

O-126-17

**TRADE MARKS ACT 1994**

IN THE MATTER OF APPLICATION NO 3105699  
FOR THE TRADE MARK

**RISE**

AND APPLICATION NO 3106193  
FOR A SERIES OF THREE TRADE MARKS



EACH IN THE NAME OF BARCLAYS BANK PLC

AND

CONSOLIDATED OPPOSITION NOS 405323 AND 405319 THERETO BY  
RISE CONSTRUCTION MANAGEMENT LTD  
RISE MANAGEMENT CONSULTING INTERNATIONAL LIMITED  
RISE INVESTMENTS LTD AND  
RISE MANAGEMENT CONSULTING LIMITED, JOINTLY.

## Background

1. Barclays Bank Plc (“the applicant”) filed application no 3105699 on 24 April 2015 and application no 3106193 on 28 April 2015 for the trade marks shown on the front cover of this decision. Both applications were published in the *Trade Marks Journal* on 24 July 2015 for an identical specification of services in classes 35 and 43 which I will return to later in this decision.

2. In each case, a notice of opposition was filed by Rise Construction Management Ltd, Rise Management Consulting International Limited, Rise Investments Ltd and Rise Management Consulting Limited, jointly (“the opponents”). The grounds of opposition are founded on section 5(1), 5(2)(a), 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) based on an earlier trade mark registration no 2593331 for the mark:



rise

3. This registration has a filing date of 2 September 2011 and was entered in the register on 23 December 2011 for a specification of services also in class 35. There is a further ground of opposition founded on section 5(4)(a) of the Act based on use of the mark **Rise** since December 2011 in London for a range of services that I will refer to as necessary later in this decision.

4. The applicant filed counterstatements in which it denies the claims made.

5. Both parties filed evidence and matters came before me for a hearing where the applicant was represented by Andrew Norris of Counsel instructed by Clifford Chance LLP. The opponents were represented by Guy Hollingworth of Counsel instructed by Olswang LLP.

## **The evidence**

### Opponents' evidence

6. This consists of a witness statement of Gareth Rhys Stapleton dated 18 April 2016 with exhibits GRS 1-8 filed as evidence in chief and another dated 5 August 2016 with exhibits GRSii1-6 filed as evidence in reply.

7. Mr Stapleton states that he is the CEO and a founder of the Rise Group of companies which includes three of the opponent companies (Rise Management Consulting Ltd, Rise Construction Management Ltd and Rise Investments Ltd). Mr Stapleton refers to these companies collectively throughout his evidence. I will refer to them in my summary as "Group".

8. Mr Stapleton states that Group was founded on 1 September 2011 and was set up to "create a market-leading group of companies capable of delivering management services to clients across a wide range of market sectors".

9. Mr Stapleton gives details of some of the projects in which Group has been involved. He states that they include completing projects in the UK and "as far afield as in Oman, China and Sri Lanka". Not all of the projects to which he refers took place before the relevant dates but they include management consultancy and project management services to the Serpentine Gallery for their Sackler Gallery and their Summer Pavilion which were carried out in 2012 and "management consultancy services to the senior management team within Logistics Operations for the Glasgow Commonwealth Games in 2014 [where it was] responsible for driving programme development and reporting directly to the executive teams on programme risk, and issue management". At GRS2 he exhibits two documents. The first is an extract from the rise.eu.com website and is entitled "Commonwealth Games 2015", though the text refers to Group's involvement in the 2014 Games. The second is on headed paper and signed by the Head of Logistics at Glasgow 2014 Ltd. Dated 31 October 2014, it makes no mention of any of the opponent companies but appears to be a letter praising an individual who was the "Logistics Project Manager" for the work he did in managing the airport part of the "Athletes Mass Departure process". Mr Stapleton states that this individual was employed by the opponents.

10. Mr Stapleton also states that Group has done work for the applicant itself. At GRS1 he exhibits a letter dated 21 January 2013 on headed paper which bears both Barclays Bank PLC and the Barclaycard names. Signed by the CEO of Barclaycard, the letter was sent to express gratitude “for Rise’s support of our Level 13 refurbishment project in 2012” and indicates that “We look forward to working with you again on many projects in the future”. At GRS3 (page 16) is another printout from the rise.eu.com website. Whilst undated, it is a short article about the Level 13 “refreshing” works carried out for the client, Barclays. At GRS3 (page 17) is a similar article from the same website about a project for Barclays Corporate Real Estate Services where “Rise were appointed as Project Managers to deliver these works in May 2013”.

11. Mr Stapleton states that Group’s “growth and development has been significant and steady” and gives the following details of employee numbers and turnover:

Year	Employees	Turnover
2011-2012	10	£535,843
2012-2013	19	£1,277,818
2013-2014	No figures given	No figures given
2014-2015	Over 60	£4,000,000
2015-2016	Nearly 100	£7-8,000,000 (est)

12. The figures for 2015-2016 do not show how much of this figure accrues to before the relevant date. Mr Stapleton does not explain how many of these employees were based in the UK or how much of the turnover stems from services provided to customers in the UK.

13. Mr Stapleton states that Group has spent “over £275,000 on marketing over the years on advertising and marketing at public events but have actually invested significantly more as we have exchanged management consultancy work for promotional work from clients”. He does not break this figure down in any way to show where, when or how this money was spent. He goes on to state that the services provided by Group “are specialist professional services that are not

generally advertised to mass media” but goes on to state that “we select and target marketing opportunities in the industry press and national press” and refers to spending “£3,000 on advertising in the national newspaper, *The Daily Telegraph*, in conjunction with a special project management edition of the *Business Reporter* that they ran in 2013”. A copy of this supplement, dated April 2013, is exhibited at GRS 5. The front cover shows an advertisement for Group at the bottom of the page.

14. Mr Stapleton states that each year since March 2012, a team from Group has attended an international real-estate conference in Cannes, MIPIM, which “brings together over 7,500 participant companies, from 89 countries. There are 4,000 participants from the UK alone, and there is a well-attended London stand. Participants include those providing business services, investment, planning services, developers, local authorities and others involved in the real estate sector”. He states that he is “aware that Barclays also attends this event” but gives no further details.

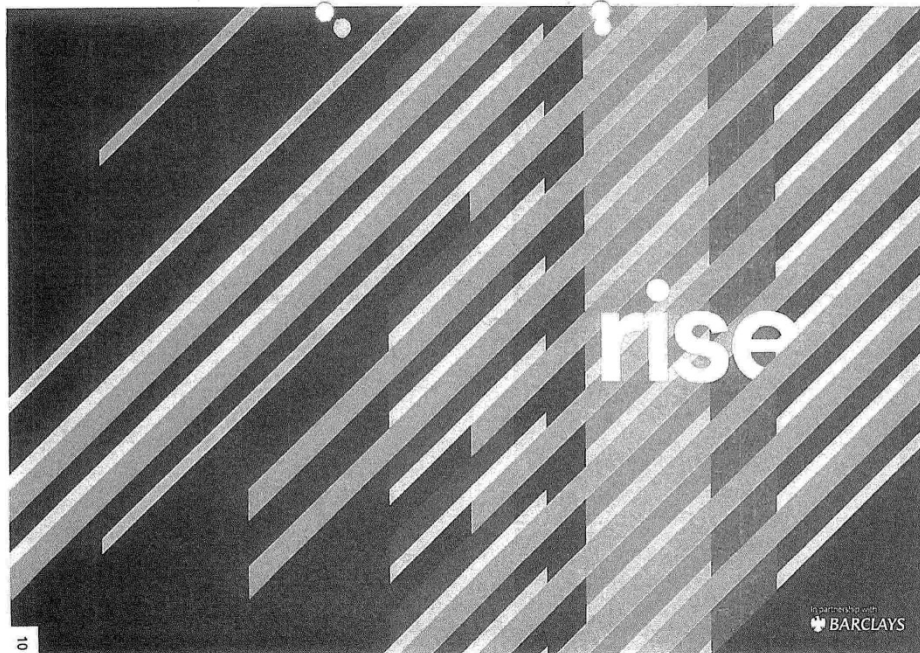
15. In addition to this promotion, Mr Stapleton states that Group is involved in charitable work and, at GRS6 gives details of these. Much of this material refers to events which took place after the relevant date though page 128 shows an article which appeared on its website in February 2015 showing Group’s involvement in making financial contributions to a water-cooler project in Africa. Page 144 shows a fundraising page showing contributions made following its involvement in “Vertical Rush 2014” where it collected money for the charity Shelter by “running up” a high rise tower building.

16. Mr Stapleton refers to Group having won a number of industry awards however the ones he refers to and which are shown at GRS7 were awarded after the relevant date.

#### Applicant’s evidence

17. This consists of a witness statement of Lubaina Manji dated 20 June 2016, with exhibits LM1-3. Ms Manji states that she has been “Head of Rise & Group Innovation Office” since October 2014 and is employed by the applicant company. Ms Manji’s witness statement gives brief details of the activities behind the application which is

intended “to improve the efficiency and functionality of financial services by creating a fintech innovation community which brings together start-up companies and innovators in the sector”. Ms Manji states that “fintech is a broad term which covers the intersection between technology and finance”. She states that the applicant’s services were first offered in 2014 under the name the Barclays Escalator but were rebranded “under the RISE Applications in the months following the launch of RISE in the UK in July 2015” after the engagement of the “in-house brand development team proposed some options for names”. She states that “The vast majority of [our] communications include a logo made up of the Rise device mark, the words “in partnership with” Barclays, and the Barclays eagle logo”. At LM1 Ms Manji exhibits a copy of a brochure. Whilst it is undated, the front cover looks like this:



It is not clear from the above but the words above the logo at the bottom of the page read “In partnership with”.

18. Ms Manji states that the applicant is a large organisation with approximately 130,000 staff worldwide and that the company is made up of:

“...a large number of entirely separate teams and business units with very different roles and responsibilities. I understand that within the Operations and

Technology arm...there are...approximately 15,000 in London alone [...with...] 31 working in the RISE team worldwide, and only a handful were involved in the naming decision”.

She states that at the time the applicant selected the name and filed the applications, she had no knowledge of the opponents but accepts that it carried out work for Barclays in 2012 and 2013 for the “Barclays Wealth business”.

19. That concludes my summary of the evidence to the extent I consider it necessary.

### **Decision**

20. Whilst the opponents have raised objections under sections 5(1) and 5(2)(a) of the Act, at the hearing Mr Hollingworth indicated his focus would be on the objection under section 5(2)(b). I intend to follow his line. The trade mark registration relied on by the opponents under this ground, as set out above, was entered in the register on 23 December 2011 and is an earlier trade mark within the meaning of section 6A of the Act. As it had not been registered for five years at the date of publication of the application in suit, the opponents are not required to prove use of the earlier mark and are able to rely on it for each of the services as registered.

21. Section 5(2)(b) of the Act states:

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

22. In reaching my decision on this ground, I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-

342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

### **The principles**

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;



(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### **Comparison of the respective services**

23. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated, at paragraph 23:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

24. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;

- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

25. 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."

26. 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."

27. 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.”

28. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court stated that:

“29. 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 für 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”.

The same is true, by analogy, as regards services.

29. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. 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”.

30. 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.”

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.

31. In *Separode Trade Mark* BL O-399-10 the appointed person stated:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

32. Shortly before the hearing, the applicant filed Forms TM21B seeking the removal of certain services from its applications along with the addition of a limitation to the specification of services. The requested amendments were made the following working day. At the hearing, Mr Hollingworth confirmed the amendments did not alter the opponents' position. With this in mind, the services to be compared are as follows:

Opponents' services	Applicant's services (both applications)
<p><b>Class 35</b></p> <p>Management consulting; project management; business construction management services</p>	<p><b>Class 35</b></p> <p>Office function services; business research for emerging and start up businesses; advisory services relating to company accounts, advertising, marketing, product development and product manufacturing, in particular for emerging business, start-up businesses and small and medium sized enterprises; assistance services relating to franchising, commercial enterprises and industrial enterprises; organisation of trade fairs for commercial or advertising purposes; appraisal and evaluation of business opportunities; advice relating to the creation of new commercial opportunities by bringing together businesses; office machines and equipment rental; organising of exhibitions and trade fairs for commercial purposes; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.</p>
	<p><b>Class 43</b></p> <p>Event facilities and temporary office and meeting facilities; hospitality services; rental of meeting rooms; rental of temporary accommodation; provision of temporary work accommodation; rental of other temporary office space; rental of furniture, linens and table settings; providing facilities for fairs, conventions, exhibitions, seminars and conferences; accommodation reservations; reservation services for meetings rooms; reservation services for other temporary office space; catering services; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.</p>

33. In their evidence, both parties' witnesses make reference to the types of activities they have carried out (or intend to carry out) under the mark. As both counsel acknowledged at the hearing, regardless of those (planned) activities, my comparison under this ground has to be conducted on the basis of the specifications of services as registered and for which registration is applied and on a notional basis.

34. In his skeleton argument, Mr Hollingworth separated the applicant's services into different categories: those it considers identical to the opponent's services, those it considers very similar, those it considers similar and those it considers "furthest removed" but still similar.

35. In his skeleton argument, Mr Norris submitted that the applicant's services in class 43 "have no similarity or only a very low level of similarity with the services covered in the earlier mark". He went on to submit that "The same can be said of the bulk of the services listed in class 35. There is a slightly higher level of similarity in relation to some of the business advisory services." At the hearing, I criticised Mr Norris' skeleton argument as being remarkably unspecific in terms of the similarity or otherwise of the respective services and requested he provide greater clarity. In due course, he referred to the different categories put forward by Mr Hollingworth and submitted that "We agree with that split. Of course, we do not think that [the one category] means identical. We do accept, however, that there is a risk of overlap." I am not convinced this makes the position very much clearer. For the sake of convenience, in making my comparison of the respective services, I will use the categories set out by Mr Hollingworth in his skeleton argument. Before I do so, I note that Mr Hollingworth referred me to the amendment to the applicant's specification, in particular the addition of the words "none of the aforesaid services including the provision of management consultancy or project management" to the services in each class. Mr Hollingworth submitted:

"With respect, that simply does not work and the reason it does not work is... that the greater includes the lesser. Management consultancy includes within it... various types of assistance and advisory services. Therefore you cannot avoid a conflict by saying "Okay, I am still providing assistance and advisory

services, but I am not actually providing a full suite of management consulting services”. ...It is my submission that, actually, trying to put a general exclusion at the end by saying “We are not providing a full suite of management consultancy services” does not avoid the fact that since the greater includes the lesser, if there is, as I say there is, a similarity or identity with these services, you cannot avoid that by this magic wording at the end, which appears to be the position that the applicant is taking”.

I bear his submissions in mind when making my comparison.

#### The applicant's services in class 35

36. The first category of services are those of the applicant which Mr Hollingworth submits are identical to those of the earlier mark. These are: *business research for emerging and start up businesses; advisory services relating to company accounts, advertising, marketing, product development and product manufacturing, in particular for emerging business, start-up businesses and small and medium sized enterprises; assistance services relating to franchising, commercial enterprises and industrial enterprises; advice relating to the creation of new commercial opportunities by bringing together businesses; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management*. In my view, these are all services which are management services relating to establishing and/or running of a business and are included within, and therefore identical to (at least) *business construction management services*.

37. As to the second category of services, Mr Hollingworth submits that *appraisal and evaluation of business opportunities; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management* are “very similar” to the services of the earlier mark. He submitted that they are: “advisory/evaluative services offered in the business context, so are similar in nature and intended purpose; they are offered to the same sorts of end users and are complementary to the core management services covered by the Earlier Mark”. In my view, appraising and evaluating business opportunities are part and parcel of establishing a new business and

growing existing ones and I consider that they are highly similar, if not identical, to (at least) *business construction management services* as are included within the earlier mark.

38. The third category of services in this class are *Office function services; organisation of trade fairs for commercial or advertising purposes; organising of exhibitions and trade fairs for commercial purposes; office machines and equipment rental; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management*, Mr Hollingworth submitted that there are similar services as “there are material similarities, in particular in terms of end user and complementarity”. I will consider each of these in turn.

39. In relation to *Office function services*, Mr Hollingworth submitted that he understood this:

“as meaning, basically, the services of running an office, such as filing, copying and recordkeeping. That is the sort of thing which may form part of project management services, so I do say that there is a closeness there.”

I agree that *office function services* are administrative, clerical and support services used by businesses in their day-to-day operation. Businesses will also be the users of the opponents’ services. There is a degree of overlap in the purpose of the respective services in that each will assist in the setting up and/or operation of a business. I find these respective services to be similar to a reasonable degree. It follows that I find *information services* relating to the above services to be similar to the same degree.

40. The *organisation of trade fairs for commercial or advertising purposes; and organising of exhibitions and trade fairs for commercial purposes* are services which are used by a business to establish or promote its place in the marketplace. There is therefore an overlap in users and purpose with the opponents’ *business construction management services*. I find these respective services to be similar to a reasonable degree. It follows that I find *information services* relating to the above services to be similar to the same degree.



41. *Office machines and equipment rental* are services which, self-evidently, provide machines and equipment for use in an office. These are services which will be used by businesses but, given that the term will cover a wide variety of machinery and equipment, may also be used by members of the general public who use such items in the study at home. The nature of the services, differs from those of the opponents' services given that they are for the rental of physical items. I do not consider that they are complementary services within the meaning of the case law set out above. I consider these to be dissimilar services to those of the earlier mark. It follows that I find that information services relating to these services also to be dissimilar.

#### The applicant's services in class 43

42. Mr Hollingworth separated the applicant's services in this class into two groups. The first is *Event facilities and temporary office and meeting facilities; hospitality services; rental of meeting rooms; rental of temporary accommodation; provision of temporary work accommodation; rental of other temporary office space; providing facilities for fairs, conventions, exhibitions, seminars and conferences; accommodation reservations; reservation services for meetings rooms; reservation services for other temporary office space; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management*. He referred to the applicant's and opponents' own businesses offering temporary office and accommodation, and event organisation services and submits that this "illustrates that there are material similarities, in particular in terms of end user and complementarity". As I have indicated above, it was accepted at the hearing that I have to make my comparison with the above case law in mind and on the basis of the services as registered and for which registration is applied. The fact that the parties may (or may not) both offer certain services does not, of itself, mean that the services under consideration are (or are not) similar.

43. Each of the services set out in the preceding paragraph are for (information relating to) the provision of accommodation. Management services as are included within the opponents' earlier specification will include a number of specific services but I do not consider that the core meaning of these services will include the provision of accommodation. I note that in his witness statement Mr Stapleton's

gives evidence that the opponents' group of companies "aim to provide our clients with...[a] complete means of project management and real estate services" which suggests that he himself considers them to be two distinct areas of trade. There is no evidence to show that other management services suppliers provide accommodation as part of their offering nor is there any evidence to show that it is a normal part of the management services industry. I find that these respective services are dissimilar.

44. That leaves *rental of furniture, linens and table settings; catering services; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.* In his skeleton argument and at the hearing, Mr Hollingworth acknowledged that these are services which are "the furthest removed" from those of the earlier mark but went on to say that "in reality, it seems inevitable that the Applicant will offer those services within the context of its RISE offering rather than, for example, starting a free-standing RISE catering company". As I have already stated, this is not the test I have to apply and, taking the case law into account, I can see no way in which these services are anything other than dissimilar to those of the opponent.

45. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

"49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

46. The opposition under this ground therefore fails in respect of the services which I have found to be dissimilar which are:

Class 35

Office machines and equipment rental; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management

Class 43

All services.

47. I therefore proceed to consider the matter under this ground further in respect only of those services of the applicant in class 35 which I have found to be similar or identical to the opponents' services.

### **Average consumer and the nature of the purchasing process**

48. 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 goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

49. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

50. Each of the services which I have found to be similar or identical are such as will be used by a business. Given that they are services which provide (administrative)

support, advice and guidance to that business, they are services which are likely to be chosen with some, though not necessarily the highest, degree of care. This is particularly the case given that the success of the business is likely to depend in part on the nature and quality of the advice and support given. The services may come to the attention of the purchaser through visual means such as through conducting research on the Internet, through articles in trade publications or advertising material, however, the aural aspects of the purchasing process will also be of importance given that word of mouth recommendations are also a likely feature.



### **Comparison of marks**

51. 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 them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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.”

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

53. The marks to be compared are as follows:

Opponents' mark	Applicant's marks
	<p data-bbox="1034 362 1161 394">3105699</p> <p data-bbox="1059 418 1136 450">RISE</p>
	<p data-bbox="1034 477 1161 508">3106193</p> 

54. The earlier mark consists of the word **rise** in lower case. There is some stylisation in that the tittle of the letter 'i' is presented in green with the remainder of the letters presented in black. Whilst the use of the coloured tittle adds very slightly to the distinctiveness of the mark, it does not alter the perception of the mark being the word **rise** which is its dominant and a distinctive element. The applicant's mark no 3105699 is for the word **RISE** in plain block capitals. As a single word with no additional stylisation, its distinctiveness rests in the word. The applicant's series of marks no 3106193 are identical to each other save for the colour in which they are presented (black, navy blue and turquoise). Each of the marks consist of four characters, the first three being the lower case letters ris. The fourth character, despite the fact that it appears to have had a small part of it cut off, has the necessary components still present that means it is recognisable and will clearly be seen as a letter e with the whole reading as the word **rise**. The presentation of the letter e adds a slight distinctiveness to the mark, however, again the dominant element is the word **rise**. Despite Mr Norris' submission that the use of the different colours affected the conceptual meaning behind the marks, I find the respective marks are very highly similar on a visual comparison and identical on an aural and conceptual comparison.

### **Distinctiveness of the earlier marks**

55. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. 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).

23. 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).”

56. As I set out above, Mr Stapleton has given evidence about the opponents' business. Much of his evidence post-dates the relevant date (28 April 2015). The turnover and advertising figures he gives are not insignificant and are increasing but are not broken down to show to which specific services they relate nor do the latter figures show how much refers to a period before the relevant date. There is no evidence of the size of the relevant market or the opponents' place within it. There is no evidence from customers or the trade though there is evidence in the form of copies of articles and letters of thanks that show an appreciation for its services or staff. Whilst RISE has positive connotations of moving upwards, I find it is a mark which has an average degree of inherent distinctiveness, a degree which, taking the

evidence as a whole, has not been shown to have materially enhanced through the use made of it.

### **Likelihood of confusion**

57. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark.

58. 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 trade marks and must instead rely upon the imperfect picture of them (s)he has retained in mind.

59. Earlier in this decision I found:

- Both the visual and aural aspects of the marks play a part in the purchasing process;
- The average consumer for the respective goods will be businesses who will take some, though not necessarily the highest degree of care over the purchase;
- The respective marks are very highly similar on a visual comparison and are aurally and conceptually identical;
- The earlier mark is of average inherent distinctiveness which has not been shown to have been materially enhanced through its use;
- I have found the following services of the application to be identical to those of the earlier mark:

*business research for emerging and start up businesses; advisory services relating to company accounts, advertising, marketing, product development and product manufacturing, in particular for emerging business, start-up businesses and small and medium sized enterprises; assistance services*

*relating to franchising, commercial enterprises and industrial enterprises; advice relating to the creation of new commercial opportunities by bringing together businesses; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.*

- I have found the following services of the application to be highly similar if not identical to those of the earlier mark:

*appraisal and evaluation of business opportunities; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management*

- I have found the following services of the application to be similar to those of the earlier mark:

*office function services; organisation of trade fairs for commercial or advertising purposes; organising of exhibitions and trade fairs for commercial purposes; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.*

60. Ms Manji submitted that the applicant has used its marks in conjunction with other marks, i.e. the name Barclays or a device element as shown earlier in this decision where it was also shown to have used the phrase “in partnership with”. Regardless of the way it may have used its marks, I have to consider the marks as applied for. Taking all factors into account and on a global comparison, I find there is a likelihood of confusion in respect of each of the services of the application which I have found to be similar to (to whatever degree) or identical with the services of the earlier mark. The opposition under section 5(2)(b) succeeds in respect of these services.



### **The opposition under section 5(4)(a) of the Act**

61. The opponents' objection under this ground is based on a claim of passing off. Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

62. Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other feature which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

63. The earlier use by the claimant must relate to the use of the sign for the purposes of distinguishing goods or services. For example, merely decorative use of a sign on a T-shirt cannot found a passing off claim: *Wild Child Trade Mark* [1998] RPC 455 (AP).

64. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act and concluded as follows:

“39. In *Last Minute*, the General Court....said:

‘50. First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51. However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant seeking a declaration of invalidity has acquired rights over its non-registered national mark before the date of filing, in this case 11 March 2000.’

40. Paragraph 51 of that judgment and the context in which the decision was made on the facts could therefore be interpreted as saying that events prior to the filing date were irrelevant to whether, at that date, the use of the mark applied for was liable to be prevented for the purpose of Article 8(4) of the CTM Regulation. Indeed, in a recent case before the Registrar, *J Sainsbury plc v. Active: 4Life Ltd* O-393-10 [2011] ETMR 36 it was argued that *Last Minute* had effected a fundamental change in the approach required before the Registrar

to the date for assessment in a s.5(4)(a) case. In my view, that would be to read too much into paragraph [51] of *Last Minute* and neither party has advanced that radical argument in this case. If the General Court had meant to say that the relevant authority should take no account of well-established principles of English law in deciding whether use of a mark could be prevented at the application date, it would have said so in clear terms. It is unlikely that this is what the General Court can have meant in the light of its observation a few paragraphs earlier at [49] that account had to be taken of national case law and judicial authorities. In my judgment, the better interpretation of *Last Minute*, is that the General Court was doing no more than emphasising that, in an Article 8(4) case, the *prima facie* date for determination of the opponent's goodwill was the date of the application. Thus interpreted, the approach of the General Court is no different from that of Floyd J in *Minimax*. However, given the consensus between the parties in this case, which I believe to be correct, that a date prior to the application date is relevant, it is not necessary to express a concluded view on that issue here.

41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom's TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user's mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v.*

*Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: “date of commencement of the conduct complained of”. If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’ ”

65. The applicant did not make any claim in its counterstatements to have used its marks prior to the filing date of its applications. Whilst Ms Manji’s evidence makes reference to the supply of some services “in the months following the launch of RISE in the UK in July 2015”, she provides no specific details regarding this use and it appears it would post-date the date of application. I intend, therefore, to consider the matter at the application date, i.e. 28 April 2015.

66. In *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL) the Court stated:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

67. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

68. In *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat), however, Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of

the relevant date, which is, at least in the first instance, the date of application.”

69. In the notice of opposition, the opponents claim to have used the mark on the following services:

Management consulting; project management; management and co-ordination of multiple projects; management advice; business management consulting; business advisory services relating to planning, management, organisation, strategy and analysis; organisation of business networking events; facilitating networking opportunities; bringing together enterprises to create business opportunities; business construction management services; planning, coordination, and control of construction projects; management consulting for purchase contracts, development contracts, sale contracts; strategic business planning; advisory services relating to strategic business planning; commercial advisory services relating to the formation of business plans; market development research and analysis; market risk analysis; cost management and cost analysis services; information and advisory services all related to the aforementioned services. (35)

Land acquisition services; consultancy relating to land acquisition services; development management services; information and advisory services all related to the aforementioned services. (36)

Pre-construction services; construction management services for the delivery of construction projects (37)

Quantity surveying services; design services relating to property; principal designer services; generation and management of design data; information and advisory services all related to the aforementioned services. (42)

Temporary accommodation; Event facilities and temporary office and meeting facilities; provision of temporary work accommodation and office space; hire of temporary office space; reservation of temporary accommodation, office space and facilities; provision and booking of catering services; information and advisory services all related to the aforementioned services (43)

Legal advisory services relating to the formation of business plans; consultancy and management services relating to health and safety; information and advisory services all related to the aforementioned services. (45)

70. Earlier in this decision, I set out a summary of the evidence filed on behalf of the opponents. Whilst there is some evidence of the provision of e.g. project management services, the opponents are under no stronger position under this

ground in relation to these services than they were in their opposition to the mark under section 5(2)(b) of the Act and I decline to deal with it further. For the remaining services set out in the preceding paragraph as being in class 35 and all the services in classes 36, 37, 42, 43 and 45, there is no evidence of any use of the mark on these services. Absent such evidence, the opponents have no prospect of success under this ground.

### **The objection under section 5(3) of the Act**

71. 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; *Addidas 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*).

72. In the notice of opposition, the opponents claim:

“The opponent is a project management consultancy company in the UK. The Opponent also provides services in construction management and other business services including, but not limited to, provision of temporary accommodation and facilities. They have been providing these and other services under the “rise” word and device marks, for over 4 years. The Opponent has expended substantial sums on development, advertising, promotion and sponsorship over the years. As a result, the Opponent has generated a strong reputation in the “rise” mark in the UK.”

73. In setting out a claim under this ground, an opponent should clearly state the specific goods and/or services on which it claims to have used the mark and on which it relies. The use of the phrase “but not limited to” as set out above, is not, therefore appropriate. The only services which are specifically relied on are project management consultancy, construction management and the provision of temporary accommodation and facilities. Given my finding in relation to the ground of opposition under section 5(2)(b) of the Act, there is no need for me to consider this ground of opposition in relation to the services for which it succeeded under that ground, i.e. project management consultancy services. Insofar as the claim relates to construction management and the provision of temporary accommodation and facilities, there is no evidence to show the opponents have the necessary reputation in respect of these services at the relevant date i.e. 28 April 2015 and its opposition under this ground fails.

### **Summary**

74. The opposition succeeds under section 5(2)(b) in respect of the following services:

*office function services; business research for emerging and start up businesses; advisory services relating to company accounts, advertising, marketing, product development and product manufacturing, in particular for emerging business, start-up businesses and small and medium sized enterprises; assistance services relating to franchising, commercial enterprises and industrial enterprises; organisation of trade fairs for commercial or advertising purposes; appraisal and evaluation of business opportunities; advice relating to the creation of new commercial opportunities by bringing together businesses; organising of exhibitions and trade fairs for commercial purposes; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.*

75. Subject to any appeal against this decision, the application will be allowed to proceed to registration for the following services:

Class 35

*Office machines and equipment rental*

Class 43

*Event facilities and temporary office and meeting facilities; hospitality services; rental of meeting rooms; rental of temporary accommodation; provision of temporary work accommodation; rental of other temporary office space; rental of furniture, linens and table settings; providing facilities for fairs, conventions, exhibitions, seminars and conferences; accommodation reservations; reservation services for meetings rooms; reservations services for other temporary office space; catering services; information services relating to all of the aforesaid services; none of the aforesaid services including the provision of management consultancy or project management.*

**Costs**

76. Both parties have achieved a roughly equal measure of success and I consider each should bear its own costs.

**Dated this 21<sup>st</sup> day of March 2017**

**Ann Corbett**

**For the Registrar**

**The Comptroller General**