applicable.

Form TM7

TRADE MARKS ACT 1994

IN THE MATTER OF United Kingdom
Designation of International Trade Mark
Registration No. M899828 X-431
(stylised) in Class 9
of LAUNCH TECH CO., LTD.

-and -

IN THE MATTER OF an Opposition
thereto by x-peer.de GmbH

STATEMENT OF CASE

1. X-peer.de GmbH (hereinafter "the Opponent") is the registered proprietor of the following Trade Mark Registrations (full details of which are attached as Annex A):

COUNTRY	REGISTRATION NO.	TRADE MARK	CLASS(ES)	A. PRIORITY DATE B. DESIGNATION DATE C. PUBLICATION DATE
INTERNATIONAL (UK)	M838808	X4-LIFE (stylised)	9, 11 & 16	A 12 March 2004 B 16 August 2004 C 11 March 2005
INTERNATIONAL (UK)	M827214	X4-TECH (stylised)	9 & 11	A 5 June 2003 B 28 November 2003 C 1 April 2005

2. The Opponent's trade mark registrations possess earlier priority and designation dates in the United Kingdom than the designation date of the opposed Trade Mark

Application No. M899828 (hereinafter "the application in suit"). Therefore, the Opponent's trade mark registrations constitute earlier marks according to Section 6(1)(a) of the Trade Marks Act 1994 (herein after "the Act").

3. The Opponent's trade marks have been in use in the UK and have acquired reputation as a result of that use.
4. The Opposition is directed against all of the goods in the application in suit.

The Trade Marks

5. The marks to be compared are:

X4 - LIFE



X4 - TECH

Earlier Marks

Opposed Mark

6. Following *Sabel v Puma* (C-251/95) a global comparison of the marks under consideration should be made, taking into account the visual, aural and conceptual characteristics of the marks.
7. The Opponent's trade marks comprise the elements "X", "4", and "-", together with added matter after these elements forming the prefix. Making a visual analysis of the Opponent's marks, it is clear that this prefix is the most unusual part of the marks, with the word "life" being an ordinary English word and the word "tech" being a common English abbreviation. Accordingly, it is

submitted that these elements forming the prefix "X4- " are memorable and distinctive.

8. Both the Opponent's marks and the mark contained in the application in suit are stylised with the most memorable part of the stylisation in each case being the elongation of one of the branches of the "X" at the beginning of each mark. In the earlier registered marks the elongation flows from top left to bottom right, and in the application in suit, the elongation flows from top right to bottom left. However, a consumer would easily forget such details and even if faced with both marks side by side on the shelf, may well believe that one is simply an updated version of the other.
9. In further considering the visual impact of the application in suit, this includes, at the beginning of the mark, the same constituents "X", "-" and "4" as are found in the Opponent's registered marks. Whilst the hyphen is placed between the "X" and the "4", such a character is often overlooked, and the placing of the hyphen could be easily mis-remembered. (Consider *IBM v Websphere* [2004] EWHC 529 (Ch), where the point that hyphens could be easily forgotten due to imperfect recollection was discussed.) There follows in the application in suit, additional matter after the "4", as in the Opponent's marks. Such added matter could be seen by consumers as simply denoting a particular product line or diffusion line of the main "X4" or "X-4" brand.
10. An aural comparison of the marks reinforces the "X4" elements of both marks. The Opponent's marks would be pronounced "EX FOUR LIFE" and "EX FOUR TECH", whilst the application in suit would be spoken as "EX FOUR THREE ONE". Most emphasis is given to the beginning of marks, i.e. the X4 prefix in all three cases. There is likely to be confusion between consumers hearing the Opponent's and Applicant's marks spoken.
11. The repetition of the prefix at the beginning of marks under different

ownership would be likely to lead to confusion amongst consumers hearing the parties' marks spoken.

12. It follows from the above that confusion will result, with products sold under the mark of the application in suit being assumed to have an economic link with goods sold under the earlier marks.

13. The application in suit comprises a mark similar to the earlier registered marks.

Goods

14. The application in suit covers the following goods in Class 9:

“Diagnostic computers for vehicle breakdown; data processing apparatus; computers; computer peripheral devices; time recording apparatus; punched card machines for offices; electronic notice boards; semi-conductors; telephone apparatus; optical goods”.

The goods covered in the application in suit are identical or similar to those encompassed in the Opponent's earlier registrations (details of which are attached as Annex A).

In particular, the items “diagnostic computers for vehicle breakdown; data processing apparatus; computers; computer peripheral devices;” are identical to the following goods included in International Registration (IR) No. 838808 X4-LIFE, “computers; parts and components of computers; computer peripheral devices; parts and components of computer peripheral devices; computer accessories (included in this class)”. “Data processing apparatus” is a term commonly used for computers and if not identical to the computers listed in the Opponent's earlier registration, then it is submitted that these are

similar.

15. It is submitted that "time recording apparatus;" is likely to be in the form of a computer, in which case it would be identical or similar to at least the "computers" in the X4-LIFE registration. Also, a consumer would expect a provider of computers and electronic devices for surveillance etc., to manufacture time recordal apparatus. By analogy, we submit that the "punched card machines for offices" are also similar to computers and electrical devices for surveillance and related accessories.
16. The item "electronic notice boards;" in the application in suit is identical or similar to at least "computers;.... video devices" included in the X4-LIFE registration.
17. "Semi-conductors;" contained in the application in suit are parts or components used in the majority of the goods listed in the X4-LIFE and X4-TECH registrations. Moreover these registrations include parts and components of specified goods. It is frequently the case that providers of electronic equipment will also manufacture the components and therefore a consumer would expect a semiconductor bearing a similar trade mark to an item of electrical equipment to derive from the same source.
18. "Telephone apparatus;" is identical or similar to the "audio devices, parts and components of audio devices; peripheral devices for audio devices; parts and components of peripheral devices for audio devices (Included in this class);", as included in the earlier X4-LIFE registration. Further, as telecommunications technology has advanced considerably, leading to convergence of technologies in e.g. mobile phones and PDAs, "telephone apparatus;" would be considered identical or similar to computers, video devices etc., in the earlier registrations. Indeed, many mobile phones now include the ability to record and/or play video clips and there are traditional

land line phones available which include video technology to allow callers to see one another in real time.

19. "Optical goods", are identical and or similar to at least computer display screens, video devices, and the viewing parts of the electrical devices for surveillance, as described in the X4-LIFE and/or X4-TECH registrations. In addition, the devices for the deterrence of animals and the extermination of insects are described in the registrations as including "optically working devices", which are identical to optical goods.
20. In the alternative and to the extent that any of the goods included in the application in suit are considered dissimilar from the goods covered by the Opponent's earlier marks, it is submitted that use of the mark applied for in respect of those goods would take unfair advantage of, or be detrimental to, the distinctive character and repute of the earlier marks.

Grounds for Opposition

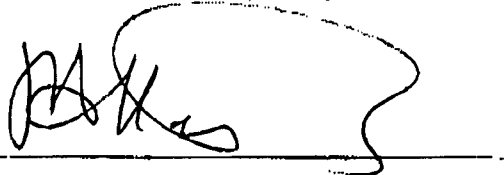
21. *Section 5(2)(b)*
The marks being compared are similar, and the goods encompassed in the application in suit are identical or similar to those protected in the earlier registrations, such that there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade marks, and therefore the application in suit should be refused as it is contrary to the Act, Section 5(2)(b).
22. *Section 5(3)*
The Opponent relies upon their registered marks' reputation in the UK, and submits that use of the mark applied for without due cause, would take unfair advantage of, or be detrimental to, the distinctive character or repute of their

earlier marks, and therefore the application in suit be refused under the Act,
Section 5(3).

Request for Refusal the Application in Suit and an Award of Costs

23. The Opponent requests that the application in suit be refused in its entirety and
that an award of costs be made in its favour.

Dated this 5 day of April 2007

A handwritten signature in black ink, appearing to be 'J.A. Kemp & Co.', written over a horizontal line.

J.A. Kemp & Co.

Agents for the Opponent

IN THE MATTER OF United Kingdom
Designation of International Trade Mark
Registration No. M899828 X-431
(stylised) in Class 9
of LAUNCH TECH CO., LTD.

-and -

IN THE MATTER OF an Opposition
thereto by x-peer.de GmbH

ANNEX A



For Innovation

Trade mark details as at 1 March 2007

Case details for International Madrid(UK) Trade Mark
M838808

Mark

X4 - LIFE

Mark text:

X4-LIFE

Status

UK case status:

Protected

Classes:

09, 11, 16

Relevant dates

International registration date:

16 August 2004

Date of designation in UK:

16 August 2004

Next renewal date:

16 August 2014

Priority claims

Priority date:

• 12 March 2004

Country:

Germany

Reference:

304 14 464.9/09

Office of origin details

Office of origin:

Germany

Basic application or registration number Filing or registration date

30414464.9/09

11 May 2004

Publication

First advert in UK TMJ:

Journal:

6573

Publication date:

11 March 2005

List of goods or services

Class 09:

Computers; parts and components of computers; computer peripheral devices; parts and components of computer peripheral devices; computer accessories (included in this class); audio devices, parts and components of audio devices; peripheral devices for audio devices; parts and components of peripheral devices for audio devices; accessories for audio devices (included in this class); video devices; part and components of video devices; peripheral devices for video devices; parts and components of peripheral devices for video devices; accessories for video devices (included in this class); electrical devices for surveillance of buildings and accessories of said devices (included in this class); devices to control electrical circuits in installations of buildings; mechanically, acoustically, optically or thermally working devices for deterrence of animals and/or extermination of insects (included in this class).

Class 11:

Lighting devices for use outside and/or inside of buildings.

Class 16:

Office devices and their accessories (included in this class).

Names and addresses

Holder:

x-peer.de GmbH

Brackestraße 3, D-38159 Vechelde, Germany

Representative:

KRAMER BARSKE SCHMIDTCHEN, Patentanwälte

Radeckestraße 43, D-81245 München, Germany

The "M" prefix is used purely within the UK and is not part of the Madrid(UK) registration number.

This enquiry shows information from the International Registration held by us. If you want to see details of the definitive International Registration, please visit the World Intellectual Property Organization.



- Explanation of terms used on this page

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For Innovation

Trade mark details as at 1 March 2007

Case details for International Madrid(UK) Trade Mark
M827214

Mark

X4-TECH

Mark text:

X4-TECH

Status

UK case status:

Protected

Classes:

09, 11

Relevant dates

International registration date:

28 November 2003

Date of designation in UK:

28 November 2003

Next renewal date:

28 November 2013

Priority claims

Priority date:

05 June 2003

Country:

Germany

Reference:

303 28 615.6/09

Office of origin details

Office of origin:

Germany

Basic application or registration number Filing or registration date

30328615 6/09

01 September 2003

Publication

First advert in UK TMJ:

Journal:

6575

Publication date:

01 April 2005

List of goods or services

Class 09:

Audio-devices; parts and components of audio-devices; peripheral devices for audio-devices; parts and components of peripheral devices for audio-devices; accessories for audio-devices (included in this class); video-devices; parts and components of video-devices; peripheral devices for video-devices; parts and components of peripheral devices for video-devices; accessories for video-devices (included in this class); electrical devices for surveillance of buildings and accessories of said devices (included in this class); devices to control electrical circuits in installations of buildings; mechanically, acoustically, optically or thermally working devices for deterrence of animals and/or extermination of insects (included in this class); none of the aforementioned goods being telecommunications devices and none being computers or computer software.

Class 11:

Lighting devices for use outside and/or inside of buildings.

Names and addresses

Holder:

x-peer.de GmbH

Brackestraße 3, D-38159 Vechelde, Germany

Representative:

Dr. Heiko Barske BLUMBACH, KRAMER & PARTNER GbR

Radeckestrasse 43, D-81245 München, Germany

UK agent:

JA Kemp & Co

14 South Square, Gray's Inn, London, United Kingdom, WC1R 5JJ

UK agent reference:

Z.03051 JAF (AJC)

The "M" prefix is used purely within the UK and is not part of the Madrid(UK) registration number

This enquiry shows information from the International Registration held by us. If you want to see details of the definitive International Registration, please visit the World Intellectual Property Organization.



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**Form TM8****Nil Fee**

For Innovation

Notice of defence and counterstatement

The Patent Office
Trade Marks Registry
 Cardiff Road, Newport
 South Wales NP10 8QQ

Please read the guidance note about filling in this form.

1. Trade mark number.	(Lowest) Class
2. Full name of the applicant or registered proprietor.	
3. Opposition, invalidation, revocation, or rectification number.	
4. Name and address (including postcode) of the agent (if any).	
5. If a statement of use of any earlier trade marks has been given in support of the opposition or invalidation action, do you accept this statement?	
6. If you answered "No" to question 5, do you want the other side to provide proof of use of the earlier marks? If you want the other side to provide proof of use you must state in your counterstatement for which earlier marks and for which goods and services you require that proof.	
7. Counterstatement	

(REV JUL04)

Form TM8

Counterstatement (continued from previous sheet)

8.	Declaration	I believe that the facts stated in this notice of defence and counterstatement are true.
	Your signature.	
	Your name in BLOCK CAPITALS.	
	Date.	
9.	Name and daytime phone number of the person we should contact in case of query.	
	Your reference.	
	Number of sheets attached to this form.	This is sheet 1 of

Note If you need more space for your counterstatement you may attach separate sheets. Number each one and say in question 9 how many sheets you have used.

Form TM8



RELEVANT SECTIONS OF THE UNITED KINGDOM TRADE MARKS ACT 1994



SECTION 1

(1) In this Act a "trade mark" means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.

A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

(2) References in this Act to a trade mark include, unless the context otherwise requires, references to a collective mark (see Section 49) or certification mark (see Section 50).

SECTION 3

(1) The following shall not be registered-

- (a) signs which do not satisfy the requirements of Section 1(1),
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services;
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade;

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

(2) A sign shall not be registered as a trade mark if it consists exclusively of-

- (a) the shape which results from the nature of the goods themselves,
- (b) the shape of goods which is necessary to obtain a technical result, or
- (c) the shape which gives substantial value to the goods.

(3) A trade mark shall not be registered if it is-

- (a) contrary to public policy or to accepted principles of morality, or
- (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).

(4) A trade mark shall not be registered if or to the extent that its use is prohibited in the United Kingdom by any enactment or rule of law or by any provision of Community Law.

(5) A trade mark shall not be registered in the cases specified, or referred to, in Section 4 (especially protected emblems).

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

SECTION 4

(1) A trade mark which consists of or contains-

- (a) the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it,
- (b) a representation of the Royal crown or any of the Royal flags,
- (c) a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof, or
- (d) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation,

shall not be given unless it appears to the registrar that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant member of the Royal family.

(2) A trade mark which consists of or contains a representation of-

- (a) the national flag of the United Kingdom (commonly known as the Union Jack), or
- (b) the flag of England, Wales, Scotland, Northern Ireland or the Isle of Man,

shall not be registered if it appears to the registrar that the use of the trade mark would be misleading or grossly offensive.

Provision may be made by rules identifying the flags to which paragraph (b) applies.

(3) A trade mark shall not be registered in the cases specified in-

Section 57 (national emblems &c of Convention countries), or

Section 58 (emblems &c of certain international organisations).

(4) Provision may be made by rules prohibiting in such cases as may be prescribed the registration of a trade mark which consists of or contains-

- (a) arms to which a person is entitled by virtue of a grant of arms by the Crown, or
- (b) insignia so nearly resembling such arms as to be likely to be mistaken for them, unless it appears to the registrar that consent has been given by or on behalf of that person.

Where such a mark is registered, nothing in this Act shall be construed as authorising its use in any way contrary to the laws of arms.

(5) A trade mark which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc (Protection) Act 1995 shall not be registered unless it appears to the registrar-

(a) that the application is made by the person for the time being appointed under Section 1(2) of the Olympic Symbol etc (Protection) Act 1995 (power of Secretary of State to appoint a person as the proprietor of the Olympics Association Right), or

(b) that consent has been given by or on behalf of the person mentioned in paragraph (a) above.

SECTION 5

(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

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

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

(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 confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(3) A trade mark which-

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

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

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 a 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.

(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

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

(5) Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration.

SECTION 6

(1) In this Act an "earlier trade mark" means-

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

(b) a Community trade mark which has a valid claim to priority from an earlier registered trade mark or international trade mark (UK), or

(c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the World Trade Organization Agreement as a well known trade mark.

(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.

(3) A trade mark within subsection (1)(a) or (b) whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless the registrar is satisfied that there was no *bona fide* use of the mark during the two years immediately preceding the expiry.

SOURCES OF PROFESSIONAL HELP AND ADVICE

You may obtain details of where to get independent professional help/advice from either of the following:

♦ The Institute of Trade Mark Attorneys
Canterbury House
2-6 Sydenham Road
CROYDON
Surrey CR0 9XE

tel : +44(0) 20 8686 2052
fax : +44(0) 20 8680 5723

♦ The Chartered Institute of Patent Agents
Staple Inn Buildings
High Holborn
LONDON WC1V 7PZ

tel : +44(0) 20 7405 9450
telex : +44(0) 20 7430 0471

Trade Marks International Unit
June 2000

**Form TM33****Nil Fee**

For Innovation

Appointment or change of agent or contact address

The Patent Office
Trade Marks Registry
 Cardiff Road, Newport
 South Wales NP10 8QQ

Please read the guidance note below about filling in this form.

1. Trade mark numbers affected. (Please put an 'M' in front of Madrid marks). (List on a separate sheet if there is not enough space on this form).	(Lowest) Class
2. Full name of the a) proprietor; or b) opponent as now shown on our records.	
3. Name and address (including postcode) of the new agent or contact address Trade Marks ADP number (if you know it).	
4. Declaration. Signature. Name in BLOCK CAPITALS. Date.	We have been appointed by the above proprietor or opponent.
5. Name and daytime phone number of the person we should contact in case of query. Your reference.	
Number of sheets attached to this form.	

Note We suggest you check the proprietor's name and the marks they own by doing a proprietor search on our website www.patent.gov.uk before you fill in the form.

(REV NOV04)

Form TM33

Annex C

Our costs

- | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 1 | Application or notice of opposition and accompanying statement | £300 plus statutory fee (if any) |
| 2 | Considering the counterstatement | £200 |
| or | | |
| 1 | Considering the application or notice of opposition and accompanying statement | £200 |
| 2 | Filing the counterstatement | £300 |
| 3 | Preparing and filing evidence | Up to £1500 |
| 4 | Considering evidence | Half of item 3 |
| 5 | Preparing for and going to the hearing | Up to £1500 |
| 6 | If one side appears in person, or if the opposite side calls witnesses, travel and general expenses will be allowed, but this will not normally be more than £250 for each person each day, and will not be more than £750 for each side each day. | |