

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION No. 2321787 TO REGISTER A SERIES OF TWO TRADE MARKS BY ENTIRE CONSULTANCY LIMITED IN CLASSES 9, 16, 35, 38 AND 42

DECISION

Introduction

1. This is an appeal against a decision of Mr Pike, the Hearing Officer acting for the Registrar, dated 24 January 2005 whereby he refused an application by Entire Consultancy Limited (“the Applicant”) to register the following series of two trade marks:

SIMPLYCLICK

SimplyClick

2. Registration was sought in respect of the following goods and services:

"Class 09

Computer hardware and software; platform software for computer hardware; platform software for communications networks.

Class 16

Printed matter.

Class 35

Advertising; compilation of advertisements for use of web pages on the Internet; compilation directories for publishing on the Internet; provision of space on websites for advertising goods and services; on-line advisory and information services relating to the sale of professional products; the bringing together, for the benefit of others, of a variety of goods and services, enabling customers to conveniently view and purchase those goods from a general merchandise internet website; business administration

services for the processing of sales made on the Internet; business information services provided on-line from a computer database or the Internet; auctioneering services.

Class 38

Telecommunication of information (including web pages), computer programs and any other data; providing user access to the Internet; providing user access to the Internet, extranets and intranets; providing user access to specially developed communication platforms, protected by secure log-ins, on the Internet; providing an on-line, interactive bulletin board for the posting, promotion, sale and resale of items via a global computer network; providing an on-line, interactive bulletin board for the collection and dissemination of statistical, quantitative and qualitative information regarding the sale and resale of items via a global computer network, extranets and intranets; telecommunications gateway services; provision of access to on-line commercial market places for conducting e-commerce; ISP services.

Class 42

Creating and maintaining websites; hosting the websites of others; creating and maintaining an on-line commercial market place for conducting e-commerce; Internet content subscription services; providing subscription access to platforms for communication on the Internet, extranets and intranets."

3. No objection was maintained in respect of the goods in Classes 9 and 16. The application was, however, refused in respect of all the services in Classes 35, 38 and 42 on the basis that the trade marks failed to qualify under section 3(1)(b) and 3(1)(c) of the Act.
4. On the 21 February 2005 the Applicant filed a Notice of Appeal to an Appointed Person. That appeal came on for hearing before me on the 6th September 2005.

The decision of the Hearing Officer

5. Section 3(1)(b) and (c) of the Act reads as follows:

"3.-(1) The following shall not be registered-

- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value,

geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services.”

6. The Hearing Officer first addressed the objection under section 3(1)(c) and began by considering whether the marks in issue designated a characteristic of the services in question. In this regard he was provided with a body of materials illustrating the goods and services which the Applicant has provided under the marks. These materials formed Annex A to his decision and included the following description:

"What is SimplyClick?"

SimplyClick is a cost-effective, content management and communications system that provides the ability for schools/communities to collaborate and share information more efficiently and effectively. Extending beyond the boundaries of the classroom, its flexible structure allows for the support and linking together of educational communities at all levels (Schools, Clusters, LEA's, Community groups ...)."

It is apparent from these materials that SimplyClick is essentially a platform comprising a series of programs enabling users within or between schools or other communities to share and access information using on-line interactive websites. In addition, the Applicant provides training sessions and ongoing support.

7. The Hearing Officer noted that the services provided by the Applicant are focused in a particular area but that this was not reflected in the specification applied for which includes services of a wide ranging nature. He rightly approached the issue on the basis that the application must be considered in respect of all the services applied for and not just those reflected in the documents contained in Annex A.
8. The Hearing Officer proceeded to consider the marks themselves. It was not suggested that the marks should be treated differently and the Hearing Officer noted that they each break naturally into the two separate words “simply” and “click” and that this is the way they would be perceived by the average consumer. He then referred to the results of a search for the words “simply

click” using the Google search engine and annexed those results at Annex B. He expressed his conclusion about the search in paragraph 17 of his decision as follows:

"It is clear from this that the words “simply click” are in common use as an instruction to highlight and subsequently select, from a list, a particular abstract entry in order to gain access to the full website. That website may contain further choices, with different pages containing different information and again one is likely to receive an instruction to “simply click” on a particular entry in order to receive further details of that particular page. If a full Internet address is known it is not necessary to access a website through an Internet search engine. One may simply enter the address in the appropriate section in order to gain direct access to the site. However, once access has been gained, one is again likely to be instructed to “simply click” on a variety of options in order to access further pages. "

And a little later, in paragraph 18:

"The words SIMPLY CLICK are words in everyday use on a large number of websites to indicate the ease with which access may be gained to particular information."

9. The Hearing Officer accordingly concluded that the marks applied for consist exclusively of signs which may serve, in trade, to designate a characteristic of services and were therefore excluded from registration by section 3(1)(c).

10. The Hearing Officer then proceeded to consider the objection under section 3(1)(b). He asked himself whether the trade marks applied for were capable of enabling the relevant consumer of the services in question to identify the origin of the services and thereby to distinguish them from other undertakings and concluded, at paragraph 23,

"For the same reasons that I found these trade marks to be excluded by the provisions of section 3(1)(c) of the Act I have concluded that the relevant consumer of the services in question would not consider these marks to denote trade origin. The average consumer of web based services will, upon encountering the words SIMPLY CLICK on a web page, perceive them as no more than an invitation to use their mouse to navigate through the site. That is why it will not be seen as a badge of origin. I am not persuaded that the trade marks applied for are sufficient, in terms of bestowing distinctive character on the sign as a

whole, to conclude that it would serve, in trade, to distinguish the services of the applicant from those of other traders."

11. He therefore decided that the marks applied for were devoid of any distinctive character and thus excluded from acceptance under section 3(1)(b).

Issues on the appeal

12. On the appeal the Applicant was represented by Mr. Julius Stobbs of Bolt Wade Tennant and Mr Allan James appeared on behalf of the Registrar. The primary submission advanced by Mr Stobbs was that the Hearing Officer fell into error in rejecting the marks under section 3(1)(c) and 3(1)(b) in respect of the whole specification of services applied for. As a fall back, he submitted that the Hearing Officer ought to have permitted the application to proceed in respect of a reduced specification of services. This, he told me, was a matter which he had raised before the Hearing Officer although it was not something specifically dealt with in the decision. Mr James, on behalf of the Registrar, did not object to this point being raised on appeal but suggested that if I was minded to conclude that a reduced specification of services would be acceptable, then the matter should be remitted for consideration by the Registrar to settle the precise terms of the specification. Accordingly, I propose first to consider the objections in relation to the broad specification sought and then the position in relation to a reduced specification.
13. At this point it is convenient to note that the Applicant accepted on the appeal, as before the Hearing Officer, that no distinction could be drawn between the two marks in the series. Accordingly in this decision I will refer only to the mark "SimplyClick".

Section 3(1)(c)

14. It was submitted on behalf of the Applicant that the Hearing Officer fell into error in failing to ask himself whether the words "simply click" were the usual way of referring to the services in question or to a characteristic of those services. Further, it was submitted, if the Hearing Officer had considered this question, he ought to have concluded that the words are merely allusive in

nature, in the sense that they allude to the fact that the services in issue are “easy to use” but do not allow the consumer immediately and without further reflection to make a definite and direct association with those services. Further, it was submitted, the Hearing Officer fell into error in failing to take into account the evidence of the use of the mark “SimplyClick” which shows that it has actually functioned as a trade mark.

15. The correct approach to the application of section 3(1)(c) of the Act has been explained by the European Court of Justice in Case C-191/01, *OHIM v Wm Wrigley (DOUBLEMINT)* [2004] RPC 18:

- "28. Under Article 4 of Regulation No 40/94, a Community trade mark may consist of any signs capable of being represented graphically, provided that they are capable of distinguishing the goods or services of one undertaking from those of other undertakings.
29. Article 7(1)(c) of Regulation No 40/94 provides that trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of the goods or of rendering of the service, or other characteristics of the goods or service are not to be registered.
30. Accordingly, signs and indications which may serve in trade to designate the characteristics of the goods or service in respect of which registration is sought are, by virtue of Regulation No 40/94, deemed incapable, by their very nature, of fulfilling the indication-of-origin function of the trade mark, without prejudice to the possibility of their acquiring distinctive character through use under Article 7(3) of Regulation No 40/94.
31. By prohibiting the registration as Community trade marks of such signs and indications, Article 7(1)(c) of Regulation No 40/94 pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see, inter alia, in relation to the identical provisions of Article 3(1)(c) of First Council Directive 89/104/EEC of 21 December 1988 to

approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p.1), *Windsurfing Chiemsee*, paragraph 25, and Joined Cases C-53/01 to C-55/01 *Linde and Others* [2003] ECR I-000, paragraph 73).

32. In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned. "

16. Similarly, in Case C-363/99 *Koninklijke KPN Nederland NV the Benelux-Merkenbureau (POSTKANTOOR)* [2004] ETMR 57, the Court explained:

- "54. As the Court has already held (*Windsurfing Chiemsee*, paragraph 25, *Linde*, paragraph 73, and *Libertel*, paragraph 52), Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that such signs or indications may be freely used by all. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks.
55. That public interest requires that all signs or indications which may serve to designate characteristics of the goods or services in respect of which registration is sought remain freely available to all undertakings in order that they may use them when describing the same characteristics of their own goods. Therefore, marks consisting exclusively of such signs or indications are not eligible for registration unless Article 3(3) of the Directive applies.
56. In those circumstances, the competent authority must, under Article 3(1)(c) of the Directive, determine whether a trade mark for which registration is sought currently represents, in the mind of the relevant class of persons, a description of the characteristics of the goods or services concerned or whether it is reasonable to assume that that might be the case in the future (see to that effect

Windsurfing Chiemsee, paragraph 31). If, at the end of that assessment, the competent authority reaches the conclusion that that is the case, it must refuse, on the basis of that provision, to register the mark.

57. It is irrelevant whether there are other, more usual, signs or indications for designating the same characteristics of the goods or services referred to in the application for registration than those of which the mark concerned consists. Although Article 3(1)(c) of the Directive provides that, if the ground for refusal set out there is to apply, the mark must consist exclusively of signs or indications which may serve to designate characteristics of the goods or services concerned, it does not require that those signs or indications should be the only way of designating such characteristics.”

And, later in the judgment:

- "95. It follows from paragraphs 54 and 55 of the present judgment that Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that descriptive signs or indications descriptive of the characteristics of the goods or services in respect of which registration is applied for may be freely used by all. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks.
96. If a mark, such as that at issue in the main proceedings, which consists of a word produced by a combination of elements, is to be regarded as descriptive for the purposes of Article 3(1)(c) of the Directive, it is not sufficient that each of its components may be found to be descriptive. The word itself must be found to be so.
97. It is not necessary that the signs and indications composing the mark that are referred to in Article 3(1)(c) of the Directive actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that those signs and indications could be used for such purposes. A word must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned (see to that effect, in relation to the identical provisions of Article 7(1)(c) of Council Regulations (EC) No 40/94 of 20 December 1993 on the

Community trade mark (OJ 1994 L 11, p.1), Case C-191/01 *OHIM v Wrigley* [2003] ECR I-0000, paragraph 32).

98. As a general rule, a mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics for the purposes of Article 3(1)(c) of the Directive. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned.
99. However, such a combination may not be descriptive within the meaning of Article 3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition must be satisfied as regards both the aural and the visual impression produced by the mark.
100. Thus, a mark consisting of a word composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of those characteristics for the purposes of Article 3(1)(c) of the Directive, unless there is a perceptible difference between the word and the mere sum of its parts: that assumes either that, because of the unusual nature of the combination in relation to the goods or services, the word creates an impression which is sufficiently far removed from that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts, or that the word has become part of everyday language and has acquired its own meaning, with the result that it is now independent of its components. In the second case, it is necessary to ascertain whether a word which has acquired its own meaning is not itself descriptive for the purpose of the same provision.
101. Furthermore, for the reason given in paragraph 57 of this judgment, it is irrelevant for the purposes of determining whether the ground for refusal set out in Article 3(1)(c) of the Directive applies to such a mark whether or not

there are synonyms permitting the same characteristics of the goods or services to be designated.

102. It is also irrelevant whether the characteristics of the goods or services which may be the subject of the description are commercially essential or merely ancillary. The wording of Article 3(1)(c) of the Directive does not draw any distinction by reference to the characteristics which may be designated by the signs or indications of which the mark consists. In fact, in the light of the public interest underlying the provision, any undertaking must be able freely to use such signs and indications to describe any characteristic whatsoever of its own goods, irrespective of how significant the characteristic may be commercially."
17. A number of principles emerge from these cases which bear on the appeal before me. First, it is in the public interest that a sign which is descriptive of a characteristic of the services in respect of which registration is sought may be freely used by all. Second, it is not necessary that the descriptive sign is actually in use at the time of the application for registration; it is sufficient that it could be used for such purposes. Third, a sign must be refused for registration if at least one of its possible meanings designates a characteristic of the services concerned. Fourth, it is irrelevant that there may be other, more usual, signs or indications for designing the same characteristic of the services. Fifth, it is irrelevant whether the characteristic of the services which may be the subject of the description is commercially essential or merely ancillary. Finally, a mark consisting of a word composed of elements, each of which is descriptive of a characteristic of the services, is itself descriptive of that characteristic unless there is a perceptible difference between the word and the sum of its parts.
18. I was also referred on behalf of the Applicant to the decisions of the Court of First Instance in Case T-387/03 *Proteome Inc v. OHIM (BIOKNOWLEDGE)* and Case T-334/03 *Deutsche Post EURO EXPRESS GmbH v OHIM (EUROPREMIUM)*. For present purposes I need only cite from the reasoning of the Court in *EUROPREMIUM*:
 - "41. By contrast, to come within the scope of Article 7(1)(c) of Regulation No 40/94, the sole provision at issue in the

present case, a word sign must serve to designate in a specific, precise and objective manner the essential characteristics of the goods and services at issue (see, to that effect, *VITALITE*, cited in paragraph 37 supra, paragraph 23; Case T-87/00 *Bank für Arbeit und Wirtschaft v OHIM (EASYBANK)* [2001] ECR II-1259, paragraphs 29 and 31; and *UltraPlus*, cited in paragraph 15 supra, paragraph 28).

42. Furthermore, as the applicant correctly observes, the Court has already held that a term flattering in nature, such as *UltraPlus*, was, however, not descriptive of the goods at issue, in that case plastic ovenware, since it did not permit the consumer immediately and without further reflection to make a definite and direct association with the goods in question (*UltraPlus*, cited in paragraph 15 supra, paragraph 26, and, to that effect, *VITALITE*, cited in paragraph 37 supra, paragraphs 22 to 24).
43. The word ‘premium’, in the meaning adopted by the Board of Appeal, is merely a laudatory term evoking a characteristic that the applicant seeks to attribute to its own goods, yet without informing consumers of the specific and objective characteristics of the goods or services offered. That term cannot, therefore, serve to designate the type of goods and services in question, either directly or by reference to their essential characteristics.
44. Since the word sign *EUROPREMIUM* is therefore not composed of elements descriptive of the goods and services in question, the judgments of the Court of Justice in *CampinaMelkunie* and *KoninklijkeKPN Nederland*, both cited in paragraph 20 supra, relied upon by the Office, are not relevant in the present case. It only remains to consider whether, despite that lack of descriptiveness of the elements of which the sign in question is composed, that sign, taken as a whole, enables the target public to establish a direct and concrete link to the goods and services for which registration was sought.
45. In that regard it is appropriate to point out that the Board of Appeal did not establish in the contested decision that the term ‘*EUROPREMIUM*’, taken as a whole, was or could be a generic or usual name to identify or distinguish goods intended for packaging, storage or transport, advertising, management or business assistance services or transport and storage services (see, to that effect, Case T-34/00 *Eurocool/Logistik v OHIM*

(EUROCOOL) [2002] ECR II-683, paragraph 50). The contested decision merely indicates that the word sign evokes in the consumer's mind the impression of high-quality European goods and services without showing that that characteristic would enable the consumer immediately and without further thought to establish a direct and concrete link to the above mentioned goods and services."

19. On the basis of these authorities it was submitted that an objection may only be raised where there is a direct and concrete connection between the descriptive meaning and some characteristic of the services concerned, and also where the consumer can, without further reflection, make a definite and direct association with the specific services in question.
20. I accept, of course, that decisions of the CFI are of great importance but they must be read subject to and in the light of the decisions of the Court of Justice. To my mind the CFI is, in these decisions, simply emphasising the need for the sign to have a descriptive as opposed to an evocative or allusive meaning before the objection may properly be invoked.
21. In the light of these principles I believe that the approach adopted by the Hearing Officer to the specification of services sought in the application in issue is unimpeachable. First, the Hearing Officer was right to consider the whole specification of services for which registration is sought. It is extremely broad and comprises a wide range of services which are available through the Internet and in relation to which the sign "SimplyClick" has never been used. Secondly, the average consumer would immediately perceive that the sign "SimplyClick" is composed of the two well known words "simply" and "click". Thirdly, as the Google search conducted by the examiner shows, the words "simply click" are widely used as an instruction to highlight and select particular entries on a whole variety of websites. More importantly, the words "simply click" are, as the Hearing Officer explained, words in every day use to indicate the ease with which access may be gained to a particular website or pages within a website.

22. Accordingly, I have reached the clear conclusion that in respect of many of the Internet services for which registration is sought the words “simply click” may serve in trade to designate a characteristic, namely, ease of access, of such services. It matters not that there are other expressions or words which may also be used to indicate ease of access. Nor does it matter that the words “simply click” may be seen as an instruction, since another possible meaning designates a characteristic of the services concerned.

Section 3(1)(b)

23. The principal criticism advanced in relation to the decision of the Hearing Officer under section 3(1)(b) was that it relied upon the reasoning under section 3(1)(c). Accordingly, it was submitted, if the Hearing Officer was wrong in his conclusion under section 3(1)(c) it must follow that he was also wrong in respect of his conclusion under section 3(1)(b).
24. In considering the issue under section 3(1)(b), the Hearing Officer set out the exposition of the law provided by the Court of Justice in Joined Cases C-53/01 to C-55/01 *Linde AG, Windward Industries Inc v. Rado Uhren (Linde)* [2003] ECR I-3161; [2003] RPC 45:

"37. It is to be noted at the outset that Article 2 of the Directive provides that any sign may constitute a trade mark provided that it is, first, capable of being represented graphically and, second, capable of distinguishing the goods and services of one undertaking from those of other undertakings.

...

39. Next, pursuant to the rule in Article 3(1)(b) of the Directive, trade marks which are devoid of distinctive character are not to be registered or if registered are liable to be declared invalid.
40. For a mark to possess distinctive character within the meaning of that provision it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from products of other undertakings (see *Philips*, paragraph 35).

41. In addition, a trade mark's distinctiveness must be assessed by reference to, first, the goods or services in respect of which registration is sought and, second, the perception of the relevant persons, namely the consumers of the goods or services. According to the Court's case-law, that means the presumed expectations of an average consumer of the category of goods or services in question, who is reasonably well informed and reasonably observant and circumspect (see Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 31, and *Philips*, paragraph 63).

...

47. As paragraph 40 of this judgment makes clear, distinctive character means, for all trade marks, that the mark must be capable of identifying the product as originating from a particular undertaking, and thus distinguishing it from those of other undertakings."

25. My attention was also drawn to the decision of the Court of Justice in Case C-329/02 P, *SAT.1 Satelliten Fernsehen v OHIM (SAT 2)* [2005] ETMR 20. The Court emphasised (at paragraph 41) that registration of a sign as a trade mark is not subject to a finding of a specific level of linguistic or artistic creativity or imaginativeness on the part of the proprietor of the trade mark. It suffices that the trade mark should enable the relevant public to identify the origin of the goods or services protected and to distinguish them from those of other undertakings.

26. In my judgment it follows from the conclusion I have reached in relation to the principal ground of objection under section 3(1)(c) that the main ground of criticism of the decision of the Hearing Officer in relation to his conclusion under section 3(1)(b) must fall away. Nevertheless, I agree with the conclusion of the Hearing Officer that the average consumer of many web based services falling within the scope of the specification will, upon encountering the words "simply click" on a website see them as being no more than a description of ease of access or an instruction to use a mouse to navigate through the site to any particular page of interest. To my mind use of the sign "SimplyClick" would not enable the relevant public to identify the

origin of many of the services in the scope of the specification and so distinguish them from the services of other undertakings.

Proposed Amended Specification

27. This brings me to the “fall back position” advanced by the Applicant. As I have indicated, during the course of the hearing I was invited to consider allowing the appeal in relation to a more restricted specification of services in the event that I was minded to uphold the decision of the Hearing Officer in relation to the broad specification. Mr James, on behalf of the Registrar, had no objection in principle to the argument being raised although it is not one addressed directly by the Hearing Officer in his decision. I invited Mr Stobbs to identify the restricted specification he had in mind and he suggested the following:

Class 35:

Advertising, compilation of advertisements for use of web pages on the Internet; compilation directories for publishing on the Internet; provision of space on websites for advertising goods and services.

Class 38:

Providing user access to specially developed communication platforms, protected by secure log-ins, on the Internet.

Class 42:

Creating and maintaining websites; hosting the websites of others; Internet content subscription services; providing subscription access to platforms for communication on the Internet, extranets and intranets

28. In substance, Mr Stobbs emphasised that the Applicant’s primary concern was to secure registration in respect of the services it provides in relation to the “SimplyClick” platform software.

29. After careful consideration I have reached the conclusion that a specification of services essentially limited to those of the kind described in the materials set out in Annex A to the decision of the Hearing Officer would be free of objection under section 3(1)(b) and (c) of the Act. The services so described are concerned with the development, supply, operation and support of the “SimplyClick” platform software. No objection has been taken to the application to register “SimplyClick” in relation to software. In my judgment

the words “simply click” do not truly describe any characteristic of such services although they do allude to the fact that the associated systems may be easy to operate. In all the circumstances I am satisfied that the sign “SimplyClick” is not one which may serve in trade to designate a characteristic of such services. Moreover, I have been persuaded by the materials provided in Annex A and the arguments advanced that the sign “SimplyClick”, when used in relation to such services, does possess a sufficiently distinctive nature that the average consumer would perceive it as denoting services coming from one particular undertaking.

30. I am not satisfied, however, that the proposed amended specification of services suggested by Mr Stobbs during the course of the hearing is adequately restricted. Furthermore, the Registrar has had no proper opportunity to consider it. Accordingly, I think that the appropriate course is to remit the application to the Registrar for the purposes of limiting the specification of services to those of the kind described in the materials set out in Annex A.

Conclusion

31. In my judgment the Hearing Officer was right to reject the application in respect of the wide specification of services sought. A narrow specification of services, limited to the kind of services provided by the Applicant in relation to its “SimplyClick” platform software would, however, be free of objection under section 3(1)(b) or (c) of the Act.
32. Accordingly, I direct:
- (a) that the application be remitted to the Registrar to allow the framing of a limited specification of services in accordance with paragraphs 29 and 30 of this decision;
 - (b) save as aforesaid the appeal be dismissed;
 - (c) there be no order as to the costs of this appeal.

David Kitchin QC
12 September 2005

Mr Julius Stobbs of Boulton Wade Tennant appeared on behalf of the Applicant

Mr Allan James appeared on behalf of the Registrar