

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 2376865 IN THE  
NAME OF CUBE PUBLISHING LTD**

**AND IN THE MATTER OF OPPOSITION NO. 93561 THERETO BY  
STANDARD LIFE INSURANCE COMPANY**

**APPLICANT'S APPEAL TO AN APPOINTED PERSON FROM THE  
DECISION OF DR LAWRENCE CULLEN DATED 5 SEPTEMBER 2007**

---

**DECISION**

---

Introduction and case history

1. On 29 October 2004 the Applicant, Cube Publishing Ltd, applied to register the words STANDARD LITE as a trade mark (application no. 2376865) in respect of the following goods and services:

**Class 9:** Software; electronic publications; CD Roms; computer software and hardware to enable searching of data and connection to databases and the Internet; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; data processing equipment and computers; parts and fittings for all the aforesaid goods.

**Class 16:** Paper, cardboard and goods made from cardboard; printed matter; printed publications; newspapers; magazines; supplements; posters; periodicals; books; brochures; leaflets; user guides and training manuals; maps; holiday and travel guides; calendars, diaries and stationery; bank cards and debit cards (other than encoded or magnetic).

**Class 41:** Education and entertainment services; publishing services; publication of printed matter and printed publications; publication services; electronic publishing services; providing on-line electronic publications [not downloadable]; publication of electronic books and journals on-line; organisation of exhibitions and shows; provision of information relating to education, sporting, political, current events, cultural activities and entertainment; sports information services; organisation of competitions, quizzes, games and recreational and cultural facilities; news programme services for radio or television; all the aforesaid services also provided on-line from a computer database or from the Internet; information services relating to all the aforesaid services; electronic game services provided by means of the Internet; production of shows and radio and television programmes; cable television, television and radio entertainment services; providing digital music [not downloadable] from the Internet; providing digital music [not downloadable] from MP3 Internet web sites.

2. The Opponent, Standard Life Assurance Company, opposed the entire application (“the Application”) by Notice of Opposition (Form TM7) dated 1 July 2005, with a statement of grounds that was subsequently amended on 17 August 2005, raising objections under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) based on six registered United Kingdom (“UK”) trade marks and one registered Community trade mark (“CTM”), each comprising the words STANDARD LIFE or device marks that include the words STANDARD LIFE. Details of the earlier trade marks are set out in the table at **Annex 1** to this decision.
3. The section 5(2)(b) objection was directed at a sub-set of the goods and services of the Application, while the section 5(3) objection extended to all of the goods and services.
4. Since all of the earlier trade marks relied on had been registered for more than five years before publication of the Application (1 April 2005), the Opponent was required to make a statement of use pursuant to section 6A(3)(a) of the Act and rule 13(2)(e) of the Trade Marks Rules 2000 in relation to each of them. In the Form TM7 the Opponent claimed to have used the mark in relation to all of the goods listed in the registration in each case.
5. The Applicant defended the opposition by Notice of defence and counterstatement (Form TM8) dated 5 October 2005, putting the Opponent to proof of use in relation to all of the goods and services covered by each of the earlier trade marks. Only the Opponent filed evidence.
6. A hearing took place before Dr Lawrence Cullen, acting for the Registrar, on 1 February 2007. The Opponent was represented by Ms Karen Veitch of Kennedys and the Applicant was represented by Mr Martin Krause of Haseltine Lake, the respective trade mark attorneys for the parties.
7. In a written decision dated 5 September 2007 (O/259/07 – “the Decision”), Dr Cullen found for the Opponent under both sections 5(2)(b) and 5(3), having first concluded that the Opponent had proved use of the mark STANDARD LIFE in relation to the broadest of the specifications of goods and services covered by the earlier trade marks.
8. After the Decision was issued, Haseltine Lake wrote to the Registry on behalf of the Applicant, stating that the Hearing Officer appeared to have overlooked the Applicant’s willingness to limit the specification of goods and services covered by the Application, and asking for this point to be looked at. By a letter dated 8 November 2007, the Registry confirmed that the Hearing Officer had taken note of the comments made and had decided that no further action needed to be taken.

9. On 5 November 2007, the Applicant gave notice of appeal to an Appointed Person under section 76 of the Act, seeking to overturn the Decision. The Opponent filed a Respondent's Notice dated 11 March 2008, seeking to uphold the Decision and supporting the Hearing Officer's conclusion that the Applicant had failed to pursue the option of limiting its specification.
10. The hearing of the appeal took place before me on 15 April 2008. The Appellant (Applicant) was represented by Mr Krause. The Respondent (Opponent) was represented by Counsel, Ms Emma Himsworth, instructed by Haseltine Lake. I shall continue to refer to the parties as the Applicant and Opponent respectively.

#### Approach to this appeal

11. An appeal from the decision of a Registry Hearing Officer is not a re-hearing, but a review. An Appointed Person or Judge may not interfere with a Hearing Officer's decision merely because he or she is surprised at the outcome or even would have reached a different decision if considering the matter afresh: *BUD Trade Mark* [2002] EWCA Civ 1534, [2003] RPC 25 at [12] and [53].
12. As a case in which there was no oral evidence, I should show "a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle". A decision does not contain an error of principle merely because it could have been better expressed: *REEF Trade Mark* [2002] EWCA Civ 763, [2003] RPC 5 at [28] - [29].
13. I have already stated the successful outcome for the Opponent at first instance. Rather than attempt to summarise the Hearing Officer's reasons fully at this point, I propose to summarise and quote from the relevant parts of the Decision as I go through the Applicant's various grounds of appeal.

#### Summary of grounds of appeal

14. The grounds of appeal list 28 errors said to have been made by the Hearing Officer. I have considered the full list, and refer to specific grounds in the analysis that follows, but it is convenient at this point to adopt the approach taken in the Appellant's skeleton argument of grouping these into four general grounds:
  - (1) that the Hearing Officer erred in principle when determining the extent to which the earlier trade marks had been used and thus the scope of the specification to be taken into account under section 6A of the Act;
  - (2) that the Hearing Officer made a number of errors in principle in determining the substantive case under section 5(3), particularly as to the extent of the reputation of the earlier trade marks and the finding of unfair advantage;

- (3) that the Hearing Officer also made errors in principle in determining the substantive case under section 5(2)(b) and failed to provide sufficiently detailed reasoning under this head; and
- (4) that the Hearing Officer wrongly failed to consider the Applicant's fallback position of limiting the list of goods and services to be covered by the Application.

Proof of use under section 6A

15. Section 6A provides that the Registrar shall not refuse to register a trade mark by reason of an opposition based on an earlier trade mark, in respect of which the registration procedure was completed more than five years before the date of publication of the opposed trade mark, unless the "use conditions" are met. The section continues as follows:

- (3) The use conditions are met if –
  - (a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
  - (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.
- (4) For these purposes –
  - (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it is registered, and
  - (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.
- (5) In relation to a Community trade mark [or international trade mark (EC)], any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.
- (6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

16. Section 6A implements article 11(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ("the Directive"). This was an optional provision introduced to the Act by the Trade Marks (Proof of Use, etc.) Regulations 2004 (SI 2004/946), effective from 5 May 2004, and amended as of 10 May 2008 by the Trade Marks (Earlier Trade Marks) Regulations 2008 (SI 2008/1067) (the amendments having no impact on this case).

17. Section 100 of the Act provides that:

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

18. The evidence of use of the Opponent's earlier trade marks was set out in a witness statement made by Mr Patrick Haslett, a Senior Solicitor in the Legal Commercial Department of the Opponent, and various exhibits. The Hearing Officer summarised this evidence in some detail (at paragraphs 9 to 20). He also compiled the following table of sales and performance facts and figures that he had taken from the exhibited extracts of the Opponent's Annual Reports & Accounts for the years 2000 to 2004:

*Table 1: Comparison of Sales & Performance Facts & Figures for SLAC for period 2000-2004 (figures taken from extracts from SLAC Annual Reports & Accounts in Exhibit PH1)<sup>1</sup>*

Business Activity		Million £'s				
		2000 <sup>#</sup>	2001	2002	2003	2004
New Business premiums in UK	Individual Pensions	-	1,992 (32%):	3093 (42%)	(17%)	n/f
	Group Pensions & Annuities	-	2,057 (33%),	2243 (30%)	(45%)	n/f
	Life Insurance, Savings and Protection	-	1,721 (27%)	2,021 (28%)	(36%)	n/f
	Other	-	547 (8%)	-	(2%)	n/f
	Total	3,589	6,317	7,357	-	n/f
Banking	Mortgages under Management	5,488	5,552	7,188	8,700	10,200
	Customers Saving Accounts	4,314	4,623	4785	4562	n/f
Healthcare	Premium Income	157	164	174	194	n/f
	New Business	199	179	227	28.3	33
Assets Under Management		-	80,300	83,000	94,000	108,000
UK Market Share	Life & Pensions	6.5%	11.5%	13.3%	10.9%	8.0%
	Net Lending	-	n/f	2.2%	1.6%	n/f

<sup>1</sup> n/f = not found, unable to identify a corresponding figure

<sup>#</sup> Figures for 2000 taken from Extracts from 2001 and 2002 Annual Report & Accounts

19. Having seen the evidence of use, the Applicant conceded in its skeleton argument at first instance that the Opponent had shown use of the mark STANDARD LIFE in the United Kingdom in relation to life investment services, pensions, mortgage provision, personal savings services, health insurance and home insurance, which

translated into the following services specified in class 36 of one or more of the earlier trade marks: *banking, fund investment management, insurance, financial investment management, pension services and mortgage services*. But the Applicant submitted that there was no use proved in respect of any other class 36 services or of any of the services specified in classes 35 and 42.

20. The Hearing Officer set out his analysis of and conclusions from the Opponent's evidence of use at paragraphs 32 to 38 of the Decision. He did this by reference to CTM no. 496729 and UK TM no. 1505199 since these had the broadest specifications. Although UK TM no. 1505199 was for a device mark incorporating the words STANDARD LIFE, he concluded that use of that mark effectively amounted to use of the word mark STANDARD LIFE as well, within the meaning of section 6A(4). That conclusion has not been challenged.
21. The Hearing Officer stated that, in determining whether the Opponent had shown genuine use of the earlier trade marks he was guided by the principles laid down in Case C40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] RPC 40 and Case C259/02 *La Mer Technology Inc. v Laboratoires Goemar SA* [2004] FSR 38. Without expanding on these principles, he then concluded as follows:

35. From the evidence of Mr Haslett, I am satisfied that the opponent has shown use of the earlier mark in relation to all the goods [sic.] as registered in class 36. These services describe all the activities reported by SLAC in their annual reports (see Exhibit PH1 and Table 1) and cover provision of financial solutions to institutions and companies as well as retail services to individuals.

36. I am also satisfied that use has also been established in relation to the services in classes 35 and 42 in so far as they are required to provide the services in class 36. The services referred to in classes 35 and 42 of the registration are provided by SLAC to its customers as part of the class 36 services it provides. For example, provision of advisory and consultancy services is part of the provision of financial investment services; provision of payroll processing services allows, for example, a customers pension or healthcare contributions to be collected; computer programming services are necessary to put in place arrangements to provide customers with statistical information on their investments, or employers with information on the state of their group employee pension scheme etc. This limitation is clearly acknowledged in the class 42 registration which explicitly refers to services related to financial and insurance services. There is no evidence to suggest that SLAC carries out any of the services mentioned in classes 35 and 42 in general, for example, the SLAC companies do not provide computer consultancy services in general.

37. Mr Krause argued that the Opponent has not shown use in relation to the goods in class 35 or 42 and that the evidence filed shows use only in relation to 'banking, fund investment management, insurance, financial investment, pension and mortgages' in class 36. I do not agree with Mr Krause. His analysis in relation to class 36 does not, in my opinion, take account of the fact that if use of the earlier mark has been shown in relation to certain goods then for the purposes of opposition proceedings the proprietor of the earlier registration is entitled to a penumbra of protection that includes similar goods and services.

22. The Applicant contends that the Hearing Officer made a manifest error in finding use in relation to a number of services in respect of which there was absolutely no evidence: for example, real estate agency services in the class 36 specification and all of the class 35 and 42 services. Mr Krause submitted that the mistake seems to have been made because the Hearing Officer misunderstood the legal principles that apply under the proof of use requirement: in particular, the last sentence of paragraph 37 shows that he conflated the proof of use requirement with the separate question of the relevant penumbra of protection once the appropriate specification has been determined under section 6A(6). In contrast, what he should have done (in Mr Krause's submission) was to apply the same principles to the question of proof of use as would apply in an application for revocation based on non-use, and only then consider the penumbra of protection as against use of a similar mark on other goods and services pursuant to the provisions of sections 5(2)(b) and 5(3).
23. The Hearing Officer's citation of the *Ansul* and *Laboratoire de la Mer* cases indicates that he did intend to apply the same principles as in a revocation application based on non-use, since these are the leading authorities on what amounts to genuine use of a trade mark in the context of such an application. However, the real issue in this case is not what amounts to genuine use of a trade mark, but whether genuine use in relation to one type of service supports the maintenance of other related services or of a broader category of services in the specification of a mark being relied on in an opposition.
24. The Court of Appeal has dealt with this issue in the context of partial revocation applications based on non-use in *Thomson Holidays Ltd v Norwegian Cruise Line Ltd* [2002] EWCA Civ 1828, [2003] RPC 32 and *West v Fuller Smith & Turner plc* [2003] EWCA Civ 48, [2003] FSR 44. In the key paragraphs of the former decision, Aldous LJ stated the following:

29 ...Because of section 10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply for a general description of goods and services. As [counsel] pointed out to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take for instance a registration for "motor vehicles" only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under section 10(1). That might be understandable having regard to the similarity of the goods. However the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under section 10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when the only use was in relation to motor cars. In my view the court is required in the words of Jacob J to "dig deeper". But the crucial question is – how deep?

30. Pumfrey J [in *Decon v Fred Baker* [2001] RPC 293] was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services should be

described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox's Orange Pippins, should the registration be for fruit, apples, eating apples, or Cox's Orange Pippins?

31 Pumfrey J in *Decon* suggested that the court's task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus the court should inform itself of the nature of [the] trade and then decide how the notional consumer would describe such use.

25. This approach was also adopted in the latter case, in which the Court emphasised the need to consider a fair description that would be used by the average reasonably informed consumer for the products on which the proprietor has demonstrated use of the mark. To that end, it was said to be relevant to enquire whether the specification of goods included commercially quite different sorts of articles from those in respect of which the proprietor had used the mark, and also whether non-use in respect of a significant and identifiable sub-set of the specification of goods was established.

26. The European Court of Justice (“ECJ”) has not dealt with this issue, either in the context of revocation proceedings or in relation to article 11(2) of the Directive as applied to opposition proceedings. But the following guidance has been given by the Court of First Instance (“CFI”) in relation to the parallel provision in article 43(2) of Regulation No. 40/94 on the Community trade mark (“the Regulation”) in Case T-126/03 *Reckitt Benckiser (España), SL v OHIM (ALADIN)* [2006] ETMR 50:

42. The Court observes that the purpose of the requirement that the earlier mark must have been put to genuine use is to limit the likelihood of conflict between two marks by protecting only trade marks which have actually been used, in so far as there is no sound economic reason for them not having been used. That interpretation is borne out by the ninth recital in the preamble to Regulation No 40/94, which expressly refers to that objective (see, to that effect, *Silk Cocoon*, cited at paragraph 27 above, paragraph 38). However, the purpose of Article 43(2) and (3) of Regulation No 40/94 is not to assess commercial success or to review the economic strategy of an undertaking, nor is it to restrict trade-mark protection to the case where large-scale commercial use has been made of the marks (Case T-334/01 *MFE Marienfelde v OHIM – Vétoquinol (HIPOVITON)* [2004] ECR II-0000, paragraph 32, and Case T-203/02 *Sunrider v OHIM – Espadafor Caba (VITAFRUIT)* [2004] ECR II-0000, paragraph 38).

43. Therefore, the objective pursued by the requirement is not so much to determine precisely the extent of the protection afforded to the earlier trade mark by reference to the actual goods or services using the mark at a given time as to ensure more generally that the earlier mark was actually used for the goods or services in respect of which it was registered.



44. With that in mind, it is necessary to interpret the last sentence of Article 43(2) of Regulation No 40/94 and Article 43(3), which applies Article 43(2) to earlier national marks, as seeking to prevent a trade mark which has been used in relation to part of the goods or services for which it is registered being afforded extensive protection merely because it has been registered for a wide range of goods or services. Thus, when those provisions are applied, it is necessary to take account of the breadth of the categories of goods or services for which the earlier mark was registered, in particular the extent to which the categories concerned are described in general terms for registration purposes, and to do this in the light of the goods or services in respect of which genuine use has, of necessity, actually been established.

45. It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or sub-categories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

27. The Court added the following warning:

46. Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of 'part of the goods or services' cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.

28. The ninth recital of the Regulation, which was the CFI's starting point in *ALADIN* reads as follows:

Whereas there is no justification for protecting Community trade marks or, as against them, any trade mark which has been registered before them, except where the trade marks are actually used.

29. A parallel, though slightly more convoluted, provision is found in the Directive at recital 8 (emphasis added):

Whereas in order to reduce the total number of trade marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential to require that registered trade marks must actually be used or, if not used, be subject to revocation; **whereas it is necessary to provide that a trade mark cannot be invalidated on the basis of the existence of a non-used earlier trade mark, while the Member States remain free to apply the same principle in respect of the registration of a trade mark** or to provide that a trade

mark may not be successfully invoked in infringement proceedings if it is established as a result of a plea that the trade mark could be revoked; whereas in all these cases it is up to the Member States to establish the applicable rules of procedure.

30. The rationale of limiting the number of conflicts between marks thus lies behind section 6A of the Act in the same way as it lies behind article 43(2) of the Regulation. It is therefore appropriate to apply the guidance given by the CFI in *ALADIN* in relation to Community trade marks, which corresponds closely with the guidance of the Court of Appeal in relation to domestic trade mark revocation applications.
31. It is not apparent from the Decision that the Hearing Officer took any of this guidance into account. I agree with the Applicant that the last sentence of paragraph 37 indicates that he made an erroneous assumption that proof of use in respect of a subset of services is sufficient to support a broader range of services for the purpose of the deemed specification under section 6A(6), even where the services are not defined particularly precisely and narrowly. The combination of these two factors leads to a concern that the Hearing Officer made findings of use where none was actually demonstrated.
32. Ms Himsforth for the Opponent pointed out that, if the Applicant had wanted to challenge the Opponent's evidence of use, it should have done so by its own evidence or by seeking disclosure of documents or cross-examination of witnesses: see the Appointed Person decisions in *VOGUE Trade Mark* (BL O/154/07) and *EXTREME Trade Mark* (BL O/161/07). In the absence of such steps, the Hearing Officer had been entitled to make his own assessment of the evidence, and a re-assessment could not be made on appeal. However, as Mr Krause said, the Applicant did not object to the evidence as such, but to the conclusions drawn from it as a result of the Hearing Officer misdirecting himself in relation to section 6A. I agree with Mr Krause. In circumstances where the Hearing Officer has misdirected himself as to how to assess the evidence of use, it is appropriate to reconsider that evidence, bearing in mind the above guidance.
33. Mr Haslett does not make general claims in his witness statement of use of the *STANDARD LIFE* marks across the full range of services set out in the specifications. Apart from introducing the exhibits, his claims are as follows:
  3. Standard Life currently provides financial solutions to over 5 million people with assets under management in excess of £100 billion. ...
  4. Standard Life is the parent company operating as a United Kingdom life insurance and pensions provider ...
  5. Standard Life produces printed publications, posters and leaflets to advertise its provision of financial services and to cater for its existing customers. ...

6d. .... The print out [of Standard Life’s homepage (www.standardlife.co.uk)] clearly shows some of the various service areas in which Standard Life and its subsidiaries operate, including healthcare, mortgages, pensions, insurance and investments. The scope of services is very broad in nature and targets a wide range of customers at different levels, ...

34. Given the Applicant’s concessions set out in paragraph 19 above, the only services in the class 36 specifications for the earlier trade marks that are contentious are the following:

UK 1272923 UK 1505199	<i>... trust management, unit trust, trusteeship, ..., personal loan financing, ..., real estate agency, real estate management and real estate leasing services; provision of finance or of credit, all for real estate development;..</i>
UK 1482606	None (all conceded to have been used).
CTM 496729	As for UK TMs 1272923 and 1505199 and also: <i>financial services; actuarial services; financial appraisal services; advisory, information and consultancy services all relating to the aforesaid services.</i>

35. Of these services, I consider the average consumer would deem “*trust management, unit trust, trusteeship*” to form an intrinsic part of fund investment services, which are conceded to have been provided, and that the Opponent’s very large fund investment portfolio will inevitably have involved the provision of such services. Similarly, “*personal loan financing*”, the “*provision of finance or of credit, all for real estate development*” and “*financial appraisal services*” are all normal aspects of banking services, which again have been conceded by the Applicant. I would therefore leave all of these services in the deemed specifications for the purpose of comparing goods and services with those covered by the Application.

36. In relation to “*real estate agency, real estate management and real estate leasing services*”, Ms Himsworth highlighted the vast property portfolio and related investments of the Opponent and the fact that these inevitably required management. However, there is nothing in either the witness statement or the exhibits to suggest that the Opponent actually provides these sorts of real estate services to customers. I also do not believe that consumers would necessarily assume that such services would be offered by an institution that provides the other services listed in the class 36 specifications. Therefore I would exclude these services from the deemed specifications of UK TMs 1272923 and 1505199 and CTM 496729.

37. I have some difficulty with the term “*financial services*”, which only appears in the CTM specification. This is a very broad description, which I believe the average consumer would take to subsume many of the other class 36 services that have been separately listed, but also to include others that are not listed. The Opponent has clearly established use of its trade marks across a wide range of financial services, but I have little doubt that there are activities that fall within the term “*financial*

*services*” that it has not carried out. In the absence of evidence of use that goes beyond the specific and general categories of financial services that have been conceded by the Applicant or dealt with in my decision above, I am bound by the authorities to delete the term “*financial services*” from the deemed CTM specification. I do not consider that I would be unfairly stripping the Opponent of protection to which it is entitled by doing so.

38. “*Actuarial services*”, which are also included only in the CTM specification, are clearly connected with the conceded “*pension services*”, but the fact that they are separately itemised indicates that they are not subsumed by the latter. The Opponent has undoubtedly demonstrated that it has made extensive use of the earlier trade marks in relation to pension services, and has received awards for these services, but I am unable to find any reference to actuarial services in the evidence. It would be surprising if the Opponent did not have in-house actuarial experts to support its pension services. But it is not clear to me, even from the pension-specific publications included in the exhibits, that actuarial services are actually provided externally to customers. Nor is it clear to me, without evidence, that the average consumer would make an assumption that actuarial services are among the services automatically offered to customers by a pensions provider. I therefore proceed on the basis that “*actuarial services*” are excluded from the specification of CTM 496729.
39. “*Advisory, information and consultancy services all relating to the aforesaid services*” should stay in the deemed CTM specification, but will obviously not relate to those services that I have deleted for the purposes of this opposition.
40. Turning to class 35 and starting with the CTM on which the Hearing Officer focused, as the Hearing Officer found, there is no evidence to suggest that the Opponent has provided any of the services mentioned in general, i.e. other than in connection with the proven class 36 services. Indeed, the evidence does not directly tell me much about the class 35 services at all, even in connection with the class 36 services in respect of which use has been demonstrated. The Hearing Officer felt able to make a broad finding of use across all of the class 35 services insofar as they were required to provide the services in class 36, but he was operating on the erroneous assumption that the deemed specification under section 6A(6) could extend to similar services. Taking that assumption out of the equation and re-assessing the evidence in the light of the authorities, I make the following findings:
  - (1) I do not believe that any of “*accounting, auditing and personnel services*” fall within a fair description of the demonstrated use of the earlier trade marks or comprise commercial variations of the class 36 services that have been established.
  - (2) The Hearing Officer suggested that the description “*payroll processing services*” covers services that would be provided to enable a customer’s pension or

healthcare contributions to be collected. In the case of group pension or healthcare schemes, I accept that such services are highly likely to be part of the pension and healthcare service that would be provided, but the evidence does not go further than that. The fact that the Opponent collects personal pension or healthcare contributions from individual policy holders does not amount to the provision of an additional payroll processing service to them. It is simply part and parcel of the pension and health insurance services themselves.

- (3) “*Computerised database management services*” are not mentioned in the evidence of use. I am not persuaded that I should assume that such services must inevitably have been provided based on the use that has been established in relation to class 36.
- (4) Given my conclusions in (1) to (3) above, the “*provision of information relating to all the aforesaid services*” must necessarily be limited accordingly.
- (5) In relation to the “*provision of business statistical information*”, I conclude that the average consumer would expect this to be part and parcel of the proven services in class 36 insofar as the information concerned relates to such services. An appropriate limitation appears to me to be: “*provision of business statistical information in relation to banking, financial investment, pensions and insurance*”. The categories of business statistical information provided by the Opponent may in fact be broader than this, but they have not been proved for the purposes of this opposition.
- (6) Finally, while the Hearing Officer found that “*provision of advisory and consultancy services is part of the provision of financial investment services*”, such advisory and consultancy services are already provided for in the class 36 specification, so those listed here must be something different. Indeed, the “*advisory and consultancy services*” at the end of the class 35 specification expressly relate to the other services under class 35, not to the class 36 services. They should therefore be limited in accordance with the limitations that I have indicated in (1) to (5) immediately above.

41. In relation to the class 42 specification of CTM no. 496729:

- (1) The Hearing Officer suggested (at paragraph 36) that “*computer programming services*” are necessary to put in place arrangements to provide customers with statistical information on their investments, or employers with information on the state of their group employee pension scheme etc”. But, while the Opponent no doubt programs its own computer systems for use in providing such information services, there is no evidence that it provides computer programming services as such to its customers, and I do not believe that the average consumer would automatically include computer programming services as a subset of any of the

proven class 36 services. I find the same in relation to “*design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer database*” even though these terms are restricted to those that are “*related to financial and insurance services*”. They should therefore be deleted from the deemed specification.

(2) “*Legal services*” could not properly be considered a commercial variation on any of the proven class 36 services, or an alternative description that the average consumer would give to such services. There is some evidence that the Opponent issues information about changes in the law that are relevant to the proven class 36 services. For example, at exhibit PH5 is a leaflet explaining the simplification of the tax rules governing pension contracts. But the leaflet itself states, “This is general information only. You should speak to your financial adviser to find out how the changes will affect your own personal circumstances. ... The information provided here is based on Standard Life’s understanding of law and HM Revenue & Customs practice at the date of publication and the legislation we believe will apply from 6 April 2006”. (I note that this post-dates the Application date, but I am prepared to infer from the evidence that similar notices had been issued before the relevant date.) Other publications similarly explain the financial products offered by the Opponent by reference to an applicable legal regime. However, in my view, the average consumer would not consider such explanations to be part of a legal service to them, but as part of the necessary explanation to support the Opponent’s promotion of the particular financial or insurance product concerned. As such, they would fall within the scope of the advisory and information services under class 36 and should not be treated as standalone legal services.

(3) Having ruled that none of the other class 42 services should stand in the deemed specification under section 6A(6), the related “*advisory, information and consultancy services*” also fall away.

42. Having dealt with the broadest of the specifications of the earlier trade marks in detail, I have considered the other trade mark specifications similarly, and have devised deemed specifications under section 6A(6) for each trade mark. These are set out in full in **Annex 2** to this decision.

43. Mr Krause for the Applicant submitted that the result of the Hearing Officer’s error in his approach to section 6A was that he was over-generous to the Opponent in his analysis under both sections 5(2)(b) and 5(3) of the Act. There is clearly a significant risk that this occurred, given the starting point, which means that I must assess the position for myself, based on the revised deemed specifications for the Opponent’s trade marks. I also consider the other specific grounds of appeal under each head.

44. Since section 5(3) of the Act was relied on to attack the entire registration, whereas section 5(2)(b) was only a partial attack, the Hearing Officer considered section 5(3) first. I shall do the same.

### Section 5(3)

45. Section 5(3) of the Act provides as follows:

(3) A trade mark which is identical with or similar to an earlier trade mark shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

46. This provision implements articles 4(3) and 4(4)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (“the Directive”).

47. The Hearing Officer started his analysis by listing a number of cases that had laid down some guiding principles, in particular as to the meaning of the terms, reputation, unfair advantage and detriment (paragraphs 23 to 30): *General Motors Corp v Yplon SA (CHEVY)* [1999] ETMR 122, [2000] RPC 572; *Premier Brands UK Limited v Typhoon Europe Limited (TYPHOON)* [2000] FSR 767; *Daimler Chrysler v Alavi (MERC)* [2001] RPC 42; *C.A. Sheimer (M) Sdn Bhd's TM Application (VISA)* [2000] RPC 484; *Valucci Designs Ltd v IPC Magazines (LOADED)* (BL/455/00); *Mastercard International Inc. v Hitachi Credit (UK) Plc* [2004] EWHC 1623 (Ch); and *Electrocoin Automatics Ltd v Coinworld Ltd* [2004] EWHC 1498 (Ch). He went on to set out the principles derived from some of these cases and also from *Oasis Stores Ltd's Trade Mark Application* [1998] RPC 631.

48. The Hearing Officer did not mention one of the key ECJ decisions: Case C-408/01 *adidas-Salomon AG and adidas Benelux BV v Fitnessworld Trading Ltd* [2004] ETMR 10. Nor did he mention the Court of Appeal decision in *Intel Corporation Inc v CPM United Kingdom Ltd (INTELMARK)* [2007] EWCA Civ 431, [2007] ETMR 59. These omissions have not been criticised expressly, but the Applicant relies on both cases in its submissions on appeal. A further judgment that must now be taken into account, but had not been issued at the date of the Decision, is that of the Court of Appeal in *L'Oréal SA v Bellure NV* [2007] EWCA Civ 968, [2008] ETMR 1. This too is relied on by the Applicant in the appeal. I take these authorities into account and deal with specific points raised under them as they arise. I also bear in mind the fact that the Court of Appeal has referred a number of questions to the ECJ in both the *Intel* and *L'Oréal* cases, and that Advocate General Sharpston has now issued her Opinion in the former (Case C-252/07, Opinion of 26 June 2008).

## ***Reputation***

49. Based on the evidence of use and promotion of the STANDARD LIFE mark, the Hearing Officer concluded that at the filing date for the Application, the mark had a reputation in the United Kingdom in relation to the provision of financial and insurance services (paragraph 43).
50. The Applicant's specific complaints about this finding boil down to a submission that the Hearing Officer was wrong to find the reputation of the mark to be broader than the scope of the evidence of use, in particular, as a result of its promotional activities aimed at people who are not existing customers of the Opponent. These activities included the Opponent's sponsorship in 2000 of a major golf tournament in Loch Lomond, attracting a high level of interest from the media and a broad public.
51. The ECJ made the following statements in *CHEVY*:
26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark. ...
31. ... Article 5(2) of the Directive is to be interpreted as meaning that, in order to enjoy protection extending to non-similar products or services, a registered trade mark must be known by a significant part of the public concerned by the products or services which it covers.
52. This suggests that the relevant reputation for determining whether a trade mark may benefit from the protection afforded under section 5(3) must relate to the goods and services for which the trade mark is registered. It is therefore irrelevant to this step in the analysis if the trade mark has a reputation in relation to a broader range of goods and services. Given my finding that the evidence of use was insufficient to support retaining the umbrella term "*financial services*" in the CTM specification, and given the absence of this term from any of the UK TM specifications, the Hearing Officer was wrong to find that the STANDARD LITE trade mark had a reputation in relation to financial services generally. I have considered whether this could simply have been convenient shorthand for a longer list of specific financial services, and therefore a point where the manner of expression might be lacking, but the substance correct. I do not believe that this is the case, given the over-broad findings of use that the Hearing Officer had made under section 6A.
53. It is also necessary to point out that a reputation in the United Kingdom is insufficient to protect an earlier CTM under section 5(3). To gain such protection, it must have a reputation in a substantial part of the Community: *CHEVY* at [28] - [29] and *MOBIS Trade Mark* (BL O/020/07).
54. While the evidence of use did include some references to extra-UK activities, all of the exhibits were in the English language and apparently targeted at United



Kingdom consumers and no claims of reputation were made in relation to the rest of the Community. I therefore conclude that CTM no. 496729 should be ignored for the purpose of section 5(3). That is another basis for rejecting the reference to “*financial services*” in the finding of reputation, since the CTM specification was the only place where this general category appeared.

55. My own assessment is that the Opponent has successfully demonstrated that UK TM no. 1272923 for the word mark STANDARD LIFE had a reputation at the Application date in respect of all of the class 36 services that remain in the deemed section 6A specification at Annex 2.

56. I reach the same conclusion in relation to the device mark of UK TM no. 1505199. However, since the Application is for the pure word mark STANDARD LITE, the case in respect of UK TM no. 1272923 is the strongest for the Opponent. There is also nothing to be gained by considering the case based on UK TM no. 1482606 (STANDARD LIFE HOMEPLAN) any further, since this relates to a narrower range of services and contains an additional differentiating word

57. The Hearing Officer made no finding of reputation in relation to the class 35 or 42 services. This has not been challenged by the Opponent.

#### ***Similarity of marks and the “link” requirement***

58. In *adidas v Fitnessworld*, the ECJ said the following:

28. The condition of similarity between the mark and the sign, referred to in Art. 5(2) of the Directive, requires the existence, in particular, of elements of visual, aural or conceptual similarity (see, in respect of Art. 5(1)(b) of the Directive, Case C-251/95 *SABEL* [1997] ECR I-6191, para. [23] in fine, and Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paras [25] and [27] in fine).

29. The infringements referred to in Art. 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-357/97 *General Motors* [1999] ECR I-5421, para [23]).

30. The existence of such a link must, just like a likelihood of confusion in the context of article 5(1)(b) of the Directive, be appreciated globally, taking into account all factors relevant to the circumstances of the case: see, in respect of the likelihood of confusion, *SABEL*, para [22], and *Marca Mode*, para [40]

31. The answer ... must therefore be that the protection conferred by article 5(2) of the Directive is not conditional on a finding of a degree of similarity between the mark with a reputation and the sign such that there exists a likelihood of confusion between them on the part of the relevant section of the public. It is sufficient for the degree of similarity between the mark with a reputation and the sign to have the effect that the relevant section of the public establishes a link between the sign and the mark.

59. Subsequent discussion in the authorities of the “link” requirement has led to some confusion as to whether it is part of the test of similarity of mark and sign, or whether it comes in at a later stage of the assessment.

60. In her recent Opinion in *INTELMARK*, AG Sharpston expressed the view (at [41]-[43]) that the “link” is bound up with the question of similarity of marks, effectively being a hurdle to overcome before it is worthwhile turning to the issues of unfair advantage or detriment, rather than being part of the assessment of the latter issues.

61. Jacob LJ seemed to be of the same view when he said in *L’Oréal*:

79. So the question of “similar to” has been glossed into asking whether a “link” is established for the relevant section of the public...

62. But he then appeared to merge the issue of “link” into the issues of unfair advantage and detriment by looking at the economic consequences of the similarity of marks, when he said:

79. ... As I pointed out in the *Intel* case reference [2007] ETMR 59 (where the marks were the same, but the goods/services dissimilar) the English cases have considered that it is not enough merely that the defendant's mark "calls to mind" the registered mark. There must be at least some effect on the economic behaviour of consumers. That makes sense: for unless there is, there is no reason why trade mark law should get involved. A mere "bringing to mind" having no other effect in the long or short term, ought to go untouched by trade mark law.

80. Of course if the average consumer is, at least in part "moved in any degree to buy" (the memorable phrase of Learned Hand J in *Crescent Tool v Kilborn & Bishop* (1917) 147 F. 299) by reason of the similarity between sign and mark, then a more substantial link is established. And there will be an effect on economic behaviour, even though it may be only of the defendant's customers – see the discussion of "free-riding" above.

81. For my part I think it sufficient in this case, to say that "a link" is established only if consumers are, or are likely to be, moved in any depth to buy by reason of use of the defendants' signs. That is not the same question as whether consumers would be deceived, though it includes it.

63. In the context of article 8(1)(b) of the Regulation (the CTM equivalent of article 5(1)(b) of the Directive and section 5(2) of the Act), the ECJ has stated that the two conditions of identity/similarity of marks and identity/similarity of goods/services are cumulative and must each be satisfied before it is necessary to consider the likelihood of confusion: Case C-106/03 P *Vedial SA v OHIM* [2005] ETMR 23 (ECJ). Similarly, in relation to article 8(5) of the Regulation (the CTM equivalent of section 5(3)), the CFI has stated that the conditions of an earlier trade mark with a reputation and identity or similarity of marks are cumulative conditions, such that failure to satisfy one of them renders the provision inapplicable: *SPA-FINDERS* at [30]; Case T-181/05 *Citigroup Inc. v OHIM (CITI)* [2008] ETMR 47 at [61]. This is consistent with the first sentence of paragraph [30] of *adidas v Fitnessworld* (quoted above), by which the ECJ showed that it regards the issue of the “link” under article

5(1)(b) as being, like confusion under article 5(1)(a), the necessary consequence of the similarity of marks and the reputation of the earlier mark, as opposed to being part of the precondition of similarity itself. It also ties in with Jacob LJ's approach to "link" in *L'Oréal*, once one gets beyond his opening sentence at [79].

64. Having said that, one needs to be careful not to make a pre-emptive finding of lack of similarity in any case where it is not clear that the degree of dissimilarity between the marks in issue is such as to preclude the possibility of a link being made in some circumstances: see, by analogy, the decision of Geoffrey Hobbs QC sitting as the Appointed Person in *Home-Tek International Ltd's Applications* (O/144/05).

65. In this case the Hearing Officer did take as his starting point the visual, aural and conceptual similarity of STANDARD LIFE and STANDARD LITE. He found that they were almost identical both visually and aurally (paragraph 47). In relation to conceptual similarity, he said:

48. From a semantic point of view, following the usual rules of English language and sentence construction, the combination of STANDARD first and LIFE or LITE second, would usually be read as the first word is telling us something about the following word. Taken together, STANDARD and LIFE generate the idea or concept of the standard life – the level of living that is expected or required. While it is not a direct link, I do think that this idea does allude or bring to mind the idea of goods or services that can be put in place to provide the standard life, such as financial products or services.

49. The applied for mark, STANDARD first and LITE second does not so readily bring to mind one concept. Two ideas come to mind, firstly, where Lite implies a reduced burden or light-touch standard that does not have so many requirements as normal, i.e. where LITE is acting as an adjective. Secondly, a standard for a light weight quality, i.e., where LITE is acting as a noun. Neither of these concepts is brought to mind in any significant way by the goods in classes 9 and 16 or the services in class 41 being applied for. Also I do not think that either of these possible meanings would bring to mind the concept created by the earlier mark, i.e., the standard life expected or required. Thus, I consider that there is no link between the mark and goods applied for that help a person to distinguish the mark STANDARD LITE from the earlier registered STANDARD LIFE mark.

66. The Applicant's grounds state that the Hearing Officer was wrong both in his finding of near identity of the marks visually and aurally and in the last statement of paragraph 49 of the Decision concerning conceptual similarity. I do not see anything wrong in this part of the Decision. STANDARD LIFE and STANDARD LITE differ visually in only one letter towards the end of the marks and differ aurally in only one consonant sound at the end. Conceptually, STANDARD LIFE has a more obvious meaning than STANDARD LITE, the latter being more difficult to pin down in relation to the goods and services applied for. In the light of the obvious visual and aural similarities, the Hearing Officer was perfectly entitled to hold that the conceptual differences are not sufficient to enable one to make a pre-emptive finding of lack of similarity.

67. As explained above, however, this objective comparison of the attributes of the marks is only the start of the process. The next step is to apply the “global appreciation” test, which involves consideration of the goods and services in relation to which the earlier mark and later sign are respectively used and proposed to be used, in order to determine whether the similarity between the mark and sign is sufficient to give rise to the necessary link between them in the mind of the relevant consumer.

68. The Hearing Officer said the following in relation to the “link” to be established:

50. ...In order for unfair advantage to occur, a link must be established between the earlier registered mark and the applied for mark that is likely to lead to a change in behaviour by the consumer when presented with it. Such a link is established if the earlier mark is fixed in the mind of the consumer to such an extent that when this consumer observes the applied for mark they bring to mind the earlier mark and consider that the goods covered by this applied for mark are from the same source as the goods associated with the earlier well established mark. This is often referred to as free-riding on the reputation of the earlier mark and means that the later mark is exploiting this reputation. For some marks, similarity between the marks alone is sufficient because the earlier registered mark is so well established in the mind of the consumer that irrespective of what goods they are used on they, the applied for mark will always bring to mind the earlier mark and result in the consumer considering the applied for goods to be from the same source as the registered goods.

51. However, in some cases, the earlier mark is not so well established in the mind of the consumer that the similarity with the later applied for mark is sufficient to bring to mind the earlier mark, the goods/services it is registered for or the trade origin of the goods/services. The reputation of the earlier mark is the key to determining how well it is established in the mind of the consumer and how far the mark will stand on its own. Also, it is necessary to consider whether the consumer of the earlier goods/services who recognised the earlier mark is also likely to be a consumer for the goods/services of the applied for mark. If these goods/services are very different, then it is much less likely that a consumer seeing the applied for mark will bring to mind the earlier mark and be prompted to change his economic behaviour resulting in unfair advantage or detriment to the earlier mark, for example, though lost sales to the applicant for the later mark. An association in the mind of the consumer between the earlier and the applied for mark is not sufficient to meet the grounds under Section 5(3), the link once established must be likely to result in a change in behaviour of the consumer.

69. It appears from these paragraphs that the Hearing Officer considered it necessary under section 5(3) to find the existence of a link that is likely to do two things: (1) to cause consumers to change their behaviour; and (2) to cause them to believe that the Applicant’s goods and services are from the same source as those of the Opponent.

70. The first of these requirements has been imposed by the English Courts: see *Electrocoin* at [102] and *L’Oréal* at [79]-[81], though the Court of Appeal has now asked the ECJ for guidance as to whether this is the correct approach: see Question (3)(iii) in the *INTELMARK* reference. AG Sharpston has expressed her view (at [74] and [86] of her Opinion) that an effect on consumers’ economic behaviour is not

required, but that evidence of such an effect would buttress a case in which an earlier trade mark owner is claiming detriment to distinctiveness of his mark.

71. But the second requirement, which effectively amounts to confusion as to source, is precisely what the ECJ said in *adidas v Fitnessworld* was not necessary. I have considered whether the Hearing Officer might simply have been restricting himself to discussing a particular sub-set of circumstances in which the necessary link might be established, on the basis that he would go on to find that there was a likelihood of confusion. But the absence of any reference in his Decision to the authorities on the subject of the “link” to be established under section 5(3) means that I cannot be confident that this is the case. When combined with the fact that the Hearing Officer was assessing the existence of a “link” by reference to what I have already found to have been over-broad findings of both use and reputation, I agree with the Applicant that he made significant errors in principle in his approach to section 5(3). On that basis, I reconsider the issue myself and I am not constrained by the Hearing Officer’s own conclusions from the evidence.

#### ***Unfair advantage or detriment***

72. Whatever the ECJ’s answer will be to the question of whether the necessary “link” has to have an effect on consumers’ economic behaviour, it has not been suggested in any of the authorities that a “link” is a substitute for the requirements set out in section 5(3) of unfair advantage or detriment. So, in this case, the Opponent must show that the Applicant’s use of STANDARD LITE in relation to the goods and services in the specification applied for will either take unfair advantage of the repute or the distinctive character of the STANDARD LIFE mark or will be detrimental to that repute or distinctive character.

73. The Opponent is not required to demonstrate actual and present harm to its mark, but it must adduce *prima facie* evidence of a future risk, which is not hypothetical, of unfair advantage or detriment: Case T-215/03 *Sigla SA v OHIM* [2007] ETMR 79 at [46]; Case T-67/04 *Spa Monopole v OHIM (SPA-FINDERS)* [2005] ETMR 109 at [40].

74. The Hearing Officer stated (at paragraph 55) that it was not possible for him to determine whether the Applicant’s sale of its goods under the mark STANDARD LITE would be detrimental to the STANDARD LIFE trade mark because he had received no evidence on the point. He similarly had no evidence as to unfair advantage, and yet he inferred from the evidence of use and reputation that the Applicant’s use of the STANDARD LITE mark would take unfair advantage of the distinctive character or the repute of the STANDARD LIFE mark. I do not think that he was right to distinguish between the evidential requirements necessary to establish detriment and unfair advantage. Where an opposed mark has not been used,

it is usually necessary to draw inferences from the available evidence, which can be done in relation to detriment as much as it can in relation to unfair advantage. The stronger the earlier mark's distinctive character and reputation, the easier it will be to infer that detriment will be caused to it (*CHEVY* at [30]; *SPA-FINDERS* at [41]) or that unfair advantage will be taken (Case T-477/04 *Aktieselskabet af 21. november 2001 v OHIM (TDK)* at [65]-[67]). Conversely, an opposition based on an earlier mark that is lower down the scale of distinctiveness and reputation is more likely to need to be supported by additional evidence of likely detriment or unfair advantage.

75. STANDARD LIFE is not a mark of the fame of, for example, COCA-COLA, where the use of minor variations of the marks (e.g. COCA-COOLA) would still be connected by consumers with COCA-COLA, even if used on very different products or services from those on which the mark has been used. (I am not suggesting that this would necessarily be enough to satisfy section 5(3), but I use this as an example of a case where a link could be readily inferred.) STANDARD LIFE is also not the most inherently distinctive trade mark in relation to the services for which it has a reputation. As the Hearing Officer said, the mark conveys the idea of the standard life, – effectively alluding to the level of living that the Opponent's services can provide for its customers. But as soon as one substitutes the LIFE element of the mark, that meaning is lost. So, for example, there are other well-known entities in the financial arena that also start with the name STANDARD, such as Standard Chartered Bank and Standard & Poor's, neither of whose names would cause consumers to make a link with STANDARD LIFE.

76. As a result of the reputation of the STANDARD LIFE mark in relation to banking, financial investment, insurance and pension services, I would accept that the similarity of the mark STANDARD LITE is such that, if it were used in relation to the same services or even a wider range of financial services, there would be a real risk that consumers would mis-read or mis-hear the name STANDARD LITE as STANDARD LIFE, because of the tendency of the human eye and ear to finish off words and phrases that they expect to see or hear. There might also be the possibility that someone looking for the Opponent on the internet might mis-type "Standard Lite" into a search engine or address field. While the nature of financial services is such that one would expect most consumers to realise before proceeding to do business that STANDARD LITE was not connected with STANDARD LIFE, this could not be guaranteed, and in any event the later user would have pulled in an interested customer on a false basis and thereby already gained an unfair advantage by dint of using such a similar mark. Detriment could also be expected to follow, since the Opponent would lose business if anyone attracted in this way went on to do business with the STANDARD LITE entity.

77. I do not believe that the same can be assumed to be true, without further evidence, when it comes to use of STANDARD LITE on most other goods and services.

78. Looking at the specification for the Application, I am not persuaded that consumers seeing STANDARD LITE used as a trade mark on any of the following goods or services would even call to mind the mark STANDARD LIFE, since they are too far away from the Opponent's fields of business:

**Class 9:** apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; data processing equipment and computers; parts and fittings for all the aforesaid goods.

**Class 16:** paper, cardboard and goods made from cardboard; posters; maps; holiday and travel guides; calendars, diaries and stationery.

**Class 41:** entertainment services; organisation of exhibitions and shows; provision of information relating to education, sporting, political, current events, cultural activities and entertainment; sports information services; organisation of competitions, quizzes, games and recreational and cultural facilities; all the aforesaid services also provided on-line from a computer database or from the Internet; information services relating to all the aforesaid services; electronic game services provided by means of the Internet; production of shows; providing digital music [not downloadable] from the Internet; providing digital music [not downloadable] from MP3 Internet web sites.

79. Even if consumers were to call the Opponent or the STANDARD LIFE mark to mind on seeing the name STANDARD LITE on any of these goods or services, because of their awareness of the Opponent's business, the lack of any similarity between the goods/services and those for which STANDARD LIFE is known makes it highly unlikely that the Applicant would derive any advantage from such calling to mind or that there would be any detrimental effect on the distinctiveness or repute of the STANDARD LIFE trade mark.

80. The remainder of the specification is as follows:

**Class 9:** Software; electronic publications; CD Roms; computer software and hardware to enable searching of data and connection to databases and the Internet.

**Class 16:** printed matter; printed publications; newspapers; magazines; supplements; periodicals; books; brochures; leaflets; user guides and training manuals; bank cards and debit cards (other than encoded or magnetic).

**Class 41:** Education services; publishing services; publication of printed matter and printed publications; publication services; electronic publishing services; providing on-line electronic publications [not downloadable]; publication of electronic books and journals on-line; news programme services for radio or television; all the aforesaid services also provided on-line from a computer database or from the Internet; information services relating to all the aforesaid services; production of radio and television programmes; cable television, television and radio entertainment services.

81. The difference here is that these goods and services could relate to financial services. For example: "software" includes software for managing finances; "printed publications" covers publications about banking; and "news programme services for radio or television" could relate to financial news programmes. In these examples it is more likely that the relevant consumer would also be one of the Opponent's existing and potential customers. This fact and the closer link between the

Applicant's goods and services and the services for which STANDARD LIFE has a reputation in turn make it more likely that the STANDARD LIFE mark would be called to mind when seeing the STANDARD LITE mark than in the case of the goods and services considered under paragraph 78 above. But the risk of mis-reading or mis-hearing the name is much lower than if a consumer was looking for financial services themselves, because they would not start with the expectation of finding the Opponent as the source of the publications.

82. To take what is perhaps a worst case scenario, that the Applicant starts a business in financial publishing, under the name STANDARD LITE, such that all of its publications bear the mark in addition to their respective titles, I am not persuaded that there is any more than a hypothetical possibility that the similarity with the STANDARD LIFE mark would either give the Applicant a commercial advantage (whether or not "unfair") or cause detriment to the STANDARD LIFE mark. There is no suggestion that the repute of the STANDARD LIFE mark would be tarnished by virtue of the identity of the Applicant or the categories of goods and services applied for. And detriment to distinctive character (often referred to as "blurring") seems unlikely. In the absence of evidence, I am unable to conclude that the pulling power of the STANDARD LIFE trade mark would be diminished as a result of the presence of publications and television programmes about financial matters, marketed under the name STANDARD LITE.
83. The one exception, where I do consider that the Opponent's case is sufficiently shown, is in relation to "bank cards and debit cards (other than encoded or magnetic)" in class 16. Since the provision of bank cards and debit cards is an intrinsic aspect of banking services, for which the STANDARD LIFE mark has a reputation, I would put these goods in the same category as financial services supplied under the STANDARD LITE mark. There is more than a theoretical risk that consumers would mis-read or mis-hear STANDARD LITE as STANDARD LIFE and thus be attracted towards the goods because of making a direct connection with the Opponent, leading to the likelihood that the Applicant would gain an unfair advantage and/or that detriment would be caused to the distinctive character of the STANDARD LIFE mark.

***Without due cause***

84. The Hearing Officer dealt with the subject of due cause as follows:

31. In considering the issue under Section 5(3), I have also to consider whether the applicant had due cause to use the mark it seeks to register. The applicant, Cube, has filed no evidence in this case. Cube is silent as to why this particular mark was chosen, and why it is seeking to register it for the goods and services specified. The applicant cannot therefore gain relief under this provision of the Section.



85. The Applicant submits that section 5(3) does not require the Applicant to prove that it will use the mark with due cause, but rather requires the Opponent to establish that use of the mark would be without due cause. The Hearing Officer was therefore wrong to find against the Applicant on this requirement purely because of the lack of evidence as to its reasons for choosing the mark STANDARD LITE.
86. In *TYPHOON* (at p. 790-1), Neuberger J said that, in order to make commercial sense of the equivalent infringement provision under section 10(3) of the Act, it was necessary to read the requirement of “without due cause” as applying not only to the mere use by the defendant of the allegedly infringing sign on its goods, but also to any unfair advantage or detriment caused to the claimant’s trade mark as a result of such use. However, he expressly left aside the question of burden of proof.
87. Jacob LJ said in *L’Oréal* (at [83]) that the onus of establishing “due cause” clearly lay with the defendant. Again, this was an infringement case under section 10(3). It was also a case in which the defendant was using identical and similar signs to the claimant’s trade marks in order to promote identical goods to those covered by the earlier trade marks. The defendant’s witnesses had conceded that the packaging for their replica perfumes had been designed to “wink at” the originals. In those circumstances, the claimant had already raised at the least a *prima facie* case that the use of the allegedly infringing signs was “without due cause”, and it was inevitably down to the defendant to establish the contrary position.
88. I do not understand Jacob LJ’s statement in relation to burden of proof to extend to a case where the claimant has not raised a *prima facie* case under the other requirements of section 10(3). In the context of an opposition under section 5(3), unless and until the proprietor of an earlier trade mark with a reputation has shown at least a *prima facie* case that the applicant’s trade mark is similar and that its use in relation to the goods or services applied for is likely to cause detriment or unfair advantage, it seems to me that the question of “due cause” does not arise. There is nothing wrong in mere use of a similar mark, whether for identical, similar or non-similar goods/services, unless its use is likely to have the effects set out in section 5(2) or 5(3) of the Act.
89. Accordingly, it seems to me that the mere fact that the Applicant has adopted a similar mark to that of the Opponent does not in itself give rise to a requirement to justify its adoption and proposed use. However, where the Opponent has succeeded in showing likelihood of detriment or unfair advantage, in addition to a reputation and similarity of marks, then the burden falls back on the Applicant to show “*due cause*”. At that point, I agree with the Hearing Officer: the lack of any evidence from the Applicant to explain why it has adopted STANDARD LITE as a trade mark prevents it from defending the case on the basis of “due cause”. This is the case for bank and debit cards.

### ***Conclusion under section 5(3)***

90. To summarise, I reject the grounds of opposition under section 5(3) except in relation to “bank cards and debit cards (other than encoded or magnetic)” in class 16.

91. I should add that, although there is some ongoing uncertainty as to the precise meaning of “link”, “detriment” and “unfair advantage”, which it is hoped will be cleared up with guidance from the ECJ in *INTELMARK* and *L’Oréal*, I do not think that it is necessary for me to stay this appeal pending the outcome of either or both of these references. My decision has been reached on the evidence (or lack of it) and not on the basis of a contested interpretation of the terms that are used in section 5(3). Also, the Court of Appeal has asked the ECJ to make a number of assumptions in those references which are specific to the facts found on the evidence in each case and which do not apply to this one, so the guidance given may not be directly applicable. Finally, I note that neither party has invited me to postpone my decision.

### **Section 5(2)(b)**

92. Section 5(2)(b) of the Act implements part of Article 4(1)(b) of the Directive, and reads as follows:

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

(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 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.

93. This ground was relied on by the Opponent in relation to specific goods in classes 9 and 16 as follows:

(a) registration of the following class 9 goods:

*“Software; electronic publications; CD Roms; computer software and hardware to enable searching of data and connection to databases and the Internet; data processing equipment and computers; parts and fittings for all the aforesaid goods”*

because they are confusingly similar to the following class 42 services of UK TMs nos. 1276787 and 1276788:

*“Computer programming services; computer consultancy services; design services for computers; computer hardware and software rental services; services for leasing access time to a computer data base”*

and to the following services in class 42 of UK TM no. 1505199 and CTM no. 496729:

*“Computer programming services; computer consultancy services; design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer database”*

(b) registration of the following class 16 goods:

*“printed matter; printed publications; newspapers; magazines; supplements; posters; periodicals; books; brochures; leaflets; user guides and training manuals”*

which, if referring to business, financial, legal, personnel, public relations, advertising, real estate or computer related topics, would be confusingly similar to the specifications of services in classes 35, 36 and 42 in all of the earlier trade marks relied on.

94. The Hearing Officer started his analysis under section 5(2)(b) by listing a number of ECJ authorities from which he took guidance (at paragraph 62): *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 BV* [2000] FSR 77; *Marca Mode CV v Adidas AG and Adidas Benelux BV* [2000] ETMR 723; and *Vedial SA v OHIM* (already referred to). He then set out some of the applicable principles (at paragraphs 63 to 66). None of this is objected to by the Applicant.

95. In his application of the guidance to the facts of the case, the Hearing Officer proceeded as he had done under section 5(3) on the basis that use had been proved across the full class 36 specification of CTM no. 496729 and across the services in the class 35 and 42 specification “in so far as they are required to provide the services in class 36”. He also reiterated (at paragraph 72) that the reputation of the STANDARD LIFE trade marks extended to financial and insurance services.

96. His conclusion was as follows (the bold type being in the original):

73. Taking all of the above into account and bearing in mind imperfect recollection, I consider that on balance, a consumer seeing printed matter or the other applied for goods in class 16 bearing the mark STANDARD LITE and dealing with financial goods or services would be likely to bring to mind the mark STANDARD LIFE. Thus there is a likelihood of confusion. However, by the same token, I did not think that a consumer seeing such goods bearing the mark STANDARD LITE and describing matters other than financial goods or services would be likely to be confused. I also consider that a consumer seeing software, CD ROMs or the other applied for goods in class 9 bearing the mark STANDARD LITE and dealing with financial goods or services would be likely to think that these came from the same source as the services sold under the mark STANDARD LIFE in class 42.

**74. SLAC has successfully made out the opposition on the grounds of Section 5(2)(b) to the registration of the trade mark STANDARD LITE in relation to certain goods in class 9 and 26 [sic. – obviously intended to be 16].**

97. The Applicant makes a general complaint that the Hearing Officer provided insufficiently detailed reasoning for his decision under section 5(2)(b) and appeals on the following grounds:

(1) that the objection to registration of the goods in class 9 was based solely on the similarity of goods with the services in the class 42 specification of the earlier

trade marks, and only succeeded because the Hearing Officer wrongly held that the Opponent had used the marks in respect of those services;

(2) that there was no evidence to support the contention that the goods in class 16 of the Application are similar to the services for which the earlier trade marks are protected; and

(3) that the Hearing Officer erred in holding (at paragraph 73 of the Decision, quoted above) that the fact that a consumer would be likely to bring to mind the mark STANDARD LIFE on seeing the mark STANDARD LITE on goods in class 16 which deal with financial goods or services was sufficient to amount to a likelihood of confusion.

98. I agree with the first ground. Insofar as the alleged confusion is based on services in the class 42 specifications of the Opponent's earlier trade marks, it will be clear from my analysis in relation to the use conditions under section 6A that the attack must fail: see my findings at paragraph 41 of this decision and the deemed specification set out in Annex 2. That deals fully with the opposition to the Applicant's class 9 goods.

99. As to the second of the Applicant's complaints, the Hearing Officer did not set out any separate reasoning in relation to the alleged similarity between the listed goods in class 16 and the services covered by the earlier trade marks. I do not see that as fatal in itself, since his decision clearly indicates that he knew that similarity was a requirement. As far as the lack of evidence of similarity of goods and services goes, the Registry often has to consider similarity without the assistance of evidence, so this is not fatal either. But what is more of a problem in this case is that, as in the rest of the Decision, the Hearing Officer conducted his analysis by reference to an over-broad scope of the specification rather than the narrower scope set out in Annex 2. He may have come out with the same answer, had he relied only on the narrower scope, but we cannot be sure.

100. Further, I agree with the Applicant that the Hearing Officer made an impermissible leap when he concluded from the fact that consumers would "bring to mind" the STANDARD LIFE mark that there was a likelihood of confusion. The ECJ has clearly stated that section 5(2) requires confusion as to origin and that a mere association, in the sense that the later mark brings the earlier mark to mind, is not enough: *SABEL v Puma* at [26].

101. Given these errors, I need to reach my own decision. In doing so, I bear in mind the authorities referred to by the Hearing Officer and in particular the following guidance that they have given:

- (1) The likelihood of confusion must be appreciated globally, taking into account all factors relevant to the circumstances of the case, in particular, the recognition of the earlier trade mark on the market, the association which can be made with the earlier trade mark, the degree of similarity between the respective trade marks and between the goods/services in the respective specifications: *SABEL* at [22]-[24].
  - (2) The matter must be judged through the eyes of the average consumer of the goods or services in issue, who is deemed to be reasonably well-informed and reasonably circumspect and observant: *SABEL* at [22]-[24]; *Lloyd* at [26]-[27].
  - (3) In order to assess the degree of similarity between the marks concerned the court must determine the degree of visual, aural and conceptual similarity between them and, where appropriate, evaluate the importance to be attached to those different elements taking into account the nature of the goods in question and the circumstances in which they are marketed: *Lloyd* at [27]-[28].
  - (4) The more distinctive the earlier mark (either *per se* or because of market recognition), the greater the likelihood of confusion: *SABEL* at [24].
  - (5) The average consumer rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them that he has kept in his mind; further, the average consumer's level of attention is likely to vary according to the category of goods in question: *LLOYD* at [27].
  - (6) Appreciation of the likelihood of confusion depends upon the degree of similarity between the goods as well as that between the marks. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa: *Canon* at [17]-[19].
  - (7) Similarity of goods/services has to be assessed by taking into account all the relevant factors relating to the goods/services themselves, including *inter alia* their nature, their purpose of use, their method of use, and whether they are in competition with each other or are complementary: *Canon* at [23].
102. I have already dealt with the distinctiveness of the STANDARD LIFE mark and its visual, aural and conceptual similarity to STANDARD LITE in the course of my analysis under section 5(3).
103. Turning to similarity of goods/services, printed publications and the like are on the face of it quite different categories of goods from banking, insurance services etc. Both the purpose and method of use of the class 16 goods as against the class 36 services are quite different, and I do not see any reason why they should be considered in competition with each other. On the other hand, they may be said to be complementary, given that a consumer who wants to find out about what financial

products to invest in, or the best mortgage or pensions provider, or the like, would be assisted by consulting publications on the subject.

104. Banking, insurance and pensions providers such as the Opponent do issue publications about themselves and sometimes about financial matters generally. But there is no evidence to indicate that the Opponent or other entities in the same field of business sell such publications as part of a separate business from their core financial businesses. Commonly, as the evidence shows in this case, publications by specific financial services companies are given away to customers and prospective customers as a way of promoting their services. In contrast, a business that separately markets printed publications about financial services would generally sell these through bookshops and newsagents, or through 'virtual' retail outlets on the internet, such as Amazon. If a consumer were looking for a publication about a particular financial services company, the most likely starting point would be to approach that company, whether by going to a branch or writing, or by visiting its website. On the other hand, someone looking for books about banking or pensions generally would go to a bookshop or look on an on-line bookstore.
105. Based on the above, I find it a real stretch to say that the class 16 goods that are opposed under section 5(2)(b) are similar to the class 36 services in the deemed specifications at Annex 2, even insofar as they relate to overlapping subject matter. But, to avoid the risk of pre-emptively rejecting the opposition, I have nevertheless considered whether such similarities as there are might result in a likelihood of confusion.
106. If a consumer who is aware of the Opponent were to come across a publication bearing the name STANDARD LITE as a trade mark (rather than simply as a book title to identify the content of the book) when browsing in a bookshop or on-line outlet for books on pensions or insurance, I can see that this name might bring the STANDARD LIFE mark to mind. But it does not seem to me likely that he or she would assume that the publication had been issued or licensed by the Opponent just because of the presence of a similar name. There is no reason for a consumer to suppose that the Opponent would use any name other than STANDARD LIFE if it were to decide to go into more general publishing. Even if a consumer were initially to mis-read STANDARD LITE as STANDARD LIFE, which I have already said is unlikely, there would be no reason for them to choose to look at that publication over any other one, since (on the available evidence) the Opponent has no reputation for publishing. And any possible mistake made on the first glance would quickly disappear since consumers do not buy books or even magazines or newspapers about financial matters without picking them up and looking at them properly.

***Conclusion under section 5(2)(b)***

107. I have therefore concluded that the opposition should also have failed under section 5(2)(b).

Applicant's "fallback position"

108. Having reached the decision that the appeal has been successful except in relation to "bank cards and debit cards (other than encoded or magnetic)" in class 16, the Applicant's claim that the Hearing Officer ignored its offer to limit its specification of goods and services to remove any that related to finance and insurance does not need to be considered except in relation to those remaining goods.

109. The Opponent objected to any limitation on the basis that the Applicant never made and pursued a formal and unconditional offer to restrict its specification. I do not need to go into the authorities on this point, because it seems to me that any limitation along the lines suggested by the Applicant would not work in the case of bank cards and debit cards. Since these inherently relate to banking services, a description such as "bank cards and debit cards other than those relating to banking services" simply would not make sense.

110. Therefore, to the small extent that the Applicant's fallback position is relevant, I reject it.

Conclusion

111. The end result is that the Applicant's appeal has been successful in relation to the grounds of opposition under both sections 5(2)(b) and 5(3) of the Act, with one small exception. I would allow the Application to go forward to registration subject to deleting "bank cards and debit cards (other than encoded or magnetic)" from the specification in class 16.

112. The Hearing Officer ordered the Applicant to pay the Opponent the sum of £1,000 as a contribution to its costs of the proceedings below. In view of the outcome of the appeal, I reverse that order. I also order the Opponent to pay a further £750 as a contribution to the Applicant's costs of this appeal.





ANNA CARBONI

21 July 2008

The Appellant (Applicant) was represented by Mr Martin Krause of Haseltine Lake. The Respondent (Opponent) was represented by Counsel, Ms Emma Himsworth, instructed by Kennedys.

**Annex 1****Opponent's earlier trade marks, as registered**



UK or CTM no.	Sign	Application and registration dates	Class/specification
UK 1272922	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 06.07.1990	35: Legal, accounting, auditing and personnel services, all relating to pensions; payroll processing services; computerised data-base management services; statistical information services for business purposes; all included in Class 35.
UK 1272923	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 20.07.1990	36: Banking, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension, financial management, personal loan financing, mortgaging, real estate agency, real estate management and real estate leasing services; provision of finance or of credit, all for real estate development; all included in Class 36.
UK 1276787		app. 01.10.1986 reg. 26.05.1989	42: Computer programming services; computer consultancy services; design services for computers; computer hardware and software rental services; services for leasing access time to a computer data base; legal services; all included in Class 42.
UK 1276788	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 26.05.1989	42: Computer programming services; computer consultancy services; design services for computers; computer hardware and software rental services; services for leasing access time to a data base; legal services; all included in Class 42.
UK 1482606	<b>STANDARD LIFE HOMEPLAN</b>	app. 13.11.1991 reg. 11.06.1993	36: Banking; insurance services; mortgage services; all relating to homes; all included in Class 36.
UK 1505199		app. 30.06.1992 reg. 09.09.1994	35: Accounting, auditing and personnel services, all relating to pensions; payroll processing services; computerised data base management services; statistical information services; all included in Class 35.  36: Banking, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension, financial management, personal loan financing, mortgaging, real estate agency, real estate management and real estate leasing services; provision of finance or of credit; all for real estate development; all included in Class 36.



			42: Computer programming services; computer consultancy services; design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer data base; legal services; advisory, information and consultancy services, all relating to all the aforesaid services; all included in Class 42
CTM 496729	<b>STANDARD LIFE</b>	app. 25.03.1997 reg. 10.03.1999	<p>35: Accounting, auditing and personnel services; payroll processing services; computerised database management services; provision of information relating to all the aforesaid services; provision of business statistical information; advisory and consultancy services all relating to the aforesaid services.</p> <p>36: Banking, financial, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension, financial management, personal loan financing, mortgage, real estate agency, real estate management and real estate leasing services; provision of finance or of credit; actuarial services; financial appraisal services; advisory, information and consultancy services all relating to the aforesaid services.</p> <p>42: Computer programming services; computer consultancy services; design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer database; all the aforesaid services being related to financial and insurance services; legal services; advisory, information and consultancy services all relating to the aforesaid services.</p>

## Annex 2

### Deemed specifications for the Opponent's earlier trade marks under section 6A(6)

UK or CTM no.	Sign	Application and registration dates	Class/specification
UK 1272922	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 06.07.1990	<del>35: Legal, accounting, auditing and personnel services, all relating to pensions; payroll processing services in relation to the processing of group pension and healthcare insurance contributions; computerised data base management services; statistical information services for business purposes in relation to banking, financial investment, pensions and insurance; all included in Class 35.</del>
UK 1272923	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 20.07.1990	36: Banking, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension, financial management, personal loan financing, mortgaging, real estate agency, real estate management and real estate leasing services: provision of finance or of credit, all for real estate development; all included in Class 36.
UK <del>1276787</del>		app. 01.10.1986 reg. 26.05.1989	<del>42: Computer programming services; computer consultancy services; design services for computers; computer hardware and software rental services; services for leasing access time to a computer data base; legal services; all included in Class 42.</del>
UK 1276788	<b>STANDARD LIFE</b>	app. 01.10.1986 reg. 26.05.1989	42: Computer programming services; computer consultancy services; design services for computers; computer hardware and software rental services; services for leasing access time to a data base; legal services; all included in Class 42.
UK 1482606	<b>STANDARD LIFE HOMEPLAN</b>	app. 13.11.1991 reg. 11.06.1993	36: Banking; insurance services; mortgage services; all relating to homes; all included in Class 36.
UK 1505199		app. 30.06.1992 reg. 09.09.1994	<del>35: Accounting, auditing and personnel services, all relating to pensions; payroll processing services in relation to the processing of group pension and healthcare insurance contributions; computerised data base management services; statistical information services in relation to banking, financial investment, pensions and insurance; all included in Class 35.</del>  36: Banking, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension,

			<p>financial management, personal loan financing, mortgaging, <del>real estate agency, real estate management and real estate leasing services</del>; provision of finance or of credit; all for real estate development; all included in Class 36.</p> <p><del>42: Computer programming services; computer consultancy services; design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer data base; legal services; advisory, information and consultancy services, all relating to all the aforesaid services; all included in Class 42.</del></p>
CTM 496729	<b>STANDARD LIFE</b>	app. 25.03.1997 reg. 10.03.1999	<p>35: <del>Accounting, auditing and personnel services</del>; payroll processing services <u>in relation to the processing of group pension and healthcare insurance contributions</u>; <del>computerised database management services</del>; provision of information relating to <del>all</del> the aforesaid services; provision of business statistical information <u>in relation to banking, financial investment, pensions and insurance</u>; advisory and consultancy services all relating to the aforesaid services.</p> <p>36: Banking, <del>financial</del>, trust management, unit trust, trusteeship, fund investment management, insurance, financial investment, pension, financial management, personal loan financing, mortgage, <del>real estate agency, real estate management and real estate leasing services</del>; provision of finance or of credit; <del>actuarial services</del>; financial appraisal services; advisory, information and consultancy services all relating to the aforesaid services.</p> <p><del>42: Computer programming services; computer consultancy services; design of computer hardware; rental of computer hardware and computer software; leasing of access time to a computer database; all the aforesaid services being related to financial and insurance services; legal services; advisory, information and consultancy services all relating to the aforesaid services.</del></p>