

O-388-12

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION 2574168
BY ADVANCE MAGAZINE PUBLISHERS, INC.
FOR THE TRADE MARK:**

TEEN VOGUE

AND

OPPOSITION THERETO (NO 102331) BY MR EDUARDO LÓPEZ CABRÉ

The background and the pleadings

1) Application 2574168 was filed by Advance Magazine Publishers, Inc. (“the Applicant”) on 4 March 2011, and published in the Trade Marks Journal on 27 May 2011. The mark for which registration is sought is as follows:

TEEN VOGUE

Registration of the mark is sought for a range of goods in classes 9, 18 and 21, but only registration of the following goods is opposed in these proceedings:

Class 18: Umbrellas; parasols; parts and fittings for umbrellas and parasols.

2) Mr Eduardo López Cabré opposes the registration of the mark. His opposition was filed on 26 August 2011 on a ground under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is based on Mr López Cabré’s Community Trade Mark (“CTM”) 2082287 for the word mark **VOGUE** in respect of the following goods:

Class 18: Umbrellas.

Mr López Cabré’s mark was filed on 9 February 2001, and completed its registration procedure on 6 March 2002. The consequences of these dates are that: i) Mr López Cabré’s mark constitutes an earlier mark in accordance with section 6 of the Act, and ii) it is subject to the proof of use conditions contained in Section 6A of the Act, the registration procedure having been completed more than five years before the publication of the Applicant’s mark. The relevant period during which genuine use must be proved is 28 May 2006 to 27 May 2011.

3) The Applicant filed a counterstatement, conceding that the goods in question are identical or similar, but denying the ground of opposition and putting Mr López Cabré to proof of use of his mark. Both parties filed written submissions. Only Mr López Cabré filed evidence. Neither party requested to be heard. I therefore give this decision after a careful review of all the papers before me.

The evidence

4) The evidence consists of a witness statement of 7 February 2012 by Mr Eduardo López Sampedro, who states that he is the manager of Parimex SA (“Parimex”), and that this company is an exclusive licensee of Mr López Cabré’s mark (CTM 2082287 – “the earlier mark”). He attaches to his statement as **Exhibit ELS1** a copy of a licence agreement of 18 September 2002, made before a notary, under which Mr López Cabré grants to Parimex SA exclusive use of his mark while it remains in force.

5) Attached as **Exhibits ELS4-9** are copies of catalogues dated 2006, 2007, 2008, 2009, 2010 and 2011. They show how the earlier mark is used on an umbrella. Depending on the style and design of the umbrella, the mark appears on its handle, tip or protective cover, or on a fabric or metal tag permanently attached to the cover. Mr López Sampedro says that around 1500 catalogues are distributed each year to existing and potential clients and representatives promoting “Vogue umbrellas” in various EU countries. A breakdown showing the costs of providing these catalogues (and of

display stands, photographs of which are shown in **Exhibit ELS15**) in seven EU countries is given in **Exhibit ELS14** as follows:

	2006	2007	2008	2009	2010	2011	Euros €
United Kingdom	7,500.00	3,600.00	-	5,000.00	1,000.00	2,600.00	
Italy	100.00	-	200.00	300.00	100.00	200.00	
Spain	30,000.00	40,000.00	40,000.00	41,000.00	40,000.00	36,000.00	
Portugal	500.00	500.00	250.00	400.00	600.00	450.00	
Greece	650.00	650.00	800.00	600.00	300.00	100.00	
Czech Republic	-	300.00	400.00	200.00	200.00	200.00	
Belgium	-	-	-	400.00	300.00	200.00	
Total	38,750.00	45,050.00	41,650.00	47,900.00	42,500.00	39,750.00	255,600.00

Attached as **Exhibit ELS12** are copies of invoices showing sales of umbrellas bearing the earlier mark to distributors in the above countries for the years from 2006 to 2011. (An invoice of 13 March 2006 to a distributor in France is also included, but this falls outside the relevant proof of use period). The various models of umbrella are specified in the invoices by means of codes corresponding to the codes used in the respective catalogues. It is thus possible to check the appearance of the models invoiced, and ascertain how the mark appears on them. Mr López Sampedro says that a label is also attached to each umbrella; **Exhibit ELS11** shows the range of labels used. In these labels, the words “fashion in the rain” appear in much smaller print under the word VOGUE. In most, a thin, rectangular frame appears around both the word VOGUE and the slogan beneath it. This is also the manner in which the mark appears on the invoices in **Exhibit ELS12**, business stationery in **Exhibit ELS13** and the display stands shown in **Exhibit ELS15**. I will depict the primary forms of use later.

6) Mr López Sampedro states that Parimex operates primarily in the wholesale market, selling its umbrellas in bulk to distributors who then put them on the retail market, and that for the period 2006 to 2011 inclusive the total annual turnover figure achieved for sales under the earlier mark in the EU was over 14 million Euros. **Exhibit ELS3** shows a country-by-country breakdown, as follows, of the annual sales turnover from 2006 to 2011 inclusive in Euros for certain EU countries:

	2006	2007	2008	2009	2010	2011	Euros €
United Kingdom	178,163.95	58,029.79	-	39,796.80	4,356.28	19,861.72	
France	4,416.00	-	-	-	-	-	
Italy	1,777.00	-	6,674.00	12,775.20	3,958.56	8,089.44	
Spain	2,108,861.30	2,264,889.30	2,114,595.80	2,207,512.70	2,759,925.50	1,892,720.40	
Portugal	25,857.76	26,123.05	12,902.35	21,909.50	31,683.05	21,152.05	
Greece	38,451.80	33,956.30	37,107.40	31,447.20	15,394.80	3,987.60	
Czech Republic	-	13,955.30	17,782.20	10,449.60	12,368.40	9,361.20	
Belgium	-	-	-	21,998.70	12,648.15	8,624.80	
Total	2,357,527.81	2,396,953.74	2,189,061.75	2,345,889.70	2,840,334.74	1,963,797.21	14,093,564.95

The figures provided are ex factory prices. The cost of one of the umbrellas on the retail market ranges from 12 to 35 Euros.

Proof of use

The law

7) As stated previously, the proof of use provisions apply to the earlier mark. The relevant use conditions are set out in Section 6A of the Act as follows:

(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) “In relation to a Community trade mark [.....], any reference in subsection (3) [.....] to the United Kingdom shall be construed as a reference to the European Community”.

8) Section 100 is also relevant; it reads:

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

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

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

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

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

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

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

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

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

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

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

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

10) The relevant period for my assessment is the five year period ending on the date of publication of the Applicant’s mark, namely: 28 May 2006 to 27 May 2011. Mr López Cabré is required to prove that during this period, and in relation to the relevant goods (umbrellas), there was genuine use by him, or with his consent, of the earlier mark relied on in these proceedings.

The proprietor’s consent

11) Mr López Cabré has not used the mark himself; the only use put forward is that of Parimex. This is not fatal though, because genuine use made with the consent of Mr López Cabré would be sufficient. However, the Applicant submits that the agreement between Mr López Cabré and Parimex (in **Exhibit ELS 1**) is a bare

exclusive licence, and that this is insufficient to constitute use with the proprietor's consent for the purposes of proof of use in these proceedings. The Applicant notes that in *Scandecor Development AB v Scandecor Marketing AB* ("*Scandecor*") [2002] FSR 7 ("*Scandecor*") the House of Lords agreed to make a reference to the CJEU relating to use under a bare licence (albeit in terms as to whether such use would mislead the public) and it submits that since the case was withdrawn before the CJEU issued its judgment, the position remains unclear.

12) However, the issue of use with consent was dealt with in an extremely thorough and considered way by Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *Einstein*². Here, again, the Applicant argues that since no order for reference to the CJEU was made in *Einstein*, the decision of the Appointed Person can only be seen as effectively "provisional". While this is noted, and whilst *Einstein* is not actually binding upon the Tribunal, it is still persuasive. I see no good reason to depart from it. Having observed (in paragraph 38 of his decision) that the views expressed by Lord Nicholls in *Scandecor* can be taken as authority for the proposition '*that the current UK Act countenances bare licensing i.e. licensing without quality control*', Mr Hobbs concluded (in paragraph 39 of his decision):

"In the present case, I hold that it was necessary for the Registrar to be satisfied that Hornby Street Limited used the trade mark EINSTEIN with the consent of the Proprietor in relation to [the relevant goods] during the relevant 5 year period, but unnecessary (for the reasons I have given at length above) for the Registrar to be satisfied that the Proprietor effectively controlled Hornby Street Limited's use".

13) Applying these principles to the present proceedings, I am satisfied that Mr López Sampedro's witness statement and the licence agreement in **Exhibit ELS1** establish that Mr López Cabré gave the necessary consent to Parimex's use of his mark. This is all that is required. I must therefore now determine whether genuine use of the mark was made by Parimex during the relevant proof of use period.

Manner of use

14) The catalogues in **Exhibits ELS4-9** show how the earlier mark was used on the umbrellas themselves in the relevant period. As might be expected, camera angles in many cases make it difficult to make out the mark on the photographs in the catalogues, but in a very large number of cases it is absolutely clear. The following image, for example, shows how the mark appears on the fabric of a green umbrella:



² Decision O-068-07

Whilst in some of the catalogues there are a couple of examples of umbrellas bearing the earlier mark in a different style of lettering, in the vast majority of cases, insofar as the mark can be seen (which it usually can be), it is used clearly and consistently in the form shown above. As can be seen, it is presented in capitals with only a small degree of stylisation amounting to little more than use of a particular (and not striking) font. There can be no doubt that this falls well within the bounds of notional and fair use of the earlier mark, which is registered as a plain word; such use can be considered as part of my assessment.

15) Labels which are additionally attached to each umbrella are shown in **Exhibit ELS11**. In these labels, the words “fashion in the rain” appear in much smaller lettering under the earlier mark. In most, a thin, rectangular frame appears around both the mark and the slogan beneath it. This is also the form of use on the invoices in **Exhibit ELS12**, the business stationery in **Exhibit ELS13** and the display stands shown in **Exhibit ELS15**. When shown on a dark background, it appears in a lighter colour, producing a “negative” effect. In some cases a rectangular dark background is provided to produce this effect. This is the case, for example, with the invoices in **Exhibit ELS12**, where it appears as follows:



16) I have already considered the way in which the earlier mark is presented on the umbrellas themselves, and found it to be a fair and notional use of the mark. A large majority of the umbrellas specified in the invoices can be seen, by checking their codes in the relevant catalogues, to bear the mark in that form (as reproduced in paragraph 14). In view of this, the additional label does not take matters any further forward. It is therefore unnecessary for me to decide whether the use of the label constitutes use of the earlier mark. Had I needed to do so, I would have found that this form of use also constitutes use of the VOGUE word mark. In *ORIENT EXPRESS O-299-08* the Appointed Person observed:

“79. The term “composite mark” in this context is perhaps misleading. Most people would not describe the repeated words BUD-BUDVAR-BUDWEISER as a composite mark, but would see them – as the Court of Appeal said – as separate marks presented adjacent to each other. Similarly, the CFI in Case T-29/04 *Castellblanch SA v OHIM* [2005] ECR II-5309 spoke of “joint affixing of separate marks or indications on the same product”, giving the example in the context of wine products of the name of the winery and the name of the product, and said that “joint use of those elements on the same bottle does not undermine the function of [one of them] as a means of identifying the products in issue”.

In the form of use reproduced in paragraph 15, the perception will be of two independent trade marks (VOGUE and FASHION IN THE RAIN) being used and jointly affixed. Such use would, therefore, also have been relevant.

Use in the European Community

17) As per section 6A(5) of the Act, the mark must have been put to genuine use in the European Community; such use must be in the relevant period of 28 May 2006 to 27 May 2011. Advocate General Sharpston's opinion in Case C-149/11 *Leno Merken v Hagelkruis Beheer BV* is relevant to this issue (the CJEU has not yet handed down its judgment in the case). When dealing with issues regarding use in one Member State she observes at paragraph 49 of her opinion:

“Whether a Community trade mark has been used in one Member State or several is irrelevant. What matters is the impact of the use in the internal market: more specifically, whether it is *sufficient to maintain or create market share* in that market for the goods and services covered by the mark and whether it contributes to a commercially relevant presence of the goods and services in that market. Whether that use results in actual commercial success is not relevant.”

18) With regard to the annual sales turnover figures for 2006 to 2011 given in **Exhibit ELS3**, figures are given for the whole of the years 2006 and 2011, although only part of those years falls within the proof of use period of 28 May 2006 to 27 May 2011. Figures are provided only for the year 2006 for France, for 2009 to 2011 inclusive for Belgium, and there are gaps for 2007 for Italy and 2008 for the UK. Nevertheless, the figures are instructive. In Spain, Parimex's average annual turnover under the earlier mark in the years 2006 to 2011 was €2,348,928. Its combined average annual turnover for the other countries in those years was €124,177. The figures are not insignificant. The picture that emerges is of a company with a fairly strong foothold of sales under the mark in its base market in Spain, but also using the mark more widely in a number of other EU countries. Though the sales figures for the other EU countries are more modest, they show a degree of continuity and consistency of purpose. They are certainly not token use merely to preserve the rights in the mark. Moreover, use of the mark need not always be quantitatively significant for it to be deemed genuine. Overall, the level of use of the mark is sufficient to constitute genuine use in the European Community.

Section 5(2)(b)

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

“5(2) A trade mark shall not be registered if because –

(a)

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

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

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

The average consumer

21) According to the case-law, the average consumer is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). The degree of care and attention the average consumer uses when selecting goods or service providers can, however, vary depending on what is involved (see, for example, the judgment of the General Court ("GC") in *Inter-Ikea Systems BV v OHIM* (Case T-112/06)). The average consumer for umbrellas and parasols will consist of the general public. Although their cost can vary, they are not, generally speaking, a highly expensive purchase. Consumers will examine them from the point of view of personal taste and suitability for purpose, and their appearance will normally be an important consideration. Consumers will therefore pay a reasonable degree of attention (but no higher or lower than the norm) when selecting them. Not just in shops, but also in the case of mail order catalogue services and online purchases, the purchasing process will be predominantly visual, but aural similarity will not be ignored in my analysis.

Comparison of the goods

22) The goods relied on by Mr López Cabré (umbrellas) are clearly identical (in the case of umbrellas) and similar (in the case of parasols, and parts and fittings for umbrellas and parasols) with those of the application which are opposed in these proceedings. In its counterstatement, the Applicant admits that the goods are identical or similar.

The distinctiveness of the earlier mark

23) 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). The *Oxford Dictionary of English* (OUP, 2010) lists the word "vogue" as a noun, defining it as "*the prevailing fashion or style at a particular time*", and as an adjective, with the definition "*popular; fashionable*". I do not consider it directly and naturally descriptive of umbrellas, although it may have some allusive qualities. I therefore consider that the earlier mark has at least a moderate degree of distinctiveness.

Comparison of the marks

24) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The visual, aural and conceptual similarities of the marks must be assessed by reference to their overall impressions, bearing in mind their distinctive and dominant components. The marks to be compared are:

The earlier mark	The Applicant's Mark
VOGUE	TEEN VOGUE

25) The earlier mark consists exclusively of the word VOGUE which, by virtue of being the sole component of the mark, is its dominant and distinctive element. The *Oxford Dictionary of English* (OUP, 2010) lists the word “teen” as a noun, defining it as “a teenager”, and as an adjective, with the definition “relating to teenagers”. When placed before VOGUE it will be seen by UK consumers as descriptive, and understood as “VOGUE relating to [i.e. for / of interest to] teenagers”. This counteracts the rule of thumb whereby consumers normally pay more attention to the first element of a mark, and leaves VOGUE as the dominant and distinctive component of the mark, though I must bear in mind that I must make a whole mark comparison, particularly given the qualifying effect that TEEN has on the word VOGUE, the whole being seen as a single phrase and not two independent elements.

26) Visually, the marks differ in that the Applicant's mark consists of two words, and the earlier mark of only one. However, although the word TEEN is the first element in the Applicant's mark, the word VOGUE is common to both. This analysis runs through into the aural comparison. Aurally, the Applicant's mark consists of two monosyllabic words, the earlier mark of only one; but the word VOGUE is common to both. Both visually and aurally there is a reasonable degree of similarity between the marks. Conceptually, both marks share the associations of the word “vogue”, though this is supplemented in the Applicant's mark by the additional association with teenagers. Conceptually, there is a reasonable degree of similarity between the marks.

Likelihood of confusion

27) 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.

28) It is common ground between the parties that the goods of the application which are opposed in these proceedings are identical or similar to the goods covered by the earlier mark. I have found the marks to have a reasonable degree of visual, aural and conceptual similarity. I have found the earlier mark to possess a moderate degree of inherent distinctive character. The consumer is used to seeing businesses

use variations of their marks as brand extensions in trade, and I consider that the consumer will perceive the descriptive word TEEN in this light, for example seeing goods bearing the mark TEEN VOGUE as a sub-category of VOGUE goods aimed at teenagers. Bearing all this in mind, together with my assessment of the nature of the average consumer and their purchasing process, and having regard to the interdependency principle, I think it likely that the average consumer will consider the relevant goods provided under the respective marks to be the responsibility of the same or an economically linked undertaking. Accordingly, there is a likelihood of confusion and **the opposition succeeds in its entirety.**

Outcome

In view of the partial nature of the opposition the application is not affected in classes 9 and 21, but as a result of this opposition the Class 18 specification will read:

Class 18: Goods of leather and/or imitation leather; clothing, belts, collars and leads for animals; whips; harness and saddlery; walking sticks; animal skins; hides; luggage; bags; brief cases; document cases; shopping bags; trunks; travelling bags; handbags, shoulder bags, tote bags, backpacks and rucksacks; bicycle bags; purses; wallets; key fobs and key cases; parts and fittings for all the aforesaid goods

Costs

29) Mr López Cabré requested an increased award of costs to take account of additional costs incurred by him in providing evidence of use, on the grounds that he had already provided evidence of use in proceedings before OHIM between the same parties for the same mark and for a period which overlapped with the relevant period in the present proceedings, which the OHIM Board of Appeal had found sufficient to prove use. However, I consider that the Applicant was fully entitled to request proof of use in these proceedings, since: 1. the OHIM proceedings were in another jurisdiction; 2. the mark considered in those proceedings was a Spanish national mark requiring proof of use in Spain, whereas the mark relied on in these proceedings is a CTM requiring proof of use in the Community; 3. the relevant proof of use periods in any case only partially coincide. I will make my assessment on the basis of the normal scale of costs. To that extent, Mr López Cabré has been successful and is entitled to a contribution towards his costs. I hereby order Advance Magazine Publishers, Inc. to pay Mr Eduardo López Cabré the sum of £1,650. This sum is calculated as follows:

<i>Preparing a statement and considering the other side's statement</i>	£300
<i>Preparing evidence</i>	£1.000
<i>Written submissions</i>	£350

31) The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 9th day of October 2012

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