

O-370-15

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 3030490

BY LONDON CITY AIRPORT LTD

TO REGISTER THE FOLLOWING MARK IN CLASSES 35, 39, AND 45:

LONDON CITY AIRPORT

O-370-15

Background

1. On 13 November 2013, London City Airport Ltd ('the applicant') applied to register the trade mark shown above for the following services:

Class 35: Advertising; business management; business administration; office functions; business advisory services; airport administration services; provision of business assistance for airport facilities; promotional services; providing space for the advertising/promotion of goods and services to others; business consulting and management services in the field of travel, travel planning and the operation of travel-related businesses; the development and management of retail operations, commercial undertakings and airports and advisory and consultancy services relating thereto; retail consultancy services; duty free retail services in connection with the sale of perfumes, cosmetics, cigarettes, alcohol, clothing, bags, luggage, luggage accessories, jewellery, watches, books, stationery, newspapers, magazines, toiletries, health and beauty products, confectionery, drinks, electrical and electronic products, coffee and beverages, food; retail services provided at airports and/or travel terminals in connection with the sale of perfumes, cosmetics, cigarettes, alcohol, clothing, bags, luggage, luggage accessories, jewellery, watches, books, stationery, newspapers, magazines, toiletries, health and beauty products, confectionery, drinks, electrical and electronic products, coffee and beverages, food, money exchange services, shoe shine services, car rental services and chauffeur services; retail services provided in retail outlets at airport and/or travel terminals in connection with the sale of perfumes, cosmetics, cigarettes, alcohol, clothing, bags, luggage, luggage accessories, jewellery, watches, books, stationery, newspapers, magazines, toiletries, health and beauty products, confectionery, drinks, electrical and electronic products, coffee and beverages, food, money exchange services, shoe shine services, car rental services and chauffeur services; the bringing together, for the benefit of others, of a variety of goods and services, namely perfumes, cosmetics, cigarettes, alcohol, clothing, bags, luggage, luggage accessories, jewellery, watches, books, stationery, newspapers, magazines, toiletries, health and beauty products, confectionery, drinks, electrical and electronic products, coffee and beverages, food, money exchange services, shoe shine services, car rental services and chauffeur services enabling customers to conveniently view and purchase those goods and services in airport/travel terminals or airport/travel terminal retail outlets, tax or duty free outlets, shopping malls or from an Internet web site; organisation, operation and supervision of sales incentive schemes, loyalty and/or promotional incentive schemes; hire, leasing or rental of office space and office equipment; advisory and consultancy services in connection with the aforesaid services.

Class 39: Transport; packaging and storage of goods; travel arrangement; transport and travel services; airport services; airport ground support services; ground and air traffic control services; airport baggage check-in services

O-370-15

(not including security inspection); airport baggage handling; storage, handling and holding of luggage and goods; airport passenger shuttle services between the airport and airport parking facilities; ground support freight handling services provided at airports; cargo and freight handling; aircraft runway and aircraft parking services; airfield management services; aircraft stand allocation; aircraft apron services; aircraft trucking; inspection of aircraft; aircraft fuelling services; aircraft handling; provision of reception and waiting areas for passenger departure and arrival; provision of flight information; passenger check-in services; passenger and/or freight transport by air; car parking, car parking booking and information services; airport information services and flight information services; advisory and information services relating to travel; tour operator services and tourist agency services; sightseeing services; tourism services; provision of tourism and travel information; ticket booking and reservation services for travel; tourist offices; transport of passengers; arranging of air travel; organisation and management of tours; travel agency services; booking and reservation of travel; arranging travel and information therefor; arranging travel and information therefor, all provided on-line from a computer database or the Internet; provision of travel information; providing electronic information concerning travel and travel destinations; car hire services.

Class 45: Security services for the protection of property and individuals; surveillance services, airport fire services; airport security services; safety services; airport baggage security inspection services; baggage screening services; screening of individuals for security purposes; information and advisory services in the field of security and/or safety; chaperoning and escort services; personal shopper services.

2. On 3 December 2013, the Intellectual Property Office ('IPO') issued an Examination Report in response to the application. In the report, a partial objection was raised under sections 3(1)(b) and (c) of the Trade Marks Act 1994 ('the Act'). The examiner justified the objection by stating that *"the mark consists exclusively of the term 'London City Airport' being a sign which may serve in trade to designate the kind of the services e.g. services relating to London City Airport"*. The objection was raised only in respect of the following services:

Class 39: Transport; travel arrangement; transport and travel services; airport passenger shuttle services between the airport and airport parking facilities; provision of flight information; car parking, car parking booking and information services; advisory and information services relating to travel; tour operator services and tourist agency services; ticket booking and reservation services for travel; transport of passengers; booking and reservation of travel; arranging travel and information therefor; arranging travel and information therefor, all provided on-line from a computer database or the Internet; provision of travel information; providing electronic information concerning travel and travel destinations; car hire services.

O-370-15

3. On 3 April 2014, Gill, Jennings & Every LLP, acting as the applicant's representative, wrote to the IPO requesting that an *ex parte* hearing be appointed. The hearing was duly arranged for 17 June 2014.
4. At the hearing before me, where the applicant was represented by Mr Mark Devaney of Gill, Jennings & Every LLP ('the agent'), the objection was maintained and a period of three months was granted so that both the agent and applicant could consider the implications of a recent decision of the Appointed Person (Professor Ruth Annand) addressing two signs with clear conceptual similarities to the application in suit (i.e. BL O-386-13 'CARDIFF AIRPORT' and 'BELFAST INTERNATIONAL AIRPORT'), and to consider the possibility of filing evidence in support of a claim to distinctiveness acquired through use. No further submissions were made by the agent in support of the application, but on 23 July 2014 Mr Devaney requested in light of the aforementioned AP decision that the hearing officer identify those terms which still faced an objection. This was indicated in the official letter dated 30 July 2014 as follows:

Class 39: Transport; travel arrangement; transport and travel services; airport passenger shuttle services between the airport and airport parking facilities; car parking, car parking booking and information services; ticket booking and reservation services for travel; transport of passengers; booking and reservation of travel; arranging travel and information therefor; arranging travel and information therefor, all provided on-line from a computer database or the Internet; provision of travel information; providing electronic information concerning travel and travel destinations.

In this same letter, I confirmed that the section 3(1) objection had been waived in respect of the following:

Class 39: Provision of flight information; advisory and information services relating to travel; tour operator services and tourist agency services; car hire services.

5. On 30 September 2014, Mr Devaney confirmed the applicant's intention to appeal the decision. A form TM5 requesting a statement of reasons for the Registrar's decision was submitted on 13 November 2014.
6. I am now asked under section 76 of the Trade Marks Act 1994 and rule 69 of the Trade Marks Rules 2008, to state in writing the grounds of my decision and the materials used in arriving at it. No formal evidence has been put before me for the purposes of demonstrating acquired distinctiveness. Therefore, I have only the *prima facie* case to consider.

The applicant's case for registration

7. Prior to setting out the law in relation to sections 3(1)(b) and (c) of the Act, the following decision will set out my reasons for maintaining the objections by reviewing and assessing the mark applied for. The arguments submitted orally by Mr Devaney at the hearing in respect of *prima facie* acceptance were those of equal treatment based on a

O-370-15

number of earlier registrations which he considered to be equitable to this application, namely the marks 'Heathrow' and 'London Luton Airport', both of which were registered for the same services as those claimed in this application.

The Law

8. Section 3(1) of the Act reads as follows:

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

(a)...

(b) trade marks which are devoid of any distinctive character.

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or rendering of services, or other characteristics of goods or services,

(d)...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

The above provisions mirror Articles 3(1)(b) and (c) of First Council Directive 89/104 of 21 December 1988. The proviso to (UK Act) section 3 is based on the equivalent provision of Article 3(3).

Decision - Section 3(1)(c)

9. I acknowledge Mr Devaney's submissions based on the principle of equal treatment. However, at the same time I must assess the mark on its own merits, and therefore attach limited significance to the fact that other 'airport' marks have already been registered.
10. As regards earlier marks registered by the IPO, I am unaware of the circumstances surrounding their acceptance, and consider them to be of little assistance in determining the outcome of this application. I draw support for this from the judgement of Jacob J in *British Sugar* [1996] RPC 281 at 305 where the following was stated:

"Both sides invited me to have regard to the state of the register. Some traders have registered marks consisting of or incorporating the word 'Treat'. I do not think this assists the factual enquiry one way or the other, save perhaps to confirm that this is the sort of word in which traders would like a monopoly. In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the registrar to put the marks concerned on the register. It has long been held under the old Act

O-370-15

that comparison with other marks on the register is in principle irrelevant when considering a particular mark tendered for registration, see e.g. MADAME Trade Mark and the same must be true under the 1994 Act. I disregard the state of the register evidence."

The point was recently reconfirmed by the CJEU in Case C-51/10 P, *Agencja Wydawnicza Technopol sp. z o.o. v. OHIM* [2011] ECR I-1541, where the Registering Authority's frontline role in conducting a full and stringent examination based on the circumstances of the particular case was emphasised:

"77. Moreover, for reasons of legal certainty and, indeed, of sound administration, the examination of any trade mark application must be stringent and full, in order to prevent trade marks from being improperly registered (OHIM v Erpo Möbelwerk, paragraph 45, and OHIM v BORCO- Marken-Import Matthiesen, paragraph 45). That examination must be undertaken in each individual case. The registration of a sign as a mark depends on specific criteria, which are applicable in the factual circumstances of the particular case and the purpose of which is to ascertain whether the sign at issue is caught by a ground for refusal (see, to that effect, as regards Article 3 of Directive 89/104, Case C-218/01 Henkel [2004] ECR I-1725, paragraph 62)."

11. In *JanSport Apparel Corp v Office for Harmonisation in the Internal Market* (Case T-80/07) the General Court gave a helpful summary of the considerations to be taken into account in relation to Article 7(1)(c) of the regulation, the equivalent of section 3(1)(c) of the Act:

"18. Under Article 7(1)(c) of Regulation No 40/94, trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service are not to be registered.

19. By prohibiting the registration of such signs, that article pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (Case C-191/01 P OHIM v Wrigley [2003] ECR I-12447, paragraph 31).

20. Furthermore, the signs covered by Article 7(1)(c) of Regulation No 40/94 are signs regarded as incapable of performing the essential function of a trade mark, namely that of identifying the commercial origin of the goods or services, thus enabling the consumer who acquired the product or service to repeat the experience, if it proves to be positive, or to avoid it, if it proves to be negative, on the occasion of a subsequent acquisition (Case T-219/00 Ellos v OHIM (ELLOS) [2002] ECR II-753, paragraph 28, and Case T-348/02 Quick v OHIM (Quick) [2003] ECR II-5071, paragraph 28).

O-370-15

21. *The signs and indications referred to in Article 7(1)(c) of Regulation No 40/94 are thus only those which may serve in normal usage from a consumer's point of view to designate, either directly or by reference to one of their essential characteristics, goods or services such as those in respect of which registration is sought (see the judgment of 9 July 2008 in Case T-323/05 Coffee Store OHIM (THE COFFEE STORE), not published in the ECR, paragraph 31 and the case-law cited). Accordingly, a sign's descriptiveness can only be assessed by reference to the goods or services concerned and to the way in which it is understood by the relevant public (Case T- 322/03 Telefon & Buch v OHIM - Herold Business Data (WEISSE SEITEN) [2006] ECR II-835, paragraph 90).*

22. *It follows that, for a sign to be caught by the prohibition set out in that provision, there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics (see Case T-19/04 Metso Paper Automation v OHIM (PAPERLAB) [2005] ECR II-2383, paragraph 25 and the case-law cited).*

23. *It must finally be pointed out that the criteria established by the case law for the purpose of determining whether a word mark composed of several word elements is descriptive or not are identical to those applied in the case of a word mark containing only a single element (Case T-28/06 RheinfelsQuellen H. Hövelmann v OHIM (VOM URSPRUNG HER VOLLKOMMEN) [2007] ECR II- 4413, paragraph 21)."*

12. Of particular relevance to this case, the leading authority on geographical names is the judgment of the Court of Justice of the European Union ('CJEU') in *Windsurfing Chiemsee* (Joined cases C-108/97 and C-109/9 'Chiemsee') where it was stated:

"37. In view of the foregoing, the answer to the questions on Article 3(1)(c) of the Directive must be that Article 3(1)(c) is to be interpreted as meaning that:

- It does not prohibit the registration of geographical names as trade marks solely where the names designate places which are, in the mind of the relevant class of persons, currently associated with the category of goods in question; it also applies to geographical names which are liable to be used in future by the undertakings concerned as an indication of the geographical origin of that category of goods;

- Where there is currently no association in the mind of the relevant class of persons between the geographical name and the category of goods in question, the competent authority must assess whether it is reasonable to assume that such a name is, in the mind of the relevant class of persons, capable of designating the geographical origin of that category of goods;

- In making that assessment, particular consideration should be given to the degree of familiarity amongst the relevant class of persons with the geographical name in

O-370-15

question, with the characteristics of the place designated by that name, and with the category of goods concerned;

- it is not necessary for the goods to be manufactured in the geographical location in order for them to be associated with it.”

13. In relation to section 3(1)(c), and in relation to the issue of geographical designation, *Chiemsee* highlights that the interest pursues an aim of ensuring that geographical names which may serve to designate the geographical origin of the relevant goods/ services remain free for the use by other traders. The Court stated further in the decision that:

"25. However, Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the categories of goods or services in respect of which registration is applied for may be freely used by all, including as collective marks or as part of complex or graphic marks. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks.

26. As regards, more particularly, signs or indications which may serve to designate the geographical origin of the categories of goods in relation to which registration of the mark is applied for, especially geographical names, it is in the public interest that they remain available, not least because they may be an indication of the quality and other characteristics of the categories of goods concerned, and may also, in various ways, influence consumer tastes by, for instance, associating the goods with a place that may give rise to a favourable response.”

14. As stated in *Chiemsee*, section 3(1)(c) of the Act excludes signs which may serve, in trade, to designate the kind of services or other characteristics of the services. The objectionable services at issue here are *'transport; travel arrangements; transport services passenger transport by road or rail; taxi services, taxi booking and information services; car parking, car park booking and information services; advisory and information services relating to travel; booking of reservation of seats/tickets for travel; car parking'* in class 39.
15. Having regard to identifying the relevant consumer, it is reasonable to assume that the services claimed can be described as being directed towards both the general public (which regularly uses public transport in order to go about its daily business, whether that be a short bus trip to a local shopping centre, or a flight to a holiday destination) and a more specialist consumer seeking to use road, rail and air services in order to engage in business activity. Either way, although the level of attention paid in selection of such services may vary a little, it is reasonable to assume that a moderate level of attention will be paid and that the average consumer will be reasonably well informed, observant and circumspect.

The Mark

O-370-15

16. The mark applied for consists of three words that would be readily understood by the average consumer without the need of any specialist knowledge or technical understanding. However, for the sake of completeness, and to avoid any doubt as to their exact meanings, I refer to the following definitions taken from Collins English Dictionary:

London *noun* 1. the capital of the United Kingdom, a port in S England on the River Thames near its estuary on the North Sea: consists of the *City* (the financial quarter), the *West End* (the entertainment and major shopping centre), the *East End* (the industrial and former dock area), and extensive suburbs.

City *noun*: 1. Any large or populous place.

Airport *noun*: a landing and taking-off area for civil aircraft, usually with surfaced runways and aircraft maintenance and passenger facilities.

17. The section 3(1) objection was raised in full accordance with guidance published in the IPO's 'Addendum to the Examination Guide' which is accessible on the IPO website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406241/Manual_of_trade_marks_practice.pdf where, at page 264 and under the heading 'Airport', the following is stated:

"AIRPORT

Names of airports such as BIRMINGHAM AIRPORT will normally be acceptable for services without the need for evidence of distinctiveness to be filed. Objection should only be taken under section 3(1)(b) and (c) where specifications include 'transport services' such as shuttle buses, taxis etc. as it is likely that consumers would expect there to be more than one undertaking providing transport services to and from an airport and would therefore be descriptive of the destination/intended purpose of the services."

18. Having established that each word has a separate meaning, I am required to decide whether the combination of those words falls foul of the requirements set out in sections 3(1)(b) and (c). With that in mind, I do not believe the combination can lay claim to any grammatical or linguistic imperfection or peculiarity such as might help to escape its inherent descriptiveness. In my view, the term 'London City Airport' would commonly and on first impression be understood to describe an airport based within the boundaries of London.
19. The section 3(1)(c) objection is therefore based on the premise that the term 'London City Airport', when used in respect of those services set out at paragraph 4 above, would be understood as a descriptive reference to their inherent characteristics. For example, in respect of a claim to transport services at large, the protection would likely encompass transport services to and from the airport by bus, coach, etc. In this type of scenario, the sign would do no more than serve to designate either the *destination* of the transport services or their geographical origin. Such services are frequently provided by undertakings which have no official connection to the airport and, when used in this context, the term would merely designate a characteristic of the services. Similarly, in respect of 'car parking' the term would serve to designate facilities located at, near to, or

O-370-15

suitable for, an airport based in the City of London. The same logic can be applied to 'booking or reservation of seats/tickets for travel' where, in my view, the term would merely serve to designate that the services are again provided from an airport based within the boundaries of London. In this respect, it is not unusual for several different tour operators to be based at airports, all of whom will offer booking and reservation of seats and tickets for travel from within the airport. This is what the Examiner was referring to in his original Examination Report when he stated, by way of further explanation around the section 3(1)(c) objection, that the sign describes services which "...relate to London City Airport".

20. The need for certain geographical designations to remain free for others to use is particularly relevant in the field of transport and travel services where, for example, an airport name is likely to be used in reference to the principal place from where these services stem from, and also as a designation of the geographical destination of the services. In my view, there would be a clear association in the mind of the relevant class of persons between the geographical name and the category of services in question, the net result being that the consumer would not, without prior education, perceive the sign as denoting trade origin.
21. In view of the fact that the terms covered by the objection are extremely broad, it is necessary to assess the distinctiveness of the sign by reference to all of the terms claimed. If there are services specified which are free of objection under section 3(1)(b) and (c), then they must be allowed to proceed. In Case C-239/05 *BVBA Management Training en Consultancy v Benelux-Merkenbureau*, the question being referred to the CJEU was whether the Directive must be interpreted as meaning that the competent authority is required to state its conclusion separately for each of the individual goods and services specified in the application. The Court answered (see paragraph 38) by confirming that, whilst the competent authority was required to assess an application by reference to all of its individual goods and services, the competent authority may use only general reasoning where the same ground of refusal is given for a category or group of goods or services. In this case, I regard all of the objectionable services to be in the same category (transport and travel services in class 39), and thus rely on general reasoning in refusing the mark for the services specified.
22. In taking a reasonably broad objection against the services claimed, it should be emphasised that the Registrar did provide the applicant with an opportunity to submit a limited specification for further consideration at the *ex parte* hearing. However, nothing was provided in response other than the agent's previously-documented inquiry as to which services were subject to the outstanding objection.
23. At paragraph 4 above, I referred to the recent Appointed Person decision in *CARDIFF AIRPORT* and *BELFAST INTERNATIONAL AIRPORT* (BL O-386-13) which, in the interests of completeness, it is useful for me to note that similar objections to those taken in this case were previously considered in that case, and that those objections were confirmed as being appropriate and correct. Paragraph 29 of the decision states that:

O-370-15

"In conclusion, the Applicants have not persuaded me that the Hearing Officer was wrong to refuse trade mark registration to CARDIFF AIRPORT and BELFAST INTERNATIONAL AIRPORT in respect of the subject services for the reasons she gave in her decision. Indeed, I agree with her assessments. In the absence of acquired distinctiveness, the trade marks were excluded from registration for the said transport and car parking etc. services under Section 3(1)(c) and 3(1)(b) of the Act."

24. Having found the mark to be excluded from registration by section 3(1)(c), that effectively ends the matter. However, in case I am found to be wrong in that respect, I will go on to determine the matter under section 3(1)(b). I should at this point stress that since an objection has been made under section 3(1)(c), this automatically engages section 3(1)(b). However, it can be useful to also consider section 3(1)(b) in its own right - the scope of the two provisions is not identical, and marks which are not descriptive under section 3(1)(c) can nonetheless be devoid of any distinctive pursuant to section 3(1)(b).

Decision - Section 3(1)(b)

25. In relation to section 3(1)(b), the CJEU held in Case C-363/99 *Koninklijke KNP Nederland NV v Benelux-Merkenbureau* ('Postkantoor') that:

"86. In particular, a word mark which is descriptive of characteristics of goods or services for the purposes of Article 3(1)(c) of the Directive is, on that account, necessarily devoid of any distinctive character with regards to the same goods or services within the meaning of Article 3(1)(b) of the Directive. A mark may none the less be devoid of any distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive."

26. I approach this ground of objection on the basis of the following principles derived from the CJEU cases referred to below:
- An objection under section 3(1)(b) operates independently of objections under section 3(1)(c) - (*Linde AG (and others) v Deutsches Patent und Markenamt*, Joined Cases C-53/01 to C-55/01, paragraphs 67 to 68);
 - For a mark to possess a distinctive character it must identify the product (or service) in respect of which registration is applied for as originating from a particular undertaking and thus distinguish that product (or service) from the products (or services) of other undertakings (*Linde* paragraphs 40-41 and 47);
 - A mark may be devoid of distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive (*Postkantoor* paragraph 86);
 - A trade mark's distinctiveness is not to be considered in the abstract but rather by reference to the goods or services in respect of which registration is sought, and by reference to the relevant public's perception of that mark (*Libertel Group BV v Benelux Merkenbureau* Case C-104/01 paragraphs 72-77);

O-370-15

- The relevant public must be deemed to be composed of the average consumer who is reasonably well-informed and reasonably observant and circumspect (*Libertel* paragraph 46 referring to Case C-342/97 *Lloyd Schuhfabrik Meyer*).
27. The question arises as to whether the term may still be devoid of any distinctive character under section 3(1)(b) in relation to the services at issue, even in the event of it not precisely designating a characteristic of the services as per section 3(1)(c). In this respect, the public interest underlying the provision for refusal of marks lacking distinctive character has been examined by the CJEU in Case C-104/01 *Libertel Groep BV v Benelux-Merkenbrau* [2003] (*Libertel*). In that case, the Court found that the public interest was "*not unduly restricting the availability*" of the given variety of mark for other traders. Advocate-General Jacobs, in his opinion in *SAT.2*, (C-329/02) gave this further consideration and pointed out that the policy underlining CTMR Article 7(1)(b) / UKTMA section 3(1)(b) is distinct from the public interest behind CTMR Article 7(1)(c) / UKTMA section 3(1)(c). He pointed out that "*there is no obvious reason why signs which simply lack any distinctive character - even if that lack is not absolute but relates only to the goods and services concerned - should be kept free for general use unless the signs themselves also have some close relationship with the relevant products*".
28. In my opinion, even if the mark falls short of conveying the requisite level of specificity and objectivity to support an objection under section 3(1)(c), I would nevertheless hold that it is not capable of performing the essential function of a trade mark without the relevant public being educated into seeing it that way. In my view, consumers would not consider the mark to denote transport and travel-related services provided by any one specific provider. Rather, it would serve to provide a non-distinctive 'functional' purpose, likely to be used by any number of service providers working in or around London City Airport. On this basis I consider that the section 3(1)(b) objection is also made out.
- 29 I believe that the mark applied for will not be identifiable as an indicator of trade origin without the public being first educated to the fact. I must therefore conclude that it is devoid of any distinctive character, and thus excluded from *prima facie* acceptance under section 3(1)(b) of the Act. For reasons identical to those presented in respect of the objection under section 3(1)(c), the refusal under section 3(1)(b) applies to all of the services referred to below:
- Class 39 Transport; travel arrangement; transport and travel services; airport passenger shuttle services between the airport and airport parking facilities; car parking, car parking booking and information services; provision of travel information; ticket booking and reservation services for travel; transport of passengers; booking and reservation of travel; arranging travel and information therefor; arranging travel and information therefor, all provided on-line from a computer database or the Internet; provision of travel information; providing electronic information concerning travel and travel destinations.

Conclusion

O-370-15

30. In this decision, I have considered all the documents filed by the applicant and all the arguments submitted to me in relation to this application. Having done so, and for the reasons given above, the application is partially refused for the services contained in Class 39 specified in paragraph 4 above, under the terms of section 37(4) of the Act because it fails to qualify under sections 3(1)(b) and 3(1)(c) of the Act.

Dated this 5th day of August 2015

Carol Bennett
For the Registrar
The Comptroller-General