

O-068-16

Trade Marks Act 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NOS 2635619 & 2635620
BY CIRCLE HEALTH LIMITED
TO REGISTER THE TRADE MARKS**

CIRCLE

&



IN CLASSES 35, 39, 43 & 44

**AND IN THE MATTER OF CONSOLIDATED OPPOSITIONS
THERE TO UNDER NOS 104481 & 400409
BY CIRCLE ANGLIA LTD**

Background and pleadings

1) On 21 September 2012, Circle Health Limited (“the applicant”) applied to register the following trade marks (“the applications”) in the UK.

Mark: CIRCLE (hereafter “CIRCLE (word)”)

Number: 2635619

Publication date: 9 November 2012

Services¹:

Class 35: Advertising; business management, advice, assistance, administration and consultancy services; professional business consultancy; business management and organization consultancy; business evaluations; efficiency experts; business investigations, business inquiries; business research; office functions; electronic data storage; advertising services provided via the Internet; accountancy; provision of business information; all the aforesaid services relating to hospitals, healthcare clinics and treatment centres for others; management of hospitals, health care clinics and treatment centres for others; advice, information and consultancy services for all of the aforesaid services; but not including consultancy services to the pharmaceutical industry.

Class 39: Transport; packaging and storage of goods; travel arrangement; provision of car parking facilities; services for the transportation by air, land or sea of people or apparatus and instruments; ambulance services; delivery of pharmaceuticals, drugs and medicines; all the aforesaid services relating to the medical, surgical and healthcare fields; advice, information and consultancy services for all of the aforesaid services.

Class 43: Services for providing food and drink; restaurant, bar and catering services; all the aforesaid services offered within hospitals, healthcare clinics and treatment centres for others; crèche services; advice, information and consultancy services for all of the aforesaid services.

Class 44: Medical services; hygienic and beauty care for human beings; dentistry services; medical analysis for the diagnosis and treatment of persons; pharmacy advice; hospital services; provision of hospital facilities; rental of hospital equipment; surgical and medical services; medical clinic services; medical services; medical treatment services; conducting medical examinations; compilation of medical reports; surgical treatment services; therapeutic treatment services; healthcare services; health clinic services; homeopathic clinical services; arranging of medical and surgical treatment; medical and surgical diagnostic services; telemedicine services; the remote diagnosis and treatment of patients by means of telecommunications technology; cosmetic treatment; cosmetic surgery and plastic surgery; physiotherapy services; counselling for the psychological treatment of medical ailments; dietetic counselling services; behavioural analysis for medical

¹ The list of services has been amended, including the deletion of class 37. However, this is the current list of services applicable to this opposition.



purposes; genetic testing for medical purposes; monitoring of patients; nursing care services; convalescent home services; nursing home services; rest home services; provision of health care services in domestic homes; health screening services; medical health and fitness assessment services; health and medical information services; exercise facilities for health rehabilitation purposes; health hydro services; advice, information and consultancy services for all of the aforesaid services.



Mark: (hereafter “CIRCLE (plus device)”)
Number: 2635620
Publication date: 9 November 2012
Services²: As 2635619

2) Circle Anglia Ltd (“opponent”) opposes both of the applications. The opposition against the CIRCLE (word) application (no. 2635619) is under no. 104481. The CIRCLE (word) application has been opposed on the basis of Sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Generally the claims made are as follows:

Section 5(2)(b)

Mark	Number	Filing date	Date of entry on Register	Classes
CIRCLE	2541975	12/03/10	07/01/11	16, 35, 36, 37, 41, 43 & 45
	2541794	12/03/10	01/10/10	16, 35, 36, 37, 41, 43 & 45
	2541793	12/03/10	19/11/10	16, 35, 36, 37, 41, 43 & 45

Section 5(3)



3) For the section 5(3) claim, the opponent relies upon the same earlier marks as those under section 5(2)(b). The opponent claims to have a reputation in the earlier marks. In particular, the opponent argues that due to its reputation the relevant public will believe that the services provided by the applicant will be those of, or economically connected, to the opponent. Further, due to the reputation acquired by

² The list of services has been amended, including the deletion of class 37. However, these are the current list of services applicable to this opposition.

the opponent, the applicant will ride on its coat tails and gain benefits by association, may tarnish the opponent's reputation or erode the distinctiveness of the mark. Accordingly, it is claimed that the application should be refused registration under section 5(3) of the Act.

Section 5(4)(a)

4) The section 5(4)(a) claim is on the basis of its alleged earlier rights in:

Sign	When was the earlier right first used?	Where was the earlier right first used?
CIRCLE	1968	London
	2005	UK
	2005	UK

5) The opponent claims to have a protectable goodwill in all of the goods and services which the earlier marks have been registered for and relied upon under sections 5(2)(b) and 5(3) of the Act. It claims that use of the trade mark applied for would constitute a misrepresentation which could cause damage by virtue of "diversion of sales, tarnishment of reputation or erosion of distinctiveness of the opponent's mark."

OPPOSITION NUMBER 400409

6) With regard to the opposition against trade mark application number 2635620, the claim is the same as opposition number 104481.

7) The opponent argues that the respective services are identical or similar and that the marks are identical. The applicant filed counterstatements in each opposition denying the claims made. The cases were subsequently consolidated. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate/necessary.

8) Both sides also filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision. A Hearing via video-link took place on 12 November 2015, with the applicant represented by Ms. Katy Adams of Groom Wilkes and Wright LLP. The opponent decided not to attend the hearing.

Evidence

Opponent's evidence

Witness statement of Paul Fakley and exhibits PF1 – PF16

9) Mr Fakley is the director of Innovation and Future Business for the opponent. This is a position he has held since 1 April 2015. Prior to this he was the opponent's Group Marketing Director, a position he held since 11 March 2013.

10) Mr Fakley states that the opponent is a not-for-profit organisation which was formed in 1968 and is one of England's largest groups of housing associations. He states that in 2005, Circle 33 Housing Group and Anglia Housing Group merged to form the opponent company. Now the Group consists of 12 partners who provide agency sales services, property sales, marketing and management of market rent, immediate rent, shared ownership and leasehold properties. Further, two of its partners provide sheltered and supported housing of their own homes. The support services include tele-care services.

11) Exhibit PF1 consists of a timeline of the opponent's history which shows that the business began as Circle 33 Housing Trust, changing its name and forming with other businesses. However, Circle is always included in the mark. Variants include Circle Care and Support Limited, Circle Anglia and Circle Housing Group.

12) Mr Fakley states that the opponent owns and manages 70,000 homes, including supported and sheltered housing, for around 200,000 people across England. He claims that the opponent also offers care and support services to a further 100,000 people across England.

13) Exhibit PF2 comprises of extracts from the opponent's annual report and accounts for the 2014 financial year. The first page refers to the opponent's core business as being "a wide range of housing choices in England, including affordable homes supported living and sheltered housing, in over 110 local authority areas."

14) Exhibit PF3 are earlier annual reports from 2006, 2007 and 2008. Mr Fakley states that these show the opponent's "continued growth and financial success and provide further details on the specific activities of Circle's Registered Providers and their development over the years"³.

15) Exhibit PF5: a copy of the opponent's brand guidelines dated August 2008. The guidelines make reference to Circle 33 Housing and Circle Anglia"

16) Mr Fakley states that the opponent manages properties and provides maintenance services for the properties in its area. He states that Circle Housing Russet is the largest provider of social housing within Tonbridge and Malling, owning and managing nearly 8,600 properties in that particular area. Further, he states that Circle Housing Mercian offers over 3,400 rented, leasehold and shared ownership

³ Paragraph 4 of the witness statement

properties, including 8 sheltered schemes for the over 55s and a supported housing scheme for single and homeless people across the West Midlands.

17) Exhibit PF6 consists of samples of promotional material which feature Circle Anglia, together with the circle device (no. 2541794). The material refers to Circle Anglia being a housing association, and includes advertisements for bringing housing association residents closer together through various meetings.

18) Exhibit PF7 consists of copies of "Invicta Telecare Alarming News". The article is dated Autumn 2007. The article refers to Circle Anglia, describing it as a housing association. The article includes the circle device which comprises registration no. 2541794.

19) Exhibit PF8 are extracts "from Invicta Telecare's 2007/2008 and 2009/2010 Annual Reports which outline performance for those years including number of alarm and telecare connections made and the results of customer satisfaction surveys. Mr Fakley claims that these reports demonstrate the continued growth of the customer base for these support services and the high level of customer satisfaction with services provided under this brand"⁴.

20) Exhibit PF9 consists of various press releases which demonstrate the variety of support services which the opponent offers under the CIRCLE brand. These services include social and entertainment events which are aimed at raising awareness of particular health benefits. A press release headed "Tonbridge disco a huge success" dated 12 June 2012 includes the following description of the opponent:

"Circle is one of the UK's leading providers of affordable housing. With a dedicated team of more than 2,200 staff, Circle manages more than 63,000 homes, including supported and sheltered housing, for around 200,000 people across the UK.

Its mission is to enhance the Life Chances of its residents by providing great homes and reliable services, and building sustainable communities."

21) Exhibit PF10 are samples of promotional material for the EPIC Trust which is a former CIRCLE sub-brand under which care and support services were provided by Circle. The exhibit includes a brochure, poster, cover pages for tender documents, letterheads, an annual review document and brochure for the Epic Trust's HARTS programme which Mr Fakley claims to show the CIRCLE mark prominently featured and the circle brand guidelines adhered to.

Revenue

22) Mr Fakley states that the revenue from Circle in the UK since 2005 is as follows. To support the turnover figures claimed, Mr Fakley attaches at exhibit PF11 of his witness statement the opponent's annual report and accounts for the 2014 financial year:

⁴ Paragraph 11 of the witness statement

Year	Turnover
2005/06	£127m
2006/07	£131m
2007/08	£170m
2008/09	£259m
2009/10	£291m
2010/11	£323m
2011/12	£333m
2012/13	£346m
2013/14	£363m

Marketing spend

23) Mr Fakley states that the opponent advertises through various media including television, radio, print publications such as newspapers, door drops, direct mail, email, pay per click, online display, posters and the internet. He provides the following expenditure amounts:

Year	Turnover
2008/09	£1,297,619
2009/10	£1,283,686
2010/11	£1,215,153
2011/12	£1,460,092
2012/13	£2,672,583
2013/14	£1,955,138
2014/15	£2,676,636

24) Mr Fakley states that the opponent also maintains the following websites, and attaches screenshots which he states were taken prior to 21 September 2013.

circlegroup.org.uk
circle.org.uk
centragroup.org.uk

25) Exhibit PF13: the opponent's annual media coverage report for 2011. The report shows that the total audience reached as a result of its advertising is 8.5 million people. The exhibit also includes clippings from regional newspapers which refer to the opponent. The majority of the clippings are dated prior to 21 September 2012 (the applications' filing date).

26) Mr Fakley states that in 2009 the opponent commissioned a study to estimate the level of loan shark activity over the 2009 Christmas period which he claims to have been widely publicised. He attaches at exhibit PF14 background on the report and details that the report was very wide spread, including national newspapers such as the Daily Mirror, Daily Mail, Guardian and the Times, regional newspapers and on a variety of websites including BBC Online, Virgin Media and Channel 4 News.

27) Exhibit PF15 “is the media coverage report for the years 2013 and 2104 for the Circle housing services under the CIRCLE brand and Circle care and support services now provided under the CENTRA sub-brand”⁵.

Awards and recognition

28) Mr Fakley goes on to detail the awards that the opponent has won, these include:

- Thorpe St Andrew Civic Award for their continuous care and support for the community through the De Carle House sheltered housing scheme.
- Innovative Large Housing provider Award and Most Innovative Affordable Housing Scheme (Orchard Village), Most Innovative Supported/Sheltered House (Cheshire Court) at the Housing Innovation Awards. Exhibit PF16 lists Orchard Village as being listed as one of England’s top five housing developments by planning minister, Nick Boles.
- Measurement of Social Return on Investment Award at the Housing Association National Accountancy Awards.
- Communications Excellence at the Guardian Public Services Awards.
- The Newingate housing development made the Inside Housing Magazine’s Top 50 Affordable Housing Developments in April 2014.
- Most Eco Aware Development (Newingate), Best Small Development, Best Large Development and Most Innovative Marketing Campaign at the First Time Buyer Awards.
- ASDA Enterprise Growth Award at the Responsible Business Awards.
- Business Transformation of the Year, Large Social Landlord of the Year and Sustainable Landlord of the Year at the UK Housing Awards.

Applicant’s evidence

Witness statement of Shane Kent Cobb and exhibit SKC1

29) Mr Cobb is employed by the applicant as their General Counsel, a position he has held since 2008. He states that the applicant is a wholly owned subsidiary of Circle Holdings plc, a Jersey registered company.

30) Mr Cobb describes the applicant as “the parent company of the Circle group’s operating companies, all of which are authorised to use the Trade Mark CIRCLE within the course of delivering healthcare and medical services. The Applicant also provides certain management and back office support for the operating companies.”⁶

31) He goes on to state that “The Applicant is the UK’s largest employee co-owned healthcare provider dedicated to delivering better healthcare outcomes and experiences for patients and greater efficiencies for the wider health economy.”⁷

⁵ Paragraph 35 of the witness statement

⁶ Paragraph 1 of the witness statement

⁷ Paragraph 4 of the witness statement

32) Mr Cobb states that the applicant has used CIRCLE continuously and extensively since 2007 in the UK across a very wide range of healthcare and medical services.

Section 5(2)(b)

33) Sections 5(2)(b) of the Act is as follows:

“5(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 trade mark is protected, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Comparison of goods and services

Class 35

34) The respective class 35 services are as follows:

Applicant Class 35 services	Opponent’s class 35 services
Advertising; business management, advice, assistance, administration and consultancy services; professional business consultancy; business management and organization consultancy; business evaluations; efficiency experts; business investigations, business inquiries; business research; office functions; electronic data storage; advertising services provided via the Internet; accountancy; provision of business information; all the aforesaid services relating to hospitals, healthcare clinics and treatment centres for others; management of hospitals, health care clinics and treatment centres for others; advice, information and consultancy services for all of the aforesaid services; but not including consultancy services to the pharmaceutical industry.	Advertising; business management; business administration; office functions; compilation of statistics; compilation of information into computer databases; all the aforesaid relating to the provision of accommodation; business management of real estate for others; information, advisory and consultancy services relating to all the aforesaid.

Advertising; advertising services provided via the Internet

35) The above terms are identical to the opponent’s “advertising”.

Business management, advice, assistance, administration and consultancy services; office functions; management of hospitals, health care clinics and treatment centres for others

36) Each of the above services are identical to the earlier “business management; business administration; office functions”.

37) In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court stated at paragraph 29 that:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Professional business consultancy; business management and organization consultancy

38) The opponent’s class 35 services end with the term “Information, advisory and consultancy services relating to all the aforesaid”. This effectively means that the opponent’s services include “business management advice, information, and consultancy services” which are identical to “professional business consultancy” and “business management consultancy”. With regard to “business organisation consultancy”, applying the principle of *Merici I* consider this to be under the same broad meaning of “business management consultancy”.

39) The remaining services covered by the applicant are: “business evaluations; efficiency experts; business investigations, business inquiries; business research; electronic data storage; accountancy; provision of business information; all the aforesaid services relating to hospitals, healthcare clinics and treatment centres for others; advice, information and consultancy services for all of the aforesaid services; but not including consultancy services to the pharmaceutical industry.”

40) Whilst the respective services are identical *per se*, both contain positive limitations which lessen the overall degree of similarity. Accordingly, I find the services to be similar to a medium degree.

Class 39

Applicant Class 39 services	Opponent class 43 services (no.2541795)
Transport; packaging and storage of goods; travel arrangement; provision of car parking facilities; services for the transportation by air, land or sea of people or apparatus and instruments; ambulance services; delivery of pharmaceuticals, drugs and medicines; all the aforesaid services relating to the medical, surgical and healthcare fields; advice, information and consultancy services for all of the aforesaid services.	Temporary accommodation services; rental of temporary accommodation; retirement home services; information, advisory and consultancy services relating to all the aforesaid.

Transport; travel arrangement; provision of car parking facilities; services for the transportation by air, land or sea of people or apparatus and instruments; ambulance services; advice, information and consultancy services for all of the aforesaid services

41) The opponent claims that its earlier class 43 services are similar to the applicant's class 39. This is on the basis that:

"...consumers are familiar with a supplier supplying not only the services of the Opponent, but also the services of the Applicant. Some of the services provided by the Opponent include *"temporary accommodation services"* and *"retirement home services"*. These services (both when offered by the Opponent and by other service providers) will often include *"transport...travel arrangement; provision of parking facilities; services for transportation of people"* amongst other services. By way of example, it is common for a retirement home to provide transportation for its residents, whether for day trips or for the weekly shop.

Consequently, we submit that the Class 39 services of the Applicant's Marks are complementary and therefore similar to the Class 43 services of the Circle Marks. Therefore, due to identity, alternatively the high degree of similarity between the Circle Marks and the Applicant's Marks, and due to the similarity between the Class 39 services covered by the Applicant's Marks and the Class 43 services covered by the Circle marks, we submit that the Applicant's Marks should be refused for the entirety of their Class 39 specifications."

42) In *YouView TV Ltd v Total Ltd* ,[2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

43) In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

44) In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

45) Taking into account the guidance provided in the *YouView*, *Beautimatic* and *Avnet I* I disagree with the opponent’s submissions. The nature and intended purpose of the respective services are not similar. The intended purpose of the applicant’s transport services are to transport something or someone from one place to another, whereas the opponent’s services are to temporarily accommodate someone. A person seeking temporary accommodation or a place to retire is not the same as somebody seeking transport. The opponent also argues that the respective services are complementary. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

46) In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

47) Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

48) In my view, nursing, convalescent and rest homes are likely to organise trips for their residents, possibly on a weekly basis. They may also organise transportation for individuals to attend appointments away from their home, for example at a hospital or doctor’s surgery. Services of this nature are less likely to be provided to people within retirement homes. Whilst some leisure activities which require transportation may be organised by the management (or consortium within the retirement home) I do not believe that the occupants will think that the transportation

comes from the same economic undertaking. I consider services of this nature may be complementary to nursing homes, but not to retirement homes. Whilst there is a fine distinction between the two, I believe that finding transport services being complementary or similar to retirement services is a step too far. They are not similar.

49) In view of the above, it must follow that the applied for “ambulance services; advice, information and consultancy services for all of the aforesaid services” are also not similar. Ambulance services are specialist to the NHS and some private healthcare agencies. They are neither similar nor complementary to the class 43 services.

Packaging and storage of goods; delivery of pharmaceuticals, drugs and medicines; all the aforesaid services relating to the medical, surgical and healthcare fields; Advice, information and consultancy services for all of the aforesaid services

50) The opponent has not specifically addressed why they consider the above services to be similar to those covered by its earlier mark, but they nevertheless claim that similarity exists. In my view, it is clear that the above services cannot be considered similar to “Temporary accommodation services; rental of temporary accommodation; retirement home services; information, advisory and consultancy services relating to all the aforesaid”. They clearly differ in nature since one is the provision of accommodation whereas the applied for services are storage, packaging and delivery of goods. Accordingly, consumers of the respective services differ and they are not in competition with one another. They are not similar.

Class 43

Applicant class 43 services (no. 2635619)	Opponent class 43 services (no. 2541795)
Services for providing food and drink; restaurant, bar and catering services; all the aforesaid services offered within hospitals, healthcare clinics and treatment centres for others; crèche services; advice, information and consultancy services for all of the aforesaid services.	Temporary accommodation services; rental of temporary accommodation; retirement home services; information, advisory and consultancy services relating to all the aforesaid.

51) The opponent argues that:

“We have already outlined our arguments as to why healthcare services generally should be considered similar to housing association services and retirement home services. It is common practice for retirement homes to provide foods for its residents through what is sometimes known as “meals on wheels”. We submit that the Class 43 services of the Applicant’s Marks are complementary and therefore similar to the Class 43 services of the Circle Marks.”

52) Temporary accommodation and rental of accommodation services plus retirement home services could include providing board and lodging, i.e. providing meals as well as somewhere to stay. Notwithstanding this, taking into account the *Avnet* core meaning principle, any consideration of services has to be restricted to “substance, as it were, of the core of possible meanings attributable to the rather general phrase”. Accordingly, whilst accommodation and retirement home providers may also provide food and drink, this is not their “core” service. Since temporary accommodation, such as hotels, usually have restaurants, bars or cafes which are open to the general public they may also be known for food and drink as well as for their core temporary accommodation services. However, in this instance the applicant’s services are limited to hospitals, healthcare clinics, etc. Whilst these places are generally open to the public, people will not visit the hospitals, etc just for its food and drink. Therefore, they will not become independently known for its food and drink. Further, the users of the respective services may differ and they would not be in competition with one another. Accordingly, due to the applicant’s limitation, I do not consider the services to be similar.

53) With regard to crèche services, the services provided are different to those covered by the opponent. Whilst a crèche may provide food and drink for the children or possibly parents, they do not present themselves to be cafes or restaurants so the end user and nature of services differ. Further they are not in competition or complementary.

Class 44

Applicant class 44 services (no. 2635619)	Opponent classes 43 &45 services (no. 2541795)
<p>Medical services; hygienic and beauty care for human beings; dentistry services; medical analysis for the diagnosis and treatment of persons; pharmacy advice; hospital services; provision of hospital facilities; rental of hospital equipment; surgical and medical services; medical clinic services; medical services; medical treatment services; conducting medical examinations; compilation of medical reports; surgical treatment services; therapeutic treatment services; healthcare services; health clinic services; homeopathic clinical services; arranging of medical and surgical treatment; medical and surgical diagnostic services; telemedicine services; the remote diagnosis and treatment of patients by means of telecommunications technology; cosmetic treatment; cosmetic surgery and plastic surgery; physiotherapy services; counselling for the psychological treatment of medical ailments; dietetic counselling services; behavioural analysis for medical purposes; genetic testing for medical purposes; monitoring of patients; nursing care services; convalescent home services; nursing</p>	<p>Class 43: Temporary accommodation services; rental of temporary accommodation; retirement home services; information, advisory and consultancy services relating to all the aforesaid.</p> <p>Class 45: Legal services; personal and social services rendered by others to meet the needs of individuals; social work services; arbitration services; legal support services; all the aforesaid relating to the provision of accommodation; legal services relating to statutory powers dealing with unfit housing; security services for the protection of property and individuals; legal services relating to the purchase and</p>

home services; rest home services; provision of health care services in domestic homes; health screening services; medical health and fitness assessment services; health and medical information services; exercise facilities for health rehabilitation purposes; health hydro services; advice, information and consultancy services for all of the aforesaid services.	sale of property; legal services relating to real estate; conveyancing services; information and consultancy services relating to health and safety; information, advisory and consultancy services relating to all the all of the aforesaid.
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Convalescent home services; nursing home services; rest home services

54) The opponent claims that the above services are identical (or at least highly similar) to its class 43 “retirement home services”.

55) The opponent’s convalescent, nursing and rest home services are all provided to people that require a home which provides continual care. People who require these services are likely to be older people or adults with mental or physical disabilities. The purpose of the services is to ensure that the occupants of the homes are made comfortable and receive day to day care. The service providers do not generally provide specialist medical care, carry out operations, or diagnose health or mental conditions but they may administer or monitor health conditions for the benefit of more specialist service providers.

56) With regard to the opponent’s retirement home services, I consider these services to be more of a property management type service rather than medical or day to day care as provided by the opponent. People seeking a retirement home do not require continual care, though I accept that some retirement homes may provide limited care and assistance. People seeking retirement homes will generally base their decision on a location and home which will suit their individual requirements in order to enjoy their retirement. Such considerations may include, *inter alia*, comfort, location, safety, social and leisure facilities. Whilst convalescent, nursing and rest home services also provide a home for individuals, the nature of the home differs. Further, the users of the respective services also differ since one will require continual care and the other just seeks residence. I also do not consider the respective services to be in competition since you are either require care, or you do not. Taking all of the aforementioned into consideration, I find that there is a low degree of similarity between the respective services.

Remaining class 44 services

57) With regard to the remaining class 44 services I do not consider them to be similar to retirement home services. Each service is specialist and would be sought by people who require specialist medical care or attention. They are not in competition with one another and are not complementary.

58) The opponent also argues that its class 45 “social services” are also similar to the applied for class 44 services. In my view social services are aimed at assisting people in the community who suffer some form of social deprivation. Whilst social services may visit people in convalescent, nursing or rest homes I am not satisfied

that within the parameters of the case law, the services can be considered to be similar. They are not in competition and would be sought by different end users.




Comparison of marks

59) 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 Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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.”

60) It would be wrong, therefore, to artificially dissect the trade 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.

61) The respective trade marks are shown below:

Earlier trade mark	Applications
CIRCLE	CIRCLE
	
	

CIRCLE (word)

62) It is clear that the respective CIRCLE (word) marks are identical.

CIRCLE (plus device)

63) With regard to the CIRCLE (plus device) application, the device around the word, even with a small proportion on the right hand side being shaded white, merely reinforces the circle message. Therefore, the overall impression of the mark is Circle.

64) Aurally, the circle device will not be pronounced since it merely projects the same message as the word. Therefore, the respective marks would be referred to as Circle marks so they are identical.

65) Visually, the respective word elements are identical. Whilst the application also contains a device element, this does reduce the extent of visual similarity. However, since the distinctive character of the device does not detract the overall impression from residing in the word Circle (reinforced by the device), I consider the marks to be visually similar to a high degree.

66) Conceptually, the respective marks will be remembered as Circle. Therefore, I find the marks to be conceptually identical.

67) Since the CIRCLE (word) mark represent the opponent's best case, I am not required to analyse the degree of similarity based on the opponent's remaining two earlier marks.

Average consumer and the purchasing act

68) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

69) 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 at paragraph 60 in these terms:

“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.”

70) The respective specifications cover a range of services. Generally, the average consumers of the services would be the public at large, though in relation to some of the class 35 services I would expect these to be mainly businesses. Many of the remaining services appear more relevant to patients within various medical establishments, staff working within such organisations or visitors. Average

consumers will also be people seeking either a retirement or nursing home. For all of the aforesaid I consider the level of care and attention to be high.

71) With regard to the way in which the services will be acquired, I consider all of them to be sought following a visual inspection, though I do not discount aural considerations.

Distinctive character of the earlier trade mark

72) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated at paragraphs 22 and 23 that:

“In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

73) The opponent has provided evidence of use of its earlier CIRCLE (word) mark. The evidence shows that it has used its mark, to a significant extent, in the housing association sector. On this basis, the opponent has proven an enhanced degree of distinctive character for housing association services.

74) From an inherent perspective, CIRCLE is an easily understood word which is instantly recognisable. The mark does not directly describe or allude to the goods in question, though given its ordinary and well known meaning I consider the inherent distinctive character to be low to medium.

Likelihood of confusion

75) Where there is no similarity between the services there cannot be a likelihood of confusion. Therefore, the opposition fails against Classes 39 and 43 in its entirety.

76) With regard to the remaining services, deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier

in this decision. One of those principles states that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*). I must also keep in mind the distinctive character of the opponent's mark as the more distinctive these marks are, the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture retained in their mind.

77) I summarise my key findings as follows:

- The respective CIRCLE (word) marks are identical.
- I found that the opponent's CIRCLE (word) registration is aurally and conceptually identical to CIRCLE (plus device). They are visually similar to a high degree.
- The average consumer will pay a high degree of care and attention when purchasing the subject services, and it will follow a visual inspection. However, I take into consideration aural referrals.
- The opponent's CIRCLE (word) registration has an enhanced distinctive character in the housing association sector. From an inherent distinctiveness perspective, it has a medium degree of distinctive character.
- Some of the class 35 services are identical (see below), and the remaining are similar to a medium degree. Some of the applied for class 44 services are similar to the opponent's class 43 "retirement services".

Conclusion

CIRCLE (word)

78) Since the respective CIRCLE (words) marks and some of the class 35 services are identical, there is an inevitable likelihood of direct confusion. Therefore, the section 5(2)(b) claim succeeds against the following class 35 services:

"Advertising; advertising services provided via the Internet; business management, advice, assistance, administration and consultancy services; office functions; management of hospitals, health care clinics and treatment centres for others; professional business consultancy; business management and organization consultancy"

79) With regard to the remaining services (see below), I found there to a medium degree of similarity:

"business evaluations; efficiency experts; business investigations, business inquiries; business research; electronic data storage; accountancy; provision of business information; all the aforesaid services relating to hospitals,

healthcare clinics and treatment centres for others; advice, information and consultancy services for all of the aforesaid services; but not including consultancy services to the pharmaceutical industry”

80) Whilst there is a lesser degree of similarity between the services, this has been offset by the identical marks⁸. Therefore, there is a likelihood of confusion for the above mentioned class 35 services.

81) With regard to the class 44 “convalescent home services; nursing home services; rest home services” I found that they are similar to the opponent’s “retirement home services” are similar to a low degree. Once again I consider the lesser degree of similarity between the services has been offset by the marks being identical. Also taking into account the medium degree of distinctive character, a medium degree of care and attention paid upon acquiring the services, I find that there is a likelihood of direct confusion.

CIRCLE (plus device)

82) With regard to the CIRCLE (plus device) application, whilst the mark is not identical to the earlier CIRCLE word mark the only difference is the device which reinforces the Circe message. The marks are similar to such an extent that they also sufficiently offset any lesser degree of similarity between the services. Therefore, I also find there to be a likelihood of confusion between the CIRCLE (plus device) application and the opponent’s earlier CIRCLE mark.

83) To summarise, the opposition succeeds against the CIRCLE (word) and CIRCLE (plus device) for the following:

- Class 35 in its entirety
- Class 44 “convalescent home services; nursing home services; rest home services”

84) The opposition fails under section 5(2)(b) of the Act for the remaining services.

SECTION 5(3)

85) Section 5(3) states:

“(3) A trade mark which-

(a) 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.”

⁸ *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*

General principles

86) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and C-487/07, *L'Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

Preliminary point

87) Since the opposition has succeeded against some of the following services, the section 5(3) claim shall only be considered in relation the services it has not succeeded. These are:

Class 39: Transport; packaging and storage of goods; travel arrangement; provision of car parking facilities; services for the transportation by air, land or sea of people or apparatus and instruments; ambulance services; delivery of pharmaceuticals, drugs and medicines; all the aforesaid services relating to the medical, surgical and healthcare fields; advice, information and consultancy services for all of the aforesaid services.

Class 43: Services for providing food and drink; restaurant, bar and catering services; all the aforesaid services offered within hospitals, healthcare clinics and treatment centres for others; crèche services; advice, information and consultancy services for all of the aforesaid services.

Class 44: Medical services; hygienic and beauty care for human beings; dentistry services; medical analysis for the diagnosis and treatment of persons; pharmacy advice; hospital services; provision of hospital facilities; rental of hospital equipment; surgical and medical services; medical clinic services; medical services; medical treatment services; conducting medical examinations; compilation of medical reports; surgical treatment services; therapeutic treatment services; healthcare services; health clinic services; homeopathic clinical services; arranging of medical and surgical treatment; medical and surgical diagnostic services; telemedicine services; the remote diagnosis and treatment of patients by means of telecommunications technology; cosmetic treatment; cosmetic surgery and plastic surgery; physiotherapy services; counselling for the psychological treatment of medical ailments; dietetic counselling services; behavioural analysis for medical purposes; genetic testing for medical purposes; monitoring of patients; nursing care services; provision of health care services in domestic homes; health screening services; medical health and fitness assessment services; health and medical information services; exercise facilities for health rehabilitation purposes; health hydro services; advice, information and consultancy services for all of the aforesaid services.

Does the opponent have the requisite reputation?

88) 'Reputation' for the purposes of Section 5(3) means that the earlier mark is known by a significant part of the public concerned with the products or services covered by that mark (paragraph 26 of the CJEU's judgment in *General Motors Corp v Yplon SA (CHEVY)* [1999] ETMR 122 and [2000] RPC 572).

89) I shall firstly carry out the section 5(3) assessment based on the opponent's CIRCLE (word) mark since this represents its best case. If they are unsuccessful, it follows that they are in no better position under its CIRCLE (plus device) mark, and its claim fails.

90) The opponent has filed evidence which demonstrates that it began using its mark since 2005 and now manages 70,000 homes for around 200,000 people. With annual turnover consistently over £300m for the last five years, I do consider them to have requisite reputation for housing association services.

91) Having established that the opponent has demonstrated the requisite reputation, the next issue is whether the relevant public – being members of the public and businesses - will make a link between the marks. To determine this I am mindful of the comments of the CJEU in *Intel* that it is sufficient for the later trade mark to bring the earlier trade mark with a reputation to mind for the link, within the meaning of *Adidas-Salomon* and *Adidas Benelux*, to be established. The CJEU also set out the factors to take into account when considering if the necessary link exists:

“41. The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case (see, in respect of Article 5(2) of the Directive, *Adidas-Salomon* and *Adidas Benelux*, paragraph 30, and *adidas* and *adidas Benelux*, paragraph 42).

42. Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark's reputation;
- the degree of the earlier mark's distinctive character, whether inherent or acquired through use;
- the existence of the likelihood of confusion on the part of the public.”

92) In Case C-408/01, *Addidas-Salomon*, the CJEU held that:

“28. The condition of similarity between the mark and the sign, referred to in Article 5(2) of the Directive, requires the existence, in particular, of elements

of visual, aural or conceptual similarity (see, in respect of Article 5(1)(b) of the Directive, Case C-251/95 SABEL [1997] ECR I-6191, paragraph 23 in fine, and Case C-342/97 Lloyd Schuhfabrik Meyer [1999] ECR I-3819, paragraphs 25 and 27 in fine).

29. The infringements referred to in Article 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-375/97 General Motors [1999] ECR I-5421, paragraph 23)."

93) In Case C-254/09P *Zafra Marroquinos v Calvin Klein Trademark Trust*, the CJEU rejected an appeal against a judgement of the General Court ("the GC") rejecting an opposition against a Community trade mark application under article 8(5) of the Community Trade Mark Regulation, which is analogous to Section 5(3) of the Act. The court held at paragraph 68 that:

"It should be noted that, in order for Article 8(5) of Regulation No 40/94 to be applicable, the marks at issue must be identical or similar. Consequently, that provision is manifestly inapplicable where, as in the present case, the General Court ruled out any similarity between the marks at issue."

94) In order to determine whether there is a link, I shall assess each consideration in turn:

The degree of similarity between the conflicting marks

95) I have already found that the respective marks are identical.

The nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

96) I do not consider there to be any degree of similarity between the services.

The strength of the earlier mark's reputation

97) Having taken into account the opponent's evidence, I consider the strength of the earlier mark's reputation in the UK to be medium.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

98) The distinctive character of the earlier mark is enhanced given the level of use of the mark rather than its inherent qualities which I consider to be low to medium.

The existence of the likelihood of confusion on the part of the public

99) There is no likelihood of confusion.

Will there be a link?

100) Taking each of the above findings into account, I find that there is no link. Clearly, for those who are unaware of the earlier mark then a link will never be made. With regard to those may encounter both marks, whilst the marks are identical and the strength of the earlier mark's reputation is medium, this is outweighed by the services not being similar.

101) In the absence of such a link it follows that there will be no detriment to the earlier mark or an unfair advantage gained by the applicant's mark as a result of the use of the latter in relation to the services.

Section 5(3) conclusion

102) The section 5(3) claim fails in its entirety.

SECTION 5(4)(a)

103) Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

Goodwill

104) In comparison to section 5(2)(b) of the Act, the test still requires consumers to believe that the goods are of the same (or related) stables. Albeit, the test is now one-directional in that those consumers must believe, applied to this case, that CIRCLE the housing association organisation is also responsible for the applied for services. I accept that there is a difference in the test in that under section 5(2)(b) one is making the assessment from the perspective of the average consumer whereas under passing-off one is concerned with a “substantial number of members of the public”. However, without debating how different these tests actually are, I consider that whichever way one looks at it, the applicant has not established that a substantial number of persons would be deceived. For similar reasons to that already expressed, I do not consider that a substantial number of members of the public will believe that the goods sold under the applicant's mark are those of the opponent.

Section 5(4)(a) Outcome

105) The opposition fails under section 5(4)(a) against the services in relation to which the section 5(2)(b) and 5(3) grounds also failed.

OVERALL OUTCOME

106) The application shall be refused for the following services:

Class 35: Advertising; business management, advice, assistance, administration and consultancy services; professional business consultancy; business management and organization consultancy; business evaluations; efficiency experts; business investigations, business inquiries; business research; office functions; electronic data storage; advertising services provided via the Internet; accountancy; provision of business information; all the aforesaid services relating to hospitals, healthcare clinics and treatment centres for others; management of hospitals, health care clinics and treatment centres for others; advice, information and consultancy services for all of the aforesaid services; but not including consultancy services to the pharmaceutical industry.

Class 44: Convalescent home services; nursing home services; rest home services.

107) Subject to appeal, the application shall proceed to registration for the following services:

Class 39: Transport; packaging and storage of goods; travel arrangement; provision of car parking facilities; services for the transportation by air, land or sea of people or apparatus and instruments; ambulance services; delivery of pharmaceuticals, drugs and medicines; all the aforesaid services relating to the medical, surgical and healthcare fields; advice, information and consultancy services for all of the aforesaid services.

Class 43: Services for providing food and drink; restaurant, bar and catering services; all the aforesaid services offered within hospitals, healthcare clinics and treatment centres for others; crèche services; advice, information and consultancy services for all of the aforesaid services.

Class 44: Medical services; hygienic and beauty care for human beings; dentistry services; medical analysis for the diagnosis and treatment of persons; pharmacy advice; hospital services; provision of hospital facilities; rental of hospital equipment; surgical and medical services; medical clinic services; medical services; medical treatment services; conducting medical examinations; compilation of medical reports; surgical treatment services; therapeutic treatment services; healthcare services; health clinic services; homeopathic clinical services; arranging of medical and surgical treatment; medical and surgical diagnostic services; telemedicine services; the remote diagnosis and treatment of patients by means of telecommunications technology; cosmetic treatment; cosmetic surgery and plastic surgery;

physiotherapy services; counselling for the psychological treatment of medical ailments; dietetic counselling services; behavioural analysis for medical purposes; genetic testing for medical purposes; monitoring of patients; nursing care services; provision of health care services in domestic homes; health screening services; medical health and fitness assessment services; health and medical information services; exercise facilities for health rehabilitation purposes; health hydro services; advice, information and consultancy services for all of the aforesaid services.

COSTS

108) Although both parties have enjoyed a measure of success, the applicant retains more of the applied for services than were successfully opposed. Accordingly, the applicant is entitled to a contribution towards its costs, albeit a reduced amount to reflect its partial success. In the circumstances I award the applicant the sum of £1100. The sum is calculated as follows:

Opposition fees	£400
Preparing statements and considering the other side's statements	£200
Preparing evidence and considering and commenting on the other side's evidence	£300
Preparing for and attending a hearing	£200
TOTAL	£1100

109) I therefore order Circle Anglia Ltd to pay Circle Health Limited the sum of £1100. The above sum should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 9th day of February 2016

MARK KING
For the Registrar,
The Comptroller-General