

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 2572383 IN THE  
NAME OF EURO CAR PARTS LIMITED**

**AND IN THE MATTER OF OPPOSITION NO. 102051 THERETO BY  
RENAULT S.A.S.**

**OPPONENT'S APPEAL TO THE APPOINTED PERSON FROM THE  
DECISION OF BEVERLEY JONES DATED 13 JULY 2012**

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**DECISION**

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Introduction

1. This appeal concerns an opposition brought by Renault s.a.s. (the “**Opponent**”) against trade mark application no. 2572383 filed on 16 February 2011 by Euro Car Parts Limited (the “**Applicant**”). The application is for the mark



in respect of the following goods:

- Class 8: workshop tools, including hand tools and hand-tool sets; tools for removing vehicle service valves;
- Class 9: jump leads; jumpstart booster pack; accumulators; accumulators for vehicles; aerials; alarms; batteries; batteries for vehicles; gasoline gauges; hands free kits for phones; distance recorders for vehicles; petrol gauges; radios; tape, cd and mp3 players; signalling equipment; steering apparatus for vehicles; electric accumulators; electric batteries and mountings therefor; electric condensers; electric circuit breakers; electric connections; electric cables; electric fuses and electric fuse boxes; electric control apparatus and instruments for motor vehicles and for engines; electrical sensors; gauges; instrument panels and clusters; electric lighters; printed electric circuits; electric relay; electric switches; speedometers; tachometers; thermostats; voltage regulators; voltmeters; testing and measuring apparatus and instruments; temperature switches,

ignition lead sets; ignition amplifiers; ignition coils; lenses and glasses for lamps; highway emergency warning equipment; exhaust gas analysers; brake fluid tester; anti-theft devices; alarm apparatus and installations; parts and fittings for all the aforesaid goods;

Class 12: EGR valves; air mass sensors; parts and fittings included in class 12 for motor vehicles, vans and engines; engines; motors; transmissions and transmission shafts; hydraulic cylinders; couplings; bearings; manual and power steering apparatus; vehicle steering columns; vehicle wheels, vehicle wheel hubs; wheel trims; accessories for vehicle wheels; wheel trims; deflectors; vehicle bodies; vehicle doors; vehicle wings; vehicle panels; bumpers; bonnets; dampers; grilles; vehicle horns; vehicle mirrors; mud flaps; roof racks; shock absorbers; springs; suspensions and suspension systems; starter motors; steering wheels; steering linkages; torsion bars; tow bars; tow poles; vehicle towing equipment; windows and window winding mechanisms; windscreen wipers; brakes, brake pads and brake linings for vehicles; caps for vehicle fuel tanks; engine mountings; vehicle fuel tanks; anti-theft devices; alarm apparatus and installations; accelerator cables; cam shafts and cam shaft bearings; engine dampers, mountings, oil coolers, sumps and valves; gearboxes and gearbox mountings; gearbox filters; creepers; parts and fittings for all the aforesaid goods,

(the “**Mark**”).

2. The Opponent opposed this application under section 5(2)(b) of the Trade Marks Act 1994 (the “**Act**”) on the basis of the following International Registration designating the UK:

No.	Mark	Key Dates	Class/Specification
449974	<b>MASTER</b>	Date of International Registration: 18 Jan 1980  Date of UK Designation: 27 November 2006	<b>Class 12:</b> land motor vehicles, motor cars for transport on land, their spare parts and/or replacement parts included in class 12.

3. The Opponent’s mark is an earlier trade mark for the purposes of section 6(1)(a) of the Act. It is not subject to the proof of use requirement under section 6A of the Act.
4. Both sides filed written submissions and neither side requested a hearing. On 13 July 2012, Beverley Jones, hearing officer for the Registrar, issued a decision rejecting the opposition in full (the “**Decision**” – reported under reference BL O-273-12).

## The Decision

5. The hearing officer set out the details of the parties' respective trade mark application and registration in issue. She then briefly summarised the evidence submitted by the Applicant and described the Opponent's reply evidence from its witness, Mr Pierre Renucci, in some detail (the Opponent having filed no evidence in chief).
6. She set out the basis for the opposition and the usual Registry summary of the guidance derived from decisions of the Court of Justice of the European Union ("CJEU"), which I shall not repeat here.
7. With regard to the comparison between the goods, the hearing officer made the following findings (paragraphs 27 to 35 of the Decision):
  - (1) there was a low to moderate degree of similarity between the Applicant's Class 8 goods and "*spare parts and/or replacement parts*" within the Opponent's list of goods;
  - (2) she grouped the Applicant's Class 9 goods into five sub-categories, and held them to range from a low degree of similarity (or no similarity at all) to a moderate degree of similarity with the vehicles/vehicle parts within the Opponent's list of goods; and
  - (3) there was identity between the Applicant's Class 12 goods and some of the Opponent's goods, since they all fell within the scope of "*spare parts and/or replacement parts*" of "*land motor vehicles, motor cars for transport on land*".
8. At paragraph 36 of the Decision, she rightly observed that she had to consider the perspective of the average consumer of the goods at issue, who is deemed to be reasonably well informed and reasonably observant and circumspect, but his level of attention is likely to vary according to the category of goods.
9. I shall set out the next two paragraphs of the Decision in full, in which the hearing officer described the purchasing process, since they came under particular scrutiny from the Appellant:

*37) The average consumer for the opponent's "land motor vehicles, motor cars for transport on land" will primarily be the general public. In the case of "spare parts and/or replacement parts" these are also likely to be purchased by the public, whether it be directly, or indirectly, through a garage. Where the goods are purchased indirectly, the general public may not necessarily see the goods before they are fitted however I would expect that the consumer would be informed as to the source of the products which are to be fitted. The same can be said for the applicant's goods in Classes 09*

and 12. In respect of the applicant's goods in Class 08, these will be purchased by the general public and mechanics or other professionals involved in maintenance and repair work.

38) I would expect the level of attention for the opponent's "land motor vehicles" and "motor cars" to be very high during the purchasing act since these are expensive infrequent purchases. The level of attention will be lower in relation to the opponent's "spare parts/replacements parts" which are likely to vary greatly in price but I would still expect, on the most part, the purchase to be a considered one affording a reasonably high level of attention to ensure that the goods have the required compatibility and functionality; the same can be said for all of the applicant's goods. I would expect the purchasing act to be primarily visual in respect of the opponent's "land motor vehicles" and "motor cars" and for the applicant's Class 08 goods where the consumer will wish to view the aesthetics and functionality of the goods. Insofar as the opponent's "spare parts and/or replacement parts" and the applicant's Class 09 and 12 goods are concerned, the visual aspect may not always come into play as these goods may be selected from a catalogue by reference to a catalogue number rather than through sight of the product itself. Finally, I also do not discount aural considerations that may play a part in respect of all of the respective goods.

10. With regard to the comparison between the marks, the hearing officer found the following:

- (1) "the dominant distinctive element of the applicant's mark is the combination of the two words 'master' and 'PRO' i.e. 'master **PRO**'" (paragraph 42);
- (2) the marks share "a moderately high degree of visual similarity" (paragraph 43);
- (3) there is a "moderately high degree of aural similarity between the marks" (paragraph 44);
- (4) the addition of the '**PRO**' element in the Mark does not create any significant degree of "conceptual dissonance" between the respective marks, and therefore the marks share a "moderately high degree of conceptual similarity" (paragraph 48); and
- (5) overall, there is a "moderately high degree of similarity between the marks" (paragraph 49).

11. With regard to the inherent distinctiveness of the Opponent's earlier mark, the hearing officer stated at paragraph 51 of the Decision that the word MASTER "will suggest a person/thing that is skilled, controlling or superior" and thus is "allusive of goods of a high quality and furthermore, the opponent's 'spare parts and replacement parts' may include parts with a controlling function". Consequently,

she found that she was “unable to attribute the earlier mark with anything more than a low degree of distinctive character”.

12. Having considered the Opponent’s evidence of use, the hearing officer concluded at paragraph 52 of the Decision that “the earlier mark has been used in the UK” and “has acquired an enhanced level of distinctive character” but “solely in relation to vans. As a consequence, the earlier mark remains of a low degree of inherent distinctiveness for all of the goods protected by the earlier mark with the exception of vans where the distinctive character is elevated to moderate”.
13. At paragraphs 54 and 55 of the Decision, the hearing officer summarised her findings and, in response to the Applicant’s contention that the Opponent’s mark was non-distinctive, stated that “the validity of an earlier mark cannot be called into question” and that “in the absence of evidence to the contrary, the earlier mark must be attributed with at least the minimum level of distinctiveness to satisfy the requirements for registration”. The hearing officer referred, *inter alia*, to the decision of the General Court in Formula One Licensing BV –v- OHIM (Case T-10/09, paragraph 47), which was later upheld by the CJEU in Case C-196/11 P at paragraphs 39 to 47 (24 May 2012, unreported).
14. She then summarised her key findings up to that point and set out her conclusions as follows:

“56) In the instant case, I have found that the opponent’s mark has a low degree of distinctive character in relation to all of the goods for which it is protected with the exception of vans where the level of distinctiveness is elevated to moderate as a consequence of the use made of it. I have also found that the dominant distinctive element of the applicant’s mark is the combination of the two words, ‘master **PRO**’. Whilst the respective marks share the same word ‘master’, it is my conclusion that, taking account of the additional elements within the applicant’s mark, namely the word ‘**PRO**’ and the device element, the overall impressions created by the respective marks are sufficiently different such that the average consumer is not likely to confuse the two marks when used in relation to the goods at issue (direct confusion) or assume that the respective goods are provided under the same or linked undertaking (indirect confusion). This is so notwithstanding certain of the respective goods being identical and taking into account the factor of imperfect recollection. The opposition therefore fails in its entirety.”

15. Having reached that conclusion, the hearing officer ordered the Opponent to pay the Applicant a contribution to its costs of £1,300.

## Appeal

16. The Opponent has appealed to the Appointed Person under section 76 of the Act. The Statement of Case attached to the Notice of Appeal (Form TM55) summarised the main grounds of appeal as being that the hearing officer:

- (1) failed “*to give any or any sufficient weight to the persuasive effect and legal impact*” of the Opponent’s mark, and that “*any cursory comparison of [the Opponent’s mark] with [the Mark] will reveal that the latter is essentially the same as the former and entirely subsumes and reproduces it with the addition of a mere suffix “Pro” which, in context is neither distinctive, nor serves to distinguish the former from the latter*”;
- (2) “*entirely and wrongly dismiss[ed] the precedent effect of the earlier registration and [made] a decision contrary to the policy of the UK Trade Marks Registry and the general interests of the public policy in the administration of a public register of trade marks*”; and
- (3) “*misdirected herself in making certain findings apparently and expressed to be based on her own experience and/or knowledge, without receiving any evidence on the various issues*”.

17. The Statement of Case went on to raise multiple objections to the hearing officer’s reasoning, some of which do not obviously fall under any of these three heads. Some of these objections, but not others, were expanded upon in the Opponent’s skeleton argument for the appeal, though I have considered all the points raised.

18. The representatives of the parties who appeared before me at the hearing of the appeal on 8 October 2013 were: Denise McFarland, instructed by D Young & Co LLP, for the Opponent and Guy Hollingworth, instructed by Olswang LLP, for the Applicant.

19. In her opening remarks, Ms McFarland said that the Opponent’s grounds of appeal really boiled down to the following “*two main strands of criticism*”:

- (1) the hearing officer misdirected herself when considering the persons to whom the Opponent’s mark is addressed, in particular, in her identification of the nature and habits of the relevant public (the “**First Ground**”): I understand this First Ground to pick up the point made under paragraph 16(3) above; and
- (2) in her final assessment of likelihood of confusion, the hearing officer did not apply the conclusions reached elsewhere in the Decision either consistently or properly. It was argued that the hearing officer did not “*follow through*

*from earlier findings that she made” and, consequently, the decision process was “somewhat confused” (the “**Second Ground**”): I understand this Second Ground to relate in part to paragraph 16(2) above.*

20. Although Ms McFarland did not press it in the hearing, I did not take her to drop the first point under paragraph 16(1) above, which I understand to be a criticism of the hearing officer’s assessment of the similarity between the two marks in issue (the “**Third Ground**”).
21. After Mr Hollingworth’s submissions, Ms McFarland stated that the Opponent had also raised a further ground of appeal, i.e. that the hearing officer had erred in concluding that the Opponent’s evidence of use warranted a finding of enhanced distinctiveness only in respect of vans (the “**Fourth Ground**”).
22. Mr Hollingworth submitted that it should not be open to the Opponent to add an additional ground of appeal in reply, as the Opponent had already had two opportunities, in the Notice of Appeal and the skeleton argument, to raise the Fourth Ground and had failed to do so. Ms McFarland referred me to paragraph 18 of the Opponent’s Statement of Case on Appeal which she said had raised the point. I return to this below.
23. The correct approach to this appeal is for me to review the Decision, not re-hear the case. I should be reluctant to interfere in the absence of a distinct and material error of principle. Further, a decision does not contain an error of principle merely because it could have been better expressed. (See *REEF Trade Mark* [2002] EWCA Civ 763 at [28]-[29]; and *Galileo International Technology. LLC –v- European Union* [2011] EWHC 35 (Ch) at [11]-[14].) Both representatives of the parties accepted this and, in addition, Mr Hollingworth referred me by analogy to the recent judgment of the Court of Appeal in *Ototoks Limited & Anr –v- Fine & Country Ltd & Ors* ([2013] EWCA Civ 672), at paragraph 50 of which Lewison LJ described the role of the Court of Appeal in considering an appeal against a High Court decision in a trade mark infringement and passing off action, as follows:

*“The Court of Appeal is not here to retry the case. Our function is to review the judgment and order of the trial judge to see if it is wrong. If the judge has applied the wrong legal test, then it is our duty to say so. But in many cases the appellant’s complaint is not that the judge has misdirected himself in law, but that he has incorrectly applied the right test. In the case of many of the grounds of appeal this is the position here. Many of the points which the judge was called upon to decide were essentially value judgments, or what in the current jargon are called multi-factorial assessments. An appeal court must be especially cautious about interfering with a trial judge’s decisions of this kind. ...”.*

The First Ground – Findings in relation to the Nature and Habits of the Relevant Public

24. The Opponent claims that the hearing officer misdirected herself when considering the persons to whom the Opponent’s mark is addressed and in identifying the nature and habits of the relevant public. The main criticism is that the hearing officer only considered purchasers of vans.
25. Ms McFarland, for the Opponent, argued in particular that:
- (1) certain findings of the hearing officer were based on her own experience and/or knowledge, without receiving any evidence on the various issues. By way of example, I was referred to the hearing officer’s finding that spare parts and/or replacement parts “*may be selected from a catalogue by reference to a catalogue number rather than through sight of the product itself*” (paragraph 38 of the Decision), the forensic origin of which finding was queried; and
  - (2) the hearing officer “*confined or constrained herself to consider only persons who would be purchasing vans*” and would be prepared to make the associated “*significant investment*”.
26. As stated above (and as summarised at paragraph 54 of the Decision), the hearing officer found that the average consumer included both the general public and specialists, such as mechanics or other professionals. The level of attention paid by such average consumer was described as, on the most part, reasonably high and, in relation to “*land motor vehicles and motor cars*”, even higher.
27. In reaching this conclusion, I do not believe that the hearing officer misdirected herself or made any findings which were unwarranted in the circumstances and led her to make an incorrect decision.
28. As discussed at the hearing, hearing officers as well as judges sometimes have to operate in a vacuum of fact, especially where certain factual aspects are not dealt with in the evidence submitted by the parties. In those circumstances, it may be justified for a hearing officer to rely on his/her own experience or general knowledge. As always, there is a balance to be struck and the hearing officer ought to resist the temptation of going on a frolic of his/her own.
29. That being so, it is a principle recognised in case law that, in the absence of evidence, a judge (and by analogy, a hearing officer) can reach a conclusion using his or her own common sense and experience of the world (see Marks & Spencer Plc v Interflora Inc and another [2012] EWCA Civ 1501, paragraph [50], which relies on dicta in Re GE Trade Mark [1973] RPC 297 at 321 and esure Insurance Ltd v Direct Line Insurance plc [2008] RPC 919 at 938).



30. In the words of Lord Diplock (see *Re GE Trade Mark* at [235]), the hearing officer should “*be alert to the danger of allowing his own idiosyncratic knowledge or temperament to influence his decision, but the whole of his training in the practice of the law should have accustomed him to this, and this should provide the safety which in the case of a jury is provided by their number*”.
31. Ms McFarland referred me to the decision of Professor Ruth Annand acting as Appointed Person in *Colgate-Palmolive Co’s Trade Mark Application* [2002] RPC 26. At paragraph [39], in response to the request to take “*judicial notice of what is on the shelves in supermarkets*” in terms of get-ups of toothpastes, Professor Annand reiterated that the tribunal should not conduct any private research and investigation and must determine the appeal on the basis of the information and materials before the hearing officer. I agree with Counsel for the Applicant that the dictum in *Colgate-Palmolive* does not assist me in the circumstances. The hearing officer did not conduct any private research or investigation but simply relied on her general knowledge and common sense, which does not strike me as having been particularly idiosyncratic or unusual. I do not believe that the hearing officer can be said to have gone on a frolic of her own.
32. With regard to the example referred to by Ms McFarland (paragraph 38 of the Decision), Ms Jones was analysing the features of the purchasing process of certain goods and noted that, in the case of ‘*spare parts and/or replacement parts*’, the visual assessment may not always come into play as they may be selected from a catalogue by reference to a catalogue number. This is neither a categorical nor a radical statement; it does not exclude the visual assessment altogether, but simply emphasises that the aural assessment may be more relevant in certain cases.
33. In any event, the above finding is arguably in favour of the Opponent, because a predominantly aural assessment would not allow the average consumer to perceive the visual differences between the marks, e.g. the fact that the latter part of the word element of the Mark (PRO) is in a different font size and script from MASTER and is surrounded by a hexagonal shape.
34. With regard to the allegation that the hearing officer constrained her assessment to purchasers of vans, I am not satisfied that the Opponent clearly identified either (1) the instances in which the hearing officer limited her assessment to purchasers of vans, or (2) how such allegedly constrained assessment influenced her decision-making process.
35. It seems to me that:

- (1) at paragraphs 25 to 35 of the Decision, the hearing officer analysed in detail the various goods applied for and assessed their similarity with those covered by the Opponent's earlier mark;
- (2) the analysis of the distinctive character of the Opponent's mark was based on a thorough review of the evidence submitted (i.e. the witness statement of Mr Renucci) and, on the basis of such review, the hearing officer's finding was that the Opponent's mark had acquired an enhanced level of distinctiveness only in relation to vans. It was open to Ms Jones to reach this conclusion and its significance is clearly expressed to relate to the analysis of the distinctive character of the Opponent's mark; and
- (3) in the summary of her findings at paragraph 54 of the Decision, the hearing officer referred to all the goods covered by both marks, described the nature and level of attention of the average consumer for each of them, and reiterated her findings as to the distinctive character of the Opponent's mark (i.e. low degree of distinctiveness for all goods except for vans, where it is moderate).

36. In the light of the above, I do not believe that the hearing officer misdirected herself or erred in reaching her findings in relation to the nature and habits of the relevant public. In particular, I believe that:

- (1) in the absence of evidence submitted by the parties, the hearing officer was entitled to draw on her own experience and general knowledge and she did so in a way that does not offend logic or common sense, nor was it in any way unreasonable; and
- (2) there is no clear evidence to suggest that the hearing officer confined her analysis and assessment only to purchasers of vans. On the contrary, the Decision seems to be thorough and balanced.

#### The Second Ground – Inconsistency of Conclusions

37. Counsel for the Opponent submitted that the hearing officer did not apply a coherent and consistent approach throughout the Decision and that, in essence, her thought and decision-making process was confused.

38. By way of example, Ms McFarland stated that the hearing officer:

- (1) after reaching certain conclusions as to the dominant element of the Mark, changed her mind and re-evaluated the Mark; and

- (2) after finding high degrees of similarity between the goods covered by the Marks and the Opponent's goods, gave "*inadequate or improper value*" to such similarities in her conclusions.

39. Further, in its Statement of Case on Appeal (paragraphs 20 and 21), the Opponent argued that:

- (1) at paragraph 52 of the Decision, the hearing officer rejected the value of written submissions relating to the use of the Opponent's mark in the UK, but then correctly stated that such mark had acquired an enhanced level of distinctiveness. Then, despite such finding of enhanced distinctiveness, she allegedly failed to "*commensurately elevate the level of protection*" conferred on the Opponent's mark; and
- (2) the conclusion at paragraph 56 of the Decision (quoted in full above) is inherently inconsistent with the earlier findings in relation to the comparison of the goods, and the hearing officer failed to give adequate reasons for what is described as "*an illogical conclusion*".

40. The underlying theme of the Second Ground is that, in the circumstances and bearing in mind the preliminary findings made by the hearing officer, no reasonable tribunal would have reached the same final conclusion or, in other words, the Decision was perverse.

41. I have reviewed the Decision in the light of the Opponent's comments on the lack of coherence and consistency and I believe that the hearing officer's conclusions at paragraphs 53 to 56 follow from her previous findings, which are also accurately summarised before proceeding to the global assessment of the likelihood of confusion.

42. To address some of the Opponent's submissions as to the inconsistency of the hearing officer's conclusions, I note the following:

- (1) at paragraph 42 of the Decision, the hearing officer found that the "*dominant distinctive element*" of the Mark was the combination of 'master' and '**PRO**'. The identification of a dominant element within a mark does not mean that all other components are automatically negligible, and the hearing officer made no suggestion that this was the case. It is only when all other components are negligible that it is permissible to make the comparison only on the basis of the dominant element (*OHIM v Shaker di Laudato & C Sas*, Case C-334/05 P, at paragraph [42]). The fact that the hearing officer also referred to other elements of the Mark (such as the bold lettering of '**PRO**' and the hexagonal device surrounding it) later in the Decision (for example,

in the visual comparison at paragraph 43 or in the conclusions at paragraph 56) does not mean that she ‘re-evaluated’ the Mark;

- (2) with regard to the “*inadequate or improper value*” given to the various degrees of similarity between the goods, it seems to me that this is tantamount to saying that the Opponent disagrees with the weight given by the hearing officer to this element in the multi-factorial assessment. There is no denial by the Opponent that the hearing officer considered its previous findings on the comparison of the goods in the conclusions (see, for example, at paragraph 56 of the Decision). As stated above, I should be reluctant to interfere with the Decision in the absence of a distinct and material error of principle, and giving too much or too little weight to certain factors in the multi-factorial global assessment is not an error of principle warranting interference (see *Digipos Store Solutions Group Limited v Digi International Inc.* [2008] EWHC 3371 (Ch), paragraphs [5] and [6]);
- (3) with regard to the finding of an enhanced level of distinctiveness in respect of vans, it is not clear to me what the Opponent means by ‘commensurately elevating’ the level of protection of the Opponent’s mark and what error of principle is in fact alleged. The Opponent appears to be saying that the conclusions at paragraph 56 of the Decision do not logically follow from the finding of enhanced distinctiveness. Again, this is a complaint in relation to the weight given to a factor (i.e. enhanced distinctive character) in the multi-factorial assessment and, as such, it is not an error of principle warranting interference; and
- (4) the complaint relating to the inherent inconsistency of the conclusions at paragraph 56 of the Decision with the findings in relation to the comparison of the goods effectively mirrors the complaint discussed at sub-paragraph (2) above. I do not believe that there is an inconsistency in the conclusion that, despite the identity of certain of the goods, the marks are not sufficiently similar for a finding of a likelihood of confusion. As discussed above, in the concluding paragraphs of the Decision (54 to 56), the hearing officer summarised all her preliminary findings, took all factors into account in the global assessment, and concluded that there was no risk of likelihood of confusion between the marks. The hearing officer’s reasoning is clear and, on the basis of her preliminary findings, it was open to her to reach that conclusion. The fact that a different weight could have been given to certain factors in the multi-factorial global appreciation test does not provide the basis for an appeal in the absence of an error of principle justifying a departure from the Decision.

### The Third Ground – Error in Assessing Similarity between the Marks

43. The Opponent complains that the hearing officer “*erred fundamentally*” in ignoring the impact and effect of the fact that there is “*overwhelming similarity*” between the Mark and the Opponent’s earlier trade mark. In the Opponent’s assessment, the dominant element of the Mark is the word MASTER, and any normal and fair reading would see the Mark as “*indicative of the earlier mark MASTER combined with a wheel-nut fancy element and the word or term “PRO” suggesting the use of this range of designated goods are “Master” branded goods, for use by the professionals, or as used by professionals, or of high ie; professional qualities or standards*”.
44. The problem for the Opponent is that neither in these quoted extracts nor elsewhere in the Notice of Appeal or the Opponent’s written or oral submissions is there any explanation of what error of law or principle the hearing officer made in her comparison of the two marks. As indicated above, the hearing officer correctly summarised the applicable legal principles, and then applied them, and then concluded that there was “*a moderately high degree of similarity between the marks*”.
45. Indeed, the hearing officer’s approach to the comparison of the different word elements of the marks is rather similar to that of the Opponent. The only real difference identified is that the Opponent suggests that the hexagonal shape in the Mark brings to mind the shape of a fastening nut, in particular a car wheel nut. This point is not found anywhere in the evidence and indeed was not raised in submission at first instance, so it is not surprising that this was not mentioned by the hearing officer. But I do not see how it helps the Opponent in any event: the perception of the hexagon as a wheel nut rather than a mere “hexagonal shape” would, as Mr Hollingworth suggested, be liable to create an impression even further removed from the Opponent’s mark, which contains no similar or equivalent shape, reference, or allusion to a fastening nut.
46. While in the Statement of Case (paragraph 13), the Opponent asserted that the hearing officer erred in failing to find that the word MASTER was the dominant element in the Mark, during the hearing Ms McFarland appeared happy to rely on the hearing officer’s statement that “*the dominant distinctive element of the applicant’s mark is the combination of the two words ‘master’ and ‘PRO’ i.e. ‘master PRO’*”. Her emphasis instead was on the assertion that the hearing officer had failed to carry forward this finding to subsequent parts of the Decision, which I have already rejected under the Second Ground above. The Third Ground therefore does not assist the Opponent.

#### The Fourth Ground – Enhanced Distinctiveness of the Opponent’s Mark

47. In the course of her reply to Mr Hollingworth’s submissions, Ms McFarland raised an additional challenge to the Decision, the Fourth Ground, and stated that such ground had been discussed at paragraph 18 of the Opponent’s Statement of Case on Appeal.
48. As I stated in the course of the hearing, I did not read the Opponent’s written submissions as raising the Fourth Ground. Nor did I hear it in Ms McFarland’s opening submissions. In particular, paragraph 18 of the Opponent’s Statement of Case on Appeal deals with the hearing officer’s findings in relation to the ‘average consumer and the purchasing process’ and the statements in it appear to be intended to show that the hearing officer had erred in stating that purchases of spare parts and/or replacement parts may be made by reference to catalogue numbers. The focus of the paragraph is on the behaviour of consumers rather than the level of distinctiveness of the Opponent’s mark.
49. Therefore, I do not believe that the Fourth Ground was validly raised as a further error of principle and I am not prepared to allow it as part of the grounds of appeal.
50. In any event, from a review of the exhibits to Mr Renucci’s witness statement, I am inclined to agree with Mr Hollingworth’s comments that the brochures at **Exhibit PR2** show the various options and accessories available for purchase with the Opponent’s vans. Rather than being evidence of use of the Opponent’s mark in relation to the options / accessories themselves, any use of the mark on those pages is in relation to the vehicles, of which one is the Master van. Further, even if this had amounted to use in respect of parts and accessories, I am not satisfied that the evidence submitted by the Opponent would have warranted a finding of enhanced distinctiveness in relation to spare parts and/or replacement parts as well.

#### Conclusion

51. Having considered all of the submissions made by each side, I am not persuaded that the hearing officer fell into error. I therefore dismiss the appeal and direct that the Mark should be permitted to proceed to registration.
52. Since I have upheld the first instance decision, the Applicant is entitled to receive the award of costs made by the hearing officer in the sum of £1,300. Bearing in mind the nature of the appeal, the steps taken and the representation at the hearing, I order the Opponent to pay the Applicant an additional sum of £1,000 as a contribution towards the costs of this appeal. The total sum of £2,300 is to be paid within 14 days of the date of notification of this decision.

ANNA CARBONI

The Appointed Person

28 February 2014

The Appellant/Opponent (Renault s.a.s.) was represented by Counsel, Denise McFarland, instructed by D Young & Co LLP.

The Respondent/Applicant (Euro Car Parts Limited) was represented by Counsel, Guy Hollingworth, instructed by Olswang LLP.