

# **Sex and Swastikas**

*Michael Edenborough*

**Lunchtime seminar to the UK-IPO**

**31<sup>st</sup> July 2008**

# **Health Warning!**

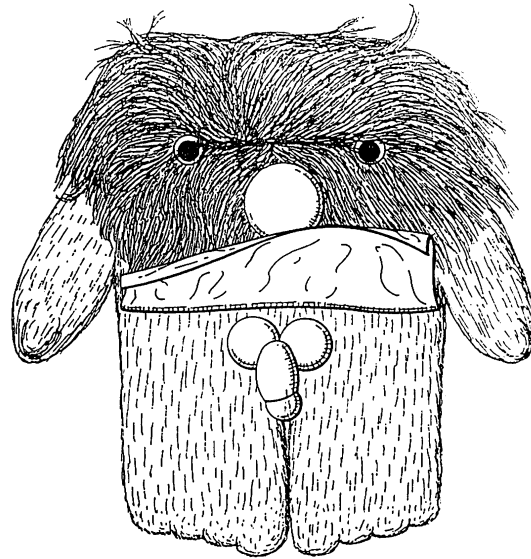
**Given the nature of the talk, no euphemisms can be used; hence “\*” and “!” &c. will only be used if they are actually present in the mark under consideration**

**Also, some of this talk may cause offence to some, some of the time**

# Designs

- **current RDA 49 s 1D; Dir 98/71 art 8; Reg 6/2002 art 9: same wording as TMA 94**
- **RDA 49 s 3(5) (89-01 version):**  
*“The registrar may refuse any application for the registration of a design ...”*

# *Masterman's Design* [1991] RPC 89



Front view of the doll in a second form  
with its apron raised.

SHEET 5

## ***Masterman's Design* [1991] RPC 89**

***per Aldous J:***

- stressed the issue was whether the design should be given the benefit of registration, *i.e.* protection of property rights**
- offend moral principles of right-thinking members of the public**
- judged against public opinion at the date of registration**

# Patents

- **Patents Act 1977 s 1(3):**  
*“ ... commercial exploitation of which would be contrary to public policy or morality”*
- **“public policy” = “*ordre public*”**
- **likely to induce riot or public disorder or to lead to other generally offensive behaviour**
- **wrong for the law to protect it, e.g. historically, contraceptive devices (*Riddlesbarger’s App* (1936) 53 RPC 57) and now landmines (LA 1998)**

# Copyright

- **Lord Eldon refused to grant interim relief to protect works that were libellous, obscene, irreligious or vulgar**
- **consequence that 000,000s copies of Southey's poem *Wat Tyler* were circulated**
- **copyright subsisted, but was unenforceable**
- **defence of public interest: very- narrow**

## **TMA 94 Section 3(3)(a)**

*“A trade mark shall not be registered if it is contrary to public policy or to accepted principles of morality”*

**Dir 89/104 art 3(1)(f)**

**Reg 40/94 art 7(1)(f)**

**two potential objections**



## Old UK Trade Mark examples

- ***OOMPHIES*** allowed (1947) 64 RPC 27, despite its (USA) sexual connotations
- ***HALLELUJAH*** refused [1976] RPC 605, offensive to many Christians

# Newer UK Trade Mark examples

- ***TINY PENIS*** refused [2002] RPC 33, as an accepted social and family value is likely to be significantly undermined, namely correct anatomical terms for the genitalia should be reserved for serious use and not debased
- ***FOOK*** refused (BL O-182-05), as it would be pronounced as “fuck”
- ***JESUS*** refused [2005] RPC 25, as would undermine an accepted social and religious value to a significant extent

# Jesús del Pozo

**La actriz Maite Nieto con traje de novia y bebé vestido a juego, diseño de la colección de Jesús del Pozo presentada en la Pasarela Cibeles**



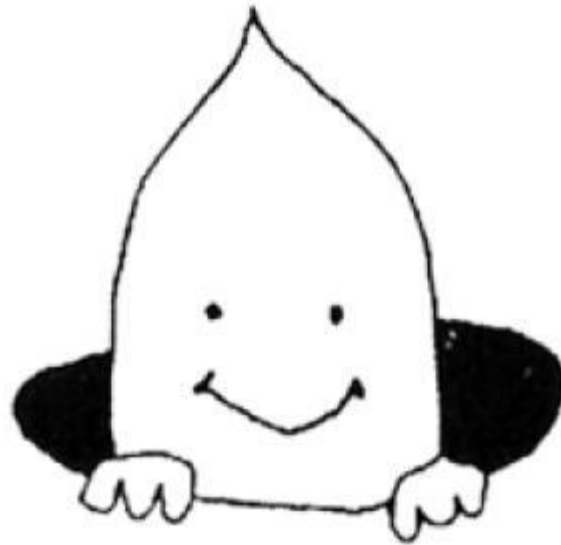
# **Some Hypothetical Examples on Accepted Principles of Morality**

- ***MUHAMMAD*** (or any equivalent spelling)
  - the Islamic equivalent of “Jesus”
- ***TURTLE***
  - when used in Chinese literature (except when referring to the animal), translated into English as “motherfucker”; particularly offensive, because calls into question one’s ancestry

**UK TM app №. 2 490 172**



**UK TM app №. 2 490 027**



**SHIT BOX**

# Contrary to Public Policy

- ***INTER CITY FIRM*** refused [2007] ETMR 10, notorious “firm” of football hooligans
- ***TOKE*** [2007] ETMR 9 and ***White Dove You don't need wings to fly*** both refused as promoting illegal drug use
- **racist or sexist incitements**

# OHIM's approach to obscenities I

- **CTM №. 306 399: refused**





## **OHIM's approach to obscenities II**

- **CTM №. 6 397 103: accepted**

***JUST A FUCKING T-SHIRT***

- **CTM №. 5784798: accepted in part [2007]  
ETMR 7**

***SCREW YOU***

# **OHIM's approach to Personal Names**

- ***BILL CLINTON***
- ***FIDEL CASTRO***
- ***JOHANNES PAUL II***
- ***BIN LADEN* Case R 176/2004-2, glorify terrorism and could offend the victims of terrorism**

# Invalidation of Existing Marks

- *FCUK* [2007] RPC 1
- *French Connection Ltd v Sutton* [2000] ETMR 341: summary judgment refused



“too busy to fcuk”

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- **MA (Natural Sciences) (Cantab)**
- **DPhil (Biophysics) (Oxon)**
- **All areas of IP law and practice, in particular patents, trade marks, copyright and designs. Over 55 reported cases since 2000, of which over half were appeals or JRs. Appeared often before the CFI and in the EPO.**