

O/115/15

TRADE MARKS ACT 1994

IN THE MATTER OF

APPLICATION NO 3022750

BY SIGMA INFORMATION SERVICES LIMITED

TO REGISTER THE TRADE MARK

SIGMA SQUAWK

IN CLASSES 36 AND 38

AND

**OPPOSITION THERETO (UNDER NO. 401841)
BY SYGMA BANQUE**

BACKGROUND



1) On 19 September 2013 Sigma Information Services Limited ('the applicant') applied to register the trade mark SIGMA SQUAWK in respect of the following services:

Class 36: *Financial services; financial services provided via the Internet; provision of financial information.*

Class 38: *Telecommunications services; chat room services; portal services; e-mail services; providing user access to the Internet; radio and television broadcasting.*

2) The application was published on 13 December 2013 in the Trade Marks Journal and notice of opposition was subsequently filed by Sygma Banque ('the opponent'). The opponent claims that the application offends under section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). It directs its opposition against class 36 of the application only.

3) The opponent relies on two Community Trade Mark ('CTM') registrations, as shown in the table below:

CTM details	Services relied upon
<p>CTM No: 7340805</p>  <p>Filing date: 24 October 2008 Date of entry in the register: 04 August 2009</p>	<p>Class 36: <i>Financial, banking, monetary and stock market services of all kinds.</i></p>
<p>CTM No: 8432775</p>  <p>Filing date: 17 July 2009 Date of entry in the register: 27 January 2010</p>	<p>Class 36: <i>Financial, banking, monetary and stock market services of all kinds.</i></p>

4) Both marks relied upon by the opponent are earlier marks in accordance with section 6 of the Act and, as both completed their registration procedure less than five years before the publication date of the contested mark, they are not subject to the proof of use conditions, as per The Trade Marks (Proof of Use, etc) Regulations 2004.

5) The applicant filed a counterstatement in which it denies, with explanation, that there is any visual, aural or conceptual similarity between the marks.

6) Both parties filed evidence. A hearing took place before me at which the applicant was represented by Miss Katherine Moggridge of counsel instructed by DMB Law; the opponent was represented by Mr John Reddington of Williams Powell.

EVIDENCE

Opponent's evidence

7) The opponent's evidence comes from Mr John Reddington, solicitor and trade mark attorney at Williams Powell (the opponent's representative). Mr Reddington provides six exhibits, as follows:

- Exhibit JR1: A copy of the Wikipedia entry entitled "Greek Alphabet".
- Exhibit JR2: A copy of the Wikipedia entry entitled "sigma". The entry states, inter alia, that "Sigma is the eighteenth letter of the Greek alphabet..." It goes on to refer to various uses of the sigma symbol (Σ) in science and mathematics etc.
- Exhibit JR3: A copy of a page from Dictionary.com providing definitions for the word "squawk", including "to utter a loud, harsh cry, as a duck or other fowl when frightened", "to complain loudly and vehemently".
- Exhibit JR4: A copy of the first page of results from a Google search for the words "financial squawk". Mr Reddington states that the word "Squawk" has a precise and commonly accepted meaning in the financial services industry and that the results of his search show a number of entries which either, impliedly, or expressly offer a descriptive meaning for the word in the financial services sector. There are a number of entries on the page bearing titles such as "Livesquawk", "Squawk Box: Business, Politics, Investors and Traders", "Financial Squawk", "Live Squawk Audio News Service for Traders".
- Exhibit JR5: Copies of pages from some of the websites found by means of the abovementioned Google search. Mr Reddington refers to the extract from www.investopedia.com which provides a definition for the term "Squawk Box" as "an intercom speaker often used on brokers' trading desks in investment banks and stock brokerages. A Squawk Box allows a firm's analysts and traders to communicate with the firm's brokers" and to an extract from Wikipedia relating to a business news television programme named "Squawk Box", which he states confirms the meaning.
- Exhibit JR6: Copies of pages from www.investopedia.com located through Wayback Machine dated 17 September 2004 and 6 January 2007 showing the same or similar definitions for the term "Squawk Box". Mr Reddington states that this shows the word "squawk" was therefore meaningful in the financial industry at the relevant date.

Applicant's evidence

8) The applicant's evidence comes from Mr Oliver Jason Maxwell Dykes, a solicitor at Strafford Law Ltd. Mr Dykes provides four exhibits, as follows:

- Exhibit OJMD1: A dictionary definition for the word "Sigma" taken from the Shorter Oxford English Dictionary, 6th edition, Volume 2, published 2007. The primary definition is "The eighteenth letter ... of the Greek alphabet..."
- Exhibit OJMD2: A dictionary definition (from the same dictionary as referred to above) for the word "Squawk". The primary definition given is "Utter a loud harsh call or cry; give out a discordant high-pitched noise".
- Exhibit OJMD3: Screenshots of the results of a Google search of the words "Sigma Squawk", which Mr Dykes states all refer to the applicant.

9) That completes my summary of the parties' evidence.

DECISION

10) The specifications of the two marks relied upon by the opponent are identical and the marks differ only in that one contains the word "banque" and the other "bank". I will approach the matter solely on the basis of the "bank" mark as the opponent can be in no better position in relation to its "banque" mark.

Section 5(2)(b)

11) This section of the Act provides:

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

(a)

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.'

12) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) C-334/05 P (LIMONCELLO)*. It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,

- (b) the matter must be judged through the eyes of the average consumer for the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,
- e) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*,
- f) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*,
- (g) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,
- (i) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,
- (j) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,
- (k) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG and Adidas Benelux BV*,
- (l) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked

undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*

Comparison of services

13) The services covered by the parties' marks are shown in the table below:

Opponent's services	Applicant's services
Class 36: <i>Financial, banking, monetary and stock market services of all kinds.</i>	Class 36: <i>Financial services; financial services provided via the Internet; provision of financial information.</i>

14) At the hearing, Miss Moggridge conceded that the respective services are identical.

Average consumer and the purchasing process

15) It is necessary to determine who the average consumer is for the respective services and the manner in which these services are likely to be selected. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”


16) The average consumer for the respective services may be the general public or a business; either way, given the importance of financial matters, the purchase is likely to be a considered one. The services are those which are likely to be sought out through websites or high street establishments and therefore the visual aspect of the marks is important. However, given that discussions may also be had between the consumer and the service provider to ensure that the specific needs of the consumer are met, I must also bear in mind the potential for aural use of the marks.

Comparison of marks

17) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Case C-591/12P, Bimbo SA v OHIM ('Bimbo')*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

It would therefore be wrong to artificially dissect the marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

Opponent's mark	Applicant's mark
 <p>The logo for SYGMA BANK. The word 'SYGMA' is written in a green, serif font. Below it is a horizontal line, and under the line, the word 'BANK' is written in a smaller, black, serif font.</p>	<p>SIGMA SQUAWK</p>

18) The applicant's trade mark consists of the words SIGMA SQUAWK presented in plain block capitals. Both parties agree that SIGMA will be perceived as a letter of the Greek alphabet; it is a distinctive element of the mark. As for the word SQUAWK, at the hearing Mr Reddington drew my attention to the opponent's evidence which purports to show that the word is descriptive in the financial services industry in relation to the provision of financial information. My attention was drawn to the definitions for "Squawk box" and the pages from websites providing business/financial news containing the term "Squawk" in their titles. Whilst the evidence suggests that "squawk" may be meaningful in relation to a certain type of intercom system used in banks, this does not mean that it will be perceived as meaningful in the mind of the average consumer of financial services. Further, the use of "squawk" in the titles of a very small number of business/financial news programmes, none of which are clearly directed at consumers in the UK (they appear to be either US or French websites) also fails to persuade me that the average UK consumer is likely to perceive the word "squawk" as meaningful in relation to financial services; I find that SQUAWK is also a distinctive element of the mark. The two words do not naturally blend or 'hang together' as a unified phrase. The overall impression is such that each of the words, SIGMA and SQUAWK, retain an independent distinctive role. That is to say, the meaning and significance that the consumer is likely to attach to each of those words, within the context of the mark as a whole, is unaffected by the other word.¹ Mr Reddington submitted that SIGMA is

¹ In this connection, I have borne in mind the comments of the CJEU in *Bimbo*, where it stated: "25.a component of a composite sign does not retain such an independent distinctive role if, together with the other component or components of the sign, that component forms a unit having a different

the dominant element, bearing in mind its position at the beginning of the mark. Miss Moggridge disputed that SIGMA is the dominant element and stressed that the overall impression of the mark must not be lost sight of. My own view is that both words make a significant contribution to the overall impression of the mark, but it is the word SIGMA which carries *slightly* greater weight in that overall impression, given that it enjoys a more prominent position at the beginning of the mark and is the first to impact on the perception.

19) The opponent's mark consists of the word SYGMA presented in green letters (which appear to be only very slightly stylised), underneath which is a black underlining and, underneath that, is the word BANK in plain black letters. Whilst the word BANK is far from negligible, it is entirely non-distinctive in the context of the relevant services and the underlining is unlikely to have any significant impact on the consumer. It is the distinctive word SYGMA which strongly dominates the overall impression of the mark as a whole.

20) In terms of the visual comparison, although the opponent's mark contains the colour green, the applicant's mark could be used in the same colour. The colour in the opponent's mark is not, therefore, a distinguishing factor. There is a point of visual similarity owing to the presence of the respective five letter words SYGMA and SIGMA (notwithstanding the slightly different presentation styles of the letters in those words). Whilst the second letter is a 'Y' in the opponent's mark and an 'I' in the applicant's mark, all of the other letters are clearly identical. Points of difference between the marks stem from the visually contrasting words BANK and SQUAWK and the underlining present in the opponent's mark which is absent from the applicant's mark. The words in the applicant's mark are presented in a linear fashion whereas they are presented above one another in the opponent's mark. Taking into account all of these factors, I find there to be a moderate degree of visual similarity overall.

21) Aurally, the opponent's mark will be pronounced as SIG-MA-BANK. The applicant's mark will be pronounced as SIG-MA-SKOO-AWK. The first two syllables of the respective marks are identical to the ear. The remaining syllables in the marks are aurally distinct. Overall there is a moderate degree of aural similarity.

22) I now come to the conceptual aspect. Dealing firstly with the applicant's mark, the two words SIGMA SQUAWK do not naturally blend to create a conceptual unit with its own meaning which is different from the meaning of each word taken separately; each word within the mark portrays its own concept which is unaffected by that conveyed by the other. The parties agree that the word SIGMA is likely to evoke the idea of the letter of the Greek alphabet. The word SQUAWK is likely to be perceived as meaning a cry/shriek. It is these two concepts which are perceived from the applicant's mark. Turning to the opponent's mark, this portrays the concept of a financial establishment by the name of SYGMA, where SYGMA, if it portrays any concept at all beyond that of an invented word, is also likely, in my view (and as submitted by Mr Reddington) to be perceived as the letter of the Greek alphabet, given that the average consumer may not be sure of the correct spelling.

meaning as compared with the meaning of those components taken separately." and Geoffrey Hobbs QC in *Deakins* (BL O/421/14).

Accordingly, to the extent that the word SYGMA may be perceived as meaning the same as the word SIGMA, there is a degree of conceptual similarity between the marks, notwithstanding the conceptual differences arising on account of the words BANK (which, in any event, is wholly descriptive) and SQUAWK.

Distinctive character of the earlier mark

23) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). The distinctive character of a trade mark must be assessed by reference to the goods or services for which it is registered and by reference to the way it is perceived by the relevant public (*Rewe Zentral AG v OHIM (LITE)* Case T-79/00 [2002] ETMR 91).

24) There is no evidence before me to show that the opponent's mark has been put to use in the UK. As such, I can only take into account its inherent level of distinctiveness. In doing so, I bear in mind the comments of Mr Iain Purvis Q.C., sitting as the Appointed Person, in *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, where he pointed out that the level of distinctive character is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

25) I have already stated that, insofar as the word SYGMA is likely to evoke any concept at all, this is likely to be of the letter of the Greek alphabet. Even if that concept is perceived, it is not one which is likely to be understood as meaningful, descriptive or allusive to the average consumer in connection with financial services. It follows that SYGMA has, at least, a normal degree of distinctiveness in relation to those services. Further, given the obvious and clear descriptive message evoked by the word ‘BANK’, the banality of the line above that word and the unremarkable manner in which the mark is presented, it is clearly the word SYGMA which gives the opponent's mark its normal degree of distinctive character (at least) as a whole.

Likelihood of confusion

26) In deciding whether there is a likelihood of confusion I must take into account all of my earlier findings and keep in mind the following:

- i) the interdependency principle, whereby a lesser degree of similarity between the goods and services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*);
- ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and;
- iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

27) As the case before me involves composite trade marks, I also bear in mind the CJEU's judgment in *Medion AG v Thomson multimedia Sales Germany & Austria GmbH*, Case C-120/04 where it was held that:

“29. In the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see *Matratzen Concord*, paragraph 32).

30. However, beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may be dominated by one or more components of a composite mark, it is quite possible that in a particular case an earlier mark used by a third party in a composite sign including the name of the company of the third party still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.

31. In such a case the overall impression produced by the composite sign may lead the public to believe that the goods or services at issue derive, at the very least, from companies which are linked economically, in which case the likelihood of confusion must be held to be established.

32. The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.

33. If such a condition were imposed, the owner of the earlier mark would be deprived of the exclusive right conferred by Article 5(1) of the directive even where the mark retained an independent distinctive role in the composite sign but that role was not dominant.

34. This would be the case where, for example, the owner of a widely known mark makes use of a composite sign juxtaposing this mark and an earlier mark which is not itself widely known. It would also be the case if the composite sign was made up of the earlier mark and a widely-known

commercial name. In fact, the overall impression would be, most often, dominated by the widely-known mark or commercial name included in the composite sign.

35. Thus, contrary to the intention of the Community legislator expressed in the 10th recital in the preamble to the directive, the guarantee of the earlier mark as an indication of origin would not be assured, even though it still had an independent distinctive role in the composite sign.

36. It must therefore be accepted that, in order to establish the likelihood of confusion, it suffices that, because the earlier mark still has an independent distinctive role, the origin of the goods or services covered by the composite sign is attributed by the public also to the owner of that mark.

37. Accordingly, the reply to the question posed must be that Article 5(1)(b) of the directive is to be interpreted as meaning that where the goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein.”

28) Also, the judgment in *OHIM v Shaker di L Laudato & Co Sas* (C-334/05 P, 12 June 2007) where it was stated:

“41. It is important to note that, according to the case-law of the Court, in the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see order in *Matratzen Concord v OHIM*, paragraph 32; *Medion*, paragraph 29).42. As the Advocate General pointed out in point 21 of her Opinion, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element”

29) The case of *Aveda Corporation v Dabur India Ltd* [2013] EWHC 589 (Ch) is also relevant. I note, in particular, the following part of the judgment:

“44. Although the decision in *Medion v Thomson* does not in terms extend to cases in which the composite sign incorporates a sign which is similar to, rather than identical with, the trade mark and some of the Court of Justice's reasoning would not apply to such a case, I consider that the underlying logic is equally applicable.

45. I entirely accept the basic proposition which the Court of Justice has repeated many times, namely that the assessment of likelihood of confusion

must be made by considering and comparing each of the signs as a whole. As the Court of Justice recognised in *Medion v Thomson*, however, there are situations in which the average consumer, while perceiving a composite sign as a whole, will recognise that it consists of two signs one or both of which has a significance which is independent of the significance of the composite whole. Thus when the well-known pharmaceutical company Glaxo plc acquired the well-known pharmaceutical company Wellcome plc, the average consumer of pharmaceutical goods confronted with the composite sign GLAXO WELLCOME or GLAXOWELLCOME would perceive the significance of both the whole and its constituent parts and conclude that this was an undertaking which combined the two previously separate undertakings (see *Glaxo Group Ltd v Glaxowellcome Ltd* [1996] FSR 388). The essence of the Court of Justice's reasoning in *Medion v Thomson* is that an average consumer of leisure electronic products confronted with the composite sign THOMSON LIFE could perceive both the whole and its constituent parts to have significance and thus could be misled into believing that there was a similar kind of connection between the respective undertakings.

46. As Mr Hobbs' decision in *Novartis Seeds* shows, this can only occur in circumstances where the consumer perceives the relevant part of the composite sign to have significance independently of the whole. In that case Mr Hobbs did not think that the average consumer would perceive CANTO to have significance independently of ERIC CANTONA CANTO. On the contrary, he considered that the average consumer would perceive ERIC CANTONA CANTO as a unit in which only ERIC CANTONA had independent significance.

47. In my view the principle which I have attempted to articulate in paragraph 45 above is capable of applying where the consumer perceives one of the constituent parts to have significance independently of the whole, but is mistaken as to that significance. Thus in *BULOVA ACCUTRON* the earlier trade mark was ACCURIST and the composite sign was BULOVA ACCUTRON. Stamp J held that consumers familiar with the trade mark would be likely to be confused by the composite sign because they would perceive ACCUTRON to have significance independently of the whole and would confuse it with ACCURIST.

48. On that basis, I consider that the hearing officer failed correctly to apply *Medion v Thomson*. He failed to ask himself whether the average consumer would perceive UVEDA to have significance independently of DABUR UVEDA as a whole and whether that would lead to a likelihood of confusion. Accordingly, it is necessary for me to consider the matter afresh. Having regard to the matters set out in paragraph 39 above, I think there can be little doubt that the average consumer who was familiar with AVEDA beauty products would be likely to be confused by the use of DABUR AVEDA in relation to identical goods. In particular, there would be a strong likelihood that the average consumer would think that it indicated some connection between DABUR and AVEDA. In my judgment it makes little difference that the second word in the composite mark is UVEDA rather than AVEDA. As the hearing officer rightly accepted, UVEDA is both visually and aurally very close to

AVEDA. The human eye has a well-known tendency to see what it expects to see and the human ear to hear what it expects to hear. Thus it is likely that some consumers would misread or mishear UVEDA as AVEDA. (Indeed, not only did the hearing officer himself write AVEDA instead of UVEDA at [43], but also the Intellectual Property Office's database of past decisions currently records the contested mark as being "Dabur AVEDA".)

30) Earlier in this decision, I found the following:

- The respective services are identical.
- The purchase will be a considered one.
- The visual aspect is important given the likely manner in which the marks will be encountered during purchase but the potential for aural use is also borne in mind.
- The overall impression of the opponent's mark is strongly dominated by the distinctive word SYGMA (the word BANK, however, is far from negligible).
- The overall impression of the applicant's mark is such that the words SIGMA and SQUAWK each retain an independent distinctive role therein i.e. the meaning and significance that the consumer is likely to attach to each of those words, within the context of the mark as a whole, is unaffected by the other word. Both words make a significant contribution to the overall impression of the mark, with SIGMA having only slightly greater weight than SQUAWK in that overall impression.
- There is a moderate degree of visual and aural similarity between the marks overall and, to the extent that the word SYGMA may portray the same concept as the word SIGMA, there is also a degree of conceptual similarity.
- In terms of the distinctiveness of the earlier mark, I have found that this is of a normal level (at least) and that it is the word SYGMA which gives the mark as a whole this level of distinctiveness.

31) Bearing in mind all of these factors, I find that the similarities between the marks are not strong enough to result in a likelihood of direct confusion; the marks are unlikely to be mistaken for one another. However, in terms of indirect confusion, I find that owing, in particular, to the identity of the services, the normal degree of distinctiveness (at least) of the earlier mark as a whole (which is attributable to the word SYGMA) and my view that the overall impression of the applicant's mark is such that the average consumer, whilst perceiving the mark as a composite whole, is also likely to perceive SIGMA as having independent significance, there is a likelihood of confusion with the opponent's mark, notwithstanding that the purchase is likely to be a considered one. The consumer is likely to believe that the respective services emanate from linked undertakings. Further, even if the word SYGMA is perceived as an invented word (rather than as the letter of the Greek alphabet), thus resulting in no conceptual similarity between respective marks, there would still, in my view, be a likelihood of indirect confusion. Contrary to Miss Moggridge's submission at the hearing, where there is a lack of conceptual similarity or conceptual counteraction, this does not automatically lead to a finding of no likelihood of confusion. The case law states that, whilst conceptual differences *may* counteract visual and aural similarities,² they do not always do so.³ In the instant

² *The Picasso Estate v OHIM* – C-361/04 P

case, the moderate degree of visual and aural similarity between the marks as a whole, stemming from the similar SYGMA/SIGMA elements, would still be sufficient, bearing in mind the identity of the services and the independent significance of the word SIGMA in the applicant's mark, so as to result in a likelihood of indirect confusion.

The opposition against Class 36 succeeds. The trade mark application is refused in respect of the services in Class 36 and will proceed to registration solely in respect of the services in Class 38.

COSTS

32) As the opponent has been successful, it is entitled to a contribution towards its costs. Keeping in mind the guidance in Tribunal Practice Notice 4/2007, I award costs to the opponent on the following basis:

Preparing the notice of opposition and considering the counterstatement	£300
Official opposition fee	£200
Preparing and filing evidence	£500
Preparing for and attending the substantive hearing	£500
Total:	£1500

33) I order Sigma Information Services Limited to pay Sygma Banque the sum of **£1500**. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6th day of March 2015

**Beverley Hedley
For the Registrar,
The Comptroller-General**

³ *Nokia Oyj v OHIM* - T-460/07