

O-458-13

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 2624716  
BY CACHET KIDS LTD**

**AND**

**OPPOSITION THERETO UNDER NO 104033  
BY CATH KIDSTON LTD**

## Background

1. Application no 2624716 has a filing date of 16 June 2012, stands in the name of Cachet Kids Ltd ("the applicant") and seeks registration for a series of two trade marks - Cachet Kids and CACHET KIDS - in respect of the following goods:

Class 25:  
Children's clothing, footwear, headgear

Class 28:  
Children's games and playthings; children's toy bicycles

Class 35:  
Retail services connected with the sale of children's clothing, footwear, headgear, children's games and playthings, children's toy bicycles

2. Following publication of the application in the *Trade Marks Journal* 6951 on 3 August 2012, notice of opposition was filed by Cath Kidston Ltd ("the opponent"). There is a single ground of opposition based on section 5(2)(b) of the Act. The opponent relies on the following Community Trade Mark ("CTM") insofar as it is registered for the following goods and services:

Mark details and relevant dates	Goods and Services
<p><b>CTM</b> 8891947</p> <p><b>Mark:</b></p> <p>CATH KIDS</p> <p><b>Filing date:</b></p> <p>18 February 2010</p> <p><b>Date of entry in register:</b></p> <p>24 August 2010</p>	<p><b>Class 25</b></p> <p>Clothing, footwear, headgear.</p>
	<p><b>Class 28</b></p> <p>Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; children's bicycles.</p>

**Class 35**

Retail and online retail services connected with the sale of any of the following goods; paints, varnishes, lacquers, Preservatives against rust and against deterioration of wood, Colorants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching preparations and other substances for laundry use, cleaning polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, deodorants for personal use, candles, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, mobile telephones, automatic vending machines and mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, recorded media, computer hardware and firmware, computer software, software downloadable from the Internet, downloadable electronic publications, compact discs, digital music, telecommunications apparatus, computer games equipment adapted for use with an external display screen or monitor, mouse mats, mobile phone accessories, contact lenses, spectacles and sunglasses, clothing for protection against injury, accident, irradiation or fire, furniture adapted for laboratory use, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, air conditioning apparatus, electric kettles, gas and electric cookers, vehicle lights and vehicle air conditioning units, pushchairs, strollers, prams, precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes, jewellery, precious stones, horological and chronometric instruments, paper, cardboard and goods made from these materials, printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters, packaging materials, printers' type, printing blocks, disposable diapers of paper for babies, printed publications, covers for cheque books, paint boxes, leather and imitations of leather, and goods made of these materials and not included in other classes, animal skins, hides, trunks and travelling bags, luggage, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), games and playthings, gymnastic and sporting articles not included in other classes, decorations for Christmas trees, children's bicycles.

3. In its statement of grounds, with regard to 5(2)(b) the opponent submits:

*“The marks are visually and phonetically highly similar because of the identity of the first two letters. CA, and the identity of the second word, KIDS in both marks.*

*The goods are identical or similar because the earlier registration covers “Clothing, footwear, headgear” in class 25 and the application covers “Children’s clothing, footwear, headgear” in class 25, these goods being a subset of the class 25 goods covered by the earlier registration; the earlier registration covers “Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; children’s bicycles” in class 28 and the application covers “Children’s games and playthings; children’s toy bicycles”, these goods being covered in the specification of the earlier registration; and the earlier registration covers retail services connected with the goods in classes 25 and 28, i.e. identical services to the class 35 services covered by the application.”*

4. The applicant filed a counterstatement. Whilst it made no comment on the similarity or otherwise of the respective goods and services, it denied there was any likelihood of confusion between the respective marks.

5. Both sides filed evidence and written submissions but neither requested to be heard. I give this decision after a careful review of all the papers before me.

#### **The evidence**

6. As indicated above, both parties filed evidence. This consists of the following witness statements:

#### Opponent’s evidence in chief

Catriona Desmond with exhibit CD1  
Victoria Kay with exhibits VK1-8

#### Applicant’s evidence

Tac Ly with exhibits TL1-TL20  
Helena Wong with exhibits HW1-HW15  
Elizabeth Pamela Fox  
Sarah Louise Bryan  
John Norton  
Siraj Master  
Paul Michael Bolton  
Neil Gray  
Allison Harper  
David Vagda

#### Opponent’s evidence in reply

Victoria Kay with exhibit VK1

7. There is a significant volume of evidence and exhibits which I have read and noted, however, given that it contains a mixture of fact and submissions and, in places, refers to trade marks and issues which are not relevant to the matters to be decided in these proceedings, I do not intend to summarise the evidence here. I will, however, refer to it as necessary later in this decision.

## Decision

8. There is a single ground of opposition based on section 5(2)(b) of the Act. This section 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.”

9. An “earlier trade mark” is defined in section 6, the relevant part of which states:

“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.”

10. I set out above the CTM relied on by the opponent. It is an earlier mark within the meaning of section 6 of the Act. Given the interplay between the date the earlier mark was entered onto the register and the date of publication of the application the subject of this decision, the earlier mark is not subject to the proof of use provisions set out in section 6A of the Act. The opponent is therefore entitled to rely on it in respect of all the goods and services for which it is registered but has limited its claim and relies only on those goods and services set out above.

11. In considering the objection under section 5(2) and the likelihood of confusion between the respective marks, I take into account the guidance from the settled case law provided by the CJEU in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P (LIMONCELLO). In the recent case of *La Chemise Lacoste SA v Baker Street Clothing Ltd* [ALLIGATOR O/333/10] Mr Hobbs Q.C., acting as the Appointed Person, set out the test shown below which was endorsed by Arnold J. in

*Och-Ziff Management Europe Ltd and Oz Management Lp v Och Capital LLP; Union Investment Management Ltd & Ochocki*, [2010] EWCH 2599 (Ch).

(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/ 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; 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;

(e) 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 in that mark;

(f) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa;

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

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

(i) 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;

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

## Comparison of the respective goods and services

Earlier mark's specification	Applicant's specification
<p><b>Class 25:</b> Clothing, footwear, headgear</p>	<p><b>Class 25:</b> Children's clothing, footwear, headgear</p>
<p><b>Class 28:</b> Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; children's bicycles.</p>	<p><b>Class 28:</b> Children's games and playthings; children's toy bicycles</p>
<p><b>Class 35:</b> Retail and online retail services connected with the sale of any of the following goods; paints, varnishes, lacquers, Preservatives against rust and against deterioration of wood, Colorants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching preparations and other substances for laundry use, cleaning polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, deodorants for personal use, candles, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, mobile telephones, automatic vending machines and mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, recorded media, computer hardware and firmware, computer software, software downloadable from the Internet, downloadable electronic publications, compact discs, digital music, telecommunications apparatus, computer games equipment adapted for use with an external display screen or monitor, mouse mats, mobile phone accessories, contact lenses, spectacles and sunglasses, clothing for protection against injury, accident, irradiation or fire, furniture adapted for laboratory use, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, air conditioning apparatus, electric kettles, gas and electric cookers, vehicle lights and vehicle air conditioning units, pushchairs, strollers, prams, precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes, jewellery, precious stones, horological and chronometric instruments, paper, cardboard and goods made from these materials, printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters, packaging materials, printers' type, printing blocks, disposable diapers of paper for babies, printed publications, covers for cheque books, paint boxes, leather and imitations of leather, and goods made of these materials and not included in other classes, animal skins, hides, trunks and travelling bags, luggage, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), games and playthings, gymnastic and sporting articles not included in other classes, decorations for Christmas trees, children's bicycles.</p>	<p><b>Class 35:</b> Retail services connected with the sale of children's clothing, footwear, headgear, children's games and playthings, children's toy bicycles</p>

12. In making the comparison of the respective goods and services, I take note of the comments of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05 where it stated:

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

13. As each of the goods and services within the applicant’s specification is a subset of those of the opponent, the respective parties’ goods and services are identical.

### Comparison of marks

14. The marks to be compared are as follows:

The opponent’s mark	The applicant’s marks
CATH KIDS	Cachet Kids  CACHET KIDS

15. In making a comparison between the marks, I must consider the respective marks’ visual, aural and conceptual similarities with reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components<sup>1</sup>, but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details.

16. The opponent’s mark consists of the two words ‘CATH KIDS’ in plain block capitals. No part of either word is stylised or emphasised in any way. The word ‘KIDS’ is non-distinctive for goods and services relating to children. Consequently, in the case of those goods and services, it is the first word ‘CATH’ which is the distinctive and dominant element of the mark as a whole.

17. The applicant’s mark consists of the two words ‘CACHET KIDS’ in plain block capitals/title case. No part of either word is stylised or emphasised in any way. The word ‘KIDS’ is non-distinctive for goods relating to children. Consequently, in the

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<sup>1</sup> *Sabel v Puma AG, para.23*

case of those goods, it is the first word 'CACHET' which is the distinctive and dominant element of the mark as a whole.

### **Visual similarities**

18. In its submissions dated 20 March 2013, the opponent states:

*"3...Visually the marks are highly similar as they both contain two words, both beginning with the letters 'CA' and ending with the word 'KIDS'. With respect to word marks, the first part is generally the word that primarily attracts the consumer's attention and therefore will be remembered more clearly than the rest of the mark. Therefore, the beginning letters 'CA' which are common to both marks, enhance the similarity of the marks. The later mark also contains the only other letters of the earlier mark, namely 'T' and 'H'. The only difference is the order of these letters and the additional letters 'C' and 'E'. With this in mind and also taking into consideration imperfect recollection, CATH KIDS and CACHET KIDS are visually highly similar."*

19. The applicant submits:

*"10. The two differences stated by the opponent above can have a marked impact on visual character in such a short word. Therefore the visual similarity in the words CATH and CACHET is low and there is no likelihood of confusion."*

20. The opponent's mark consists of the words 'CATH KIDS' presented in block capitals. The applicant's mark is the words 'CACHET KIDS'. Any similarity between the marks rests in the common letters CA in the first word of each mark and the fact that the second word in each mark is the word 'KIDS'. The applicant's mark ends with the four letters 'CHET', the opponent's with the two letters 'TH'. The opponent draws my attention to the fact that consumers are likely to pay more attention to the start of a mark. The general rule, that the average consumer tends to place most importance on the start of a word<sup>2</sup>, is exactly that - a general rule, which can be mitigated depending on the circumstances of the case.<sup>3</sup> The difference in the lengths of the first words in the marks, created by the different endings, gives rise to a clear point of difference. Taking these factors into account I find there to be a reasonable degree of visual similarity between the marks.

### **Aural similarities**

21. The opponent submits:

*"Phonetically, the marks have to be compared in their entirety. The KIDS element is contained in both marks, so aurally the endings are identical. CATH and CACHET are aurally similar, as they both begin with 'CA'. In addition, the letters 'TH' and 'CH' sound similar, as the letter 'H' softens the preceding consonant. The letter 'T' at the end of CACHET is insignificant"*

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<sup>2</sup> Les Editions Albert Rene v OHIM, Case T-336/03

<sup>3</sup> Castellani SpA v OHIM, T-149/06 ans Spa Monopole, Campagnie Fermiere de Spa SA/NV v OHIM, T-438/07

*phonetically as it is a silent letter...In view of the above, the marks have a high degree of phonetic similarity.”*

22. The applicant submits:

*“12...To elucidate some of the aural differences, CACHET KIDS has three syllables, CATH KIDS has two. CACHET has two syllables, CATH has one. CACHET has a middle digraph of “CH”, followed by the vowel “E” and then ends with consonant “T”. The second syllable of CACHET is longer than any other syllables used, making it distinctive. This is completely different from CATH which simply ends with the digraph “TH”. CACHET KIDS obviously sounds longer than CATH KIDS. The aural similarity of the marks is therefore very low.”*

23. The opponent’s mark will be pronounced ‘CATH-KIDS’. The applicant’s mark may be pronounced ‘CASH-AY KIDS’. The applicant’s mark consists of three syllables and the opponent’s of two. Both marks begin with CA and end with the word KIDS. Taking all of these factors into account I find there to be a moderate degree of aural similarity between the parties’ marks.

### **Conceptual similarities**

24. The opponent submits:

*“CATH, in this instance, is the well known abbreviation for the name Catherine and CACHET means prestige. Nonetheless, conceptually there is some similarity between the marks as both marks contain the informal word ‘KIDS’, meaning children, therefore relate to children’s goods/services sold under the marks.”*

25. The applicant states:

*“14. CATH is an abbreviation for Catherine which is a girl’s name and CACHET is a dictionary word meaning prestige. When the likelihood of confusion is being assessed for the purposes of Article 8(1)(b) of Regulation No 40/94 on the community trade mark as per case T-336/03 Les Editions Albert Rene v OHIM paragraph 80: “such conceptual differences can in certain circumstances counteract the visual and aural similarities between the signs concerned. For there to be such a counteraction, at least one of the signs at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately.”...The word CACHET has a clear and specific meaning that the public is capable of grasping immediately.*

*15. The conceptual contraction test described above certainly has the capacity to operate here given the clear and specific meaning of one of the marks and the other having no such meaning.*

*16. The word CACHET is more distinctive than the word CATH which is a common girl’s name and therefore has limited character. CACHET is a rarer*

*word mainly used on official seals on a document, letter and approval and has a character of its own.”*

26. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.<sup>4</sup> The assessment must be made from the point of view of the average consumer.

27. The average consumer will immediately comprehend a different conceptual message from the respective parties' marks. The opponent's mark will be seen as a common abbreviation for the name Catherine, coupled with the common word 'KIDS'. The applicant's mark will be seen as the common dictionary word 'Cachet', coupled with the word 'kids'.

28. Consequently, not only is there no conceptual similarity, but the competing marks are, in my view, conceptually distinct.

### **Distinctive character of the earlier mark**

29. I must now assess the distinctive character of the opponent's earlier trade mark. The distinctive character of the opponent's earlier trade mark must be appraised first, by reference to the goods and services upon which I have found it has been used and, secondly by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been used as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

30. The word 'CATH' will be understood to be an abbreviation of the name Catherine. The second word of the mark is 'KIDS', which in the context of some of the goods and services is suggestive of their target market. Consequently, the mark as a whole possesses an average degree of inherent distinctive character.

31. Turnover figures provided by Victoria Kay, the Head of Home Buying for Cath Kidston, indicate business in respect of the goods and services in its specification, as registered, to be in the region of £21.6 million in the period 2009-2012. Marketing figures for the same period amount to approximately £1.1 million. Whilst these are not insignificant amounts and will have made some difference to the distinctive character of the earlier mark, I am unable to determine the relevant market share, in what is a market of considerable value. Consequently, I am not able to determine the extent to which the distinctive character of the earlier mark has been enhanced through the use made of it.

### **Likelihood of confusion**

32. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled

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<sup>4</sup> This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind.<sup>5</sup> I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

33. I have found the marks to have a reasonable degree of visual similarity and a moderate degree of aural similarity and have found them to be conceptually dissonant. I have found an average level of inherent distinctive character in the earlier mark and have found the goods and services to be identical.

34. The parties' marks both have clear specific meanings which differ from each other and which the average consumer would immediately grasp. In reaching such a decision I am guided by the comments of the CJEU in Case C-361/04 *The Picasso Estate v OHIM* in which they said:

*"56. Such conceptual differences can in certain circumstances counteract the visual and phonetic similarities between the signs concerned. For there to be such a counteraction, at least one of the signs at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately [Case T-292/01 Phillips-Van Heusen v OHIM — Pash Textilvertrieb und Einzelhandel (BASS) [2003] ECR II-4335, paragraph 54]."*

35. This opposition is based on a wide range of goods and services to the extent that the average consumer will include anyone from a member of the general public, making a low price relatively frequent purchase, such as an item of children's clothing, to a professional seeking to purchase semi worked glass products, which self evidently requires a higher level of attention to be paid. In my view the differences between the parties' respective marks are such that, even where the goods and services are identical and are frequent, low priced purchases demanding a lower than average level of attention, the marks in their totality are sufficiently different that there is no likelihood of confusion, whether direct (where one mark is mistaken for the other) or indirect (where the average consumer believes the respective goods and services originate from the same or a linked undertaking).

36. The average consumer will not (either directly or indirectly) confuse the mark of one of these undertakings for that of the other and there will be no likelihood of confusion.

## **Conclusion**

**37. The opposition fails.**

## **COSTS**

38. The opposition having failed, the applicant is entitled to a contribution towards its costs. I have taken into account that no hearing has taken place. I make the award on the following basis:

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<sup>5</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27.

Preparing a statement and considering the other side's statement:	£300
Preparing evidence and considering the other side's evidence:	£500
Written submissions:	£200
<b>Total:</b>	<b>£1000</b>

39. I order Cath Kidston Limited to pay Cachet Kids Ltd the sum of £1000. This sum is to 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 14th day of November 2013**

**Ms A Skilton  
for the Registrar,  
The Comptroller General**