

O-131-18

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3141425
BY LONDON HOTELS CORPORATION LIMITED
TO REGISTER THE TRADE MARK**



**IN CLASSES 35 AND 43
AND
IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 406453 BY ASSOCIATED NEWSPAPERS LIMITED**

Background

1. On 18 December 2015, London Hotels Corporation Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision for the following services:

Class 35: Business management and administration services; Commercial information services; Consultancy services relating to franchising; Advertising, marketing, publicity and promotion services and information services relating thereto; Business administration services for the processing of sales made on the Internet; Communications (public relations); Operation and supervision of loyalty schemes and incentive schemes; International business representation services; Information consultancy and advisory services relating to all the aforesaid services.

Class 43: Hotel services, motel services, provision of accommodation, hotel reservation services; Temporary accommodation services; Holiday information and planning relating to accommodation; Bar services, public house services, café services, restaurant and snack bar services; Catering services; Provision of conference and convention facilities; Hotel and motel services comprising a rewards programme for frequent hotel guests in the nature of special benefits being accumulated for use in relation to hotel and motel services; Advisory and consultancy services relating to the aforesaid; providing facilities for business meetings, conferences and exhibitions; Provisions of social function facilities for special occasions; Reservation services for hotel accommodation.

2. The application was accepted and published for opposition purposes on 15 January 2016.

3. On 15 April 2016, Associated Newspapers Limited (“the opponent”) filed a notice of opposition to the registration of the application. The opponent initially pleaded grounds under Sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”), however, as it failed to file any evidence of use, reputation or goodwill, the claims under Sections 5(3) and 5(4)(a) were subsequently struck out, together with a claim

under Section 5(2)(b) based on an earlier trade mark subject to proof of use¹. The opposition therefore continued under Section 5(2)(b) only in relation to six earlier marks that were not subject to proof of use. Following a hearing, the opponent narrowed the earlier marks it relied upon to the three displayed below as it accepted that if it is unsuccessful in respect of these registrations, it will be in no better a position in respect of the other three²:

i) **UK Trade Mark number 2654145 (series of two)**



Filing date: 1 February 2013

Registration date: 30 June 2017

Goods and services relied upon: classes 9, 16, 35, 38, 41, 42

ii) **UK Trade Mark number 2233378 (series of two)**

metro.co.uk

metro.com

Filing date: 22 May 2000

Registration date: 17 March 2017

Goods and services relied upon: classes 9, 16, 35, 36, 38, 39, 41, 42

iii) **UK Trade Mark number 2192465**

METRO LONDON

Filing date: 22 March 1999

Registration date: 17 March 2017

Goods and services relied upon: classes 9, 16, 35, 36, 41, 42

4. The full specifications are shown in the Annex to this decision.

¹ UK trade mark no. 1586405

² UK trade mark nos. 2391211, 2232683, 2391469

5. For the sake of completeness, I should mention that at the time when the present opposition was filed the opponent's earlier marks nos. 2654145, 2233378 and 2192465 were themselves pending and the subject of oppositions brought by third parties. Following the opponent limiting its goods and services initially applied for, these oppositions were withdrawn and the opponent's marks proceeded to registration (for the specifications shown in the Annex to this decision).

6. The opponent claims that the applied for mark is similar to the earlier marks and covers services that are identical with and/or similar to the goods and services of the earlier marks, such that there is a likelihood of confusion under Section 5(2)(b).

7. The applicant filed a defence and counterstatement, denying all the grounds of opposition. In particular, it denies that the similarity between the marks would lead to a likelihood of confusion because, it states, the shared element metro/METRO is wholly descriptive. Included in the counterstatement is also the claim that earlier marks 2654145, 2233378 and 2192465, which at the time of the filing of the opposition were pending applications, are not earlier rights; however, given what I have said above, this is no longer an issue.

8. Only the opponent filed evidence. The matter came before me for a hearing on 12 January 2018. Martin Krause of Haseltine Lake LLP represented the opponent. Supra Chavda of Clintons Solicitors represented the applicant.

The opponent's evidence

9. This takes the form of a witness statement from Heather Orr dated 22 August 2017, together with one exhibit. Ms Orr is a trade mark attorney with the firm representing the opponent in these proceedings. She states that she has carried out an internet search, the results of which are included in the exhibit. This consists of extracts from the websites of three UK hotel chains, namely Park Plaza, Marriott and Mercure showing that these businesses offer meetings and event facilities and reward schemes.

10. The relevance of this evidence was explained by Ms Orr in a letter dated 8 September 2017. She stated:

“The evidence that has been filed is intended to substantiate the similarity of certain services for which protection is being sought.

Whilst the majority of the services that are covered by the opposed application are identical or very similar to those for which the Opponent's earlier METRO Marks are protected, there are some services for which the similarity may be considered to be less obvious in the absence of supporting evidence. The purpose of the evidence is specifically to identify the close relationship between hotel services and services in the opposed application such as the provision of function facilities and the managing/supervision of promotional services and loyalty schemes”.

The opponent's best case

11. Although the opponent has focused its opposition on three marks, no. 2233378 has the broader specification of goods and services and it is, in my view, the mark that offers the best prospect of success. I shall therefore take it as my starting point.

DECISION

12. Section 5(2)(b) of the Act reads:

“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.”

13. An earlier trade mark is defined in Section 6 of the Act, which states:

“6.-(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

....

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

14. Contrary to what the applicant states, the opponent’s 2233378 mark is an earlier mark in accordance with Section 6(1) of the Act because it has a filing date earlier than that of the trade mark in question. Whilst, as set out in section 6(1)(2), this is subject to the earlier mark being registered, the mark, as indicated earlier, has now been registered.

15. As this mark had not been registered for five years or more at the publication date of the opposed application, it is not subject to the proof of use provisions under section 6A of the Act. Consequently, the earlier mark may be relied upon for all of the goods and services for which it is registered without having to prove use.

Section 5(2)(b) - case-law

16. The following principles 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:

- (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 greater 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 goods and services

17. 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”.

18. 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 uses of the respective goods or services;
- b) The respective users of the respective goods or services;
- c) The physical nature of the goods or acts of services;
- d) The respective trade channels through which the goods or services reach the market;

- e) 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;
- f) 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.

19. I also bear in mind the decision in *Boston Scientific Ltd v OHIM*, Case T-325/06, where the General Court (GC) 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”.

20. 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.”

21. 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."

22. In *Gérard Meric v OHIM*, Case T- 133/05, the GC stated:

"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 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".

23. The competing goods and services are as follows:

Applied for services	Opponent's goods and services
<p>Class 35: Business management and administration services; Commercial information services; Consultancy services relating to franchising; Advertising, marketing, publicity and promotion services and information services relating thereto; Business administration services for the processing of sales made on the Internet; Communications (public relations); Operation and supervision of loyalty schemes and incentive schemes; International business representation</p>	<p>Class 9: Software, electronic publications, CD-Roms, computer software to enable searching of data and connection to databases and the internet; pre-recorded video tapes and cassettes; video tapes, games and cassettes; non-tangible computer accessories, such as screen savers.</p> <p>Class 16: Printed matter; printed publications; newspapers, magazines, supplements, posters, periodicals, books, brochures, leaflets, user guides</p>

services; Information consultancy and advisory services relating to all the aforesaid services

Class 43: Hotel services, motel services, provision of accommodation, hotel reservation services; Temporary accommodation services; Holiday information and planning relating to accommodation; Bar services, public house services, café services, restaurant and snack bar services; Catering services; Provision of conference and convention facilities; Hotel and motel services comprising a rewards programme for frequent hotel guests in the nature of special benefits being accumulated for use in relation to hotel and motel services; Advisory and consultancy services relating to the aforesaid; providing facilities for business meetings, conferences and exhibitions; Provisions of social function facilities for special occasions; Reservation services for hotel accommodation.

and training manuals, maps, holiday and travel guides, calendars, diaries and printed stationery.

Class 35: Retail services provided through a television shopping channel, general merchandise internet website, mail order catalogue and a newspaper publication, in connection with the sale of beauty products, toiletries, domestic cleaning products, leather goods, luggage, textiles, clothing, footwear, on-line ordering services in relation to printed matter, newspapers, books and other related publications in both printed and digital formats; providing an on-line directory; advice and assistance relating to the establishment of on-line retail stores in relation to printed matter, newspapers, books and other related publications; search and retrieval of information; business services; business services provided on-line from a computer database or from the internet; information services relating to all the aforesaid services; provision of a database; compilation and provision of business information, advice and statistics; business research; provision of commercial information; business information services; public relations services; recruitment, employment and personnel management services;

information relating to all the aforesaid services; career information and advice; all the aforesaid services also provided on-line from a computer database or the internet; advertising services and classified advertising services of and relating to advertising in printed media; promotion services relating to advertising in printed media; the organisation of exhibitions and trade fairs for commercial and advertising purposes.

Class 36: Analysis, evaluation, information and advice relating to insurance and financial services; financial management services, financial advisory services; financial services relating to credit card services, investment schemes and accounts; bank card and debit card services; cheque verification and cheque cashing, issuing and redemption of travellers cheques and travel vouchers and advisory services relating thereto; on-line financial banking, savings, payments and credit facilities; home banking and internet banking; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the internet.

	<p>Class 38: Search engine services; electronic mail services; provision of telecommunications access and links to computer databases and the internet; providing user access to the internet; telephone rental services; provision and rental of telephone chat lines; providing an on-line directory; Telecommunication or communication services provided on-line: telecommunication of information including web pages, computer programs and any other data; communication services, all provided on-line from a computer database or from the internet; providing an on-line portal network site; provision of web pages; computer bulletin and message boards; telecommunications services provided in relation to the internet; providing access to digital music web sites on the internet; providing access to MP3 web sites on the internet; news agency services; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the internet.</p> <p>Class 39: Travel agency services; tourism and tour operation services; travel information services; arranging of holidays, cruises, journeys, visits, tours and trips; travel and transport reservation services; passenger</p>
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transport services; escorting of travellers; booking of seats for travel; information services relating to all the aforesaid services; provision of information relating to journeys, tariffs, timetables and methods of transport; all the aforesaid services also provided on-line from a computer database or from the internet.

Class 41: Education services; publishing services; publication of printed matter and printed publications; publishing and publication services; electronic publishing services; providing on-line electronic publications (not downloadable); publication of electronic books and journals on-line; organisation of competitions, quizzes and games; organisation of exhibitions; provision of information relating to education; all the aforesaid services also provided on-line from a computer database or from the internet; information services relating to all the aforesaid services; electronic game services provided by means of the internet.

Class 42: Provision of a database; design of computer databases; providing search engines for the internet; providing an on-line portal network site; technical consultancy and advising in the

	<p>establishment of an on-line retail store in relation to printed matter, newspapers, books and other related publications; providing on-line computer facilities for real time interaction with other computer users concerning topics of general interest and playing games; creating and maintaining web sites; hosting the websites of others; leasing access time to a computer holiday information and advice relating to healthcare and beauty care; cookery information and advice; fashion information and advice; gardening information and advice; information relating to hotels; medical information and advice; news services; healthcare, beauty care, cookery, careers, fashion, gardening, hotels, medical matters and news services, also provided on-line from a computer database or from the internet; news reporter services and printing services; news clipping services; commissioned writing services; syndicated writing services concerning the internet and on-line computer services, all these services also provided on-line from a computer database and/or the internet; providing access to and leasing access time to computer databases; design, drawing and commissioned writing, all for the compilation of web pages on the internet; reservation of accommodation;</p>
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	<p>restaurant, canteen, snack bar, cafe, cafeteria, wine bar, nightclub, public house and catering services; catering services for the provision of food and drink; information relating to all the aforesaid services, also provided on-line from a computer database or from the internet.</p>
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24. Though Ms Chavda accepted, at the hearing, that the respective services were similar, she did not set out in more detail exactly what services she would count as similar under which mark, or how similar they were. I will, therefore, carry out my own assessment.

Class 35

25. The contested *business management and administration services, business administration services for the processing of sales made on the Internet and international business representation services* are all encompassed by the broad term *business services* covered by the earlier mark. These services are identical on the principle outlined in *Meric*.

26. Although worded slightly differently, the contested *commercial information services* and *communications (public relations)* are identical to the opponent's *provision of commercial information and public relations services* respectively.

27. The contested *consultancy services relating to franchising* fall within the opponent's *business services* and would also likely fall within its *business information services*. These services are also identical on the *Meric* principle.

28. The contested *advertising services and information services relating thereto* encompass the opponent's *advertising services and classified advertising services of and relating to advertising in printed media*. These services are also identical on the *Meric* principle. If the contested *marketing, publicity and promotion services and*

information services relating thereto do not include the opponent's *advertising services and classified advertising services of and relating to advertising in printed media*, they must, nevertheless, be similar to a high degree.

29. I find that although different in nature, purpose and methods of use, the contested *operation and supervision of loyalty schemes and incentive schemes* are clearly complementary to the opponent's *retail services provided through a television shopping channel, general merchandise internet website, mail order catalogue and a newspaper publication, in connection with the sale of beauty products, toiletries, domestic cleaning products, leather goods, luggage, textiles, clothing, footwear* given the relationship between them and the likelihood that the average consumer would understand the same undertaking to be responsible for both. I consider there to be a medium degree of similarity.

30. Finally, as the contested *information consultancy and advisory services relating to all the aforesaid services* relate to services which I found to be identical or similar to the opponent's services, they are identical (or similar to the same degree) to the opponent's *information relating to all the aforesaid services*.

Class 43

31. Before I move on to consider the similarity between these services and the services covered by the opponent's specification, it is necessary for me to clarify one point relating to the classification of some of the opponent's services. Some of the services in class 42 on which the opponent relies are now proper to class 43. This is the result of the addition in 2002 of classes 43 (and, also classes 44 and 45) to the Nice Classification. Nothing turns on the fact that the opponent's mark has not been reclassified. It is the inherent nature of the services that matters.

32. The contested *hotel services* are identical to the opponent's *hotel services* in class 42, which appears within the term *healthcare, beauty care, cookery, careers, fashion, gardening, hotels, medical matters and news services*, notwithstanding the slightly odd addition of "*also provided on-line from a computer database or from the internet*". The contested *provision of accommodation and temporary accommodation services* are

clearly encompassed by the opponent's *hotel services* in class 42 and therefore are identical on the principle outlined in *Meric*.

33. Insofar as *motel services* are concerned, Mr Krause on behalf of the opponent said at the hearing that if I consider that motel and hotel services are not the same, the services are nevertheless highly similar. Oxford English dictionary contains the following definition:

“Motel: a roadside hotel designed primarily for motorists, typically having the rooms arranged in low blocks with parking directly outside.”

34. As the dictionary definition confirms that a motel is essentially a type of hotel, I find that the contested *motel services* are encompassed by the opponent's *hotel services* in class 42 and therefore are identical on the *Meric* principle.

35. The contested *hotel and motel services comprising a rewards programme for frequent hotel guests in the nature of special benefits being accumulated for use in relation to hotel and motel services* would also in my view fall within the opponent's *hotel services* in class 42 or, alternatively, if they do not constitute a hotel service per se, must be clearly complementary to the opponent's *hotel services* with a high degree of similarity.

36. The contested *hotel reservation services; holiday information and planning relating to accommodation and reservation services for hotel accommodation* are all encompassed by the opponent's *information relating to hotels and reservation of accommodation* in class 42 and would also be highly similar to its *travel agency services* in class 39 as travel agents are a 'one-stopshop' for advising on and booking both accommodation and travel. These services are also identical on the *Meric* principle.

37. The contested *bar services, public house services, café services, restaurant and snack bar services and catering services* are identical to the opponent's *restaurant, canteen, snack bar, cafe, cafeteria, wine bar, nightclub, public house and catering services* in class 42.

38. Insofar as *provision of conference and convention facilities; providing facilities for business meetings, conferences and exhibitions and provisions of social function facilities for special occasions* are concerned, the opponent's evidence shows that three UK hotel chains provide meetings and events facilities. Although the evidence is not overwhelming and is after the relevant date (which is the date when the application at issue was filed), it concurs with my own experience that many hotels have a conference room and, therefore, can provide the facilities related to the contested services. It follows that the services can be offered to the same public through the same channels and there is complementarity in that one is important for the use of the other and customers will think that the responsibility for the services lies with the same undertaking. I consider there to be a medium degree of similarity between these services and the opponent's *hotel services* in class 42.

39. Finally as the contested *advisory and consultancy services relating to the aforesaid* relate to services which I found to be identical or similar to the opponent's services, they are identical (or similar to the same degree) to the opponent's *information relating to all the aforesaid services, also provided on-line from a computer database or from the internet*. These services are also identical on the *Meric* principle.

Average consumer

40. 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 and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. 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.”

41. In his skeleton argument, Mr Krause stated:

“The average consumer of the services at issue in class 35 is likely to purchase those services in their capacity as a business person as opposed to as a member of the public.

While this may also be the case for the services in class 43, many of the services are also likely to be purchased by members of the public.

In the case of all of the services, it is accepted that the average consumer will pay a reasonably high, but not necessarily the highest, degree of care in the purchase of the services.”

42. I agree that the average consumer of the parties’ services in class 35 is a business user while the average consumer of the applied for services in class 43 (and of the opponent’s services which I found to be identical or similar to those services) will be both the general public and businesses.

43. The services are likely to be selected from signage on the high street, from promotional literature or from the pages of websites; they might also be the subject of oral recommendations and the marks may be encountered aurally by way of telephone calls and face to face meetings. Whilst there may be a slight skew towards the visual impact of the marks taking on more significance, both the visual and aural aspects of the respective marks are important in the purchasing process.

44. Given the nature of the services which I have concluded will be directed at business users, and their importance to the efficient operation and success of any commercial undertaking and the likely sums involved, I agree with the opponent that the average consumer will pay a reasonably high, but not necessarily the highest, degree of care and attention to their selection.

45. In relation to the services aimed at the general public, *bar services, public house services, café services* and *snack bar services* are likely to constitute fairly inexpensive routine choices so I would not expect the average consumer to pay anything more than an average degree of attention to their selection. For *restaurant* and *catering services*, the degree of attention will be at least average but may increase proportionally as the cost or importance of the selection increases (the selection of a restaurant to mark an important occasion or a caterer for a wedding for example). Finally, I consider that slightly more care and consideration, i.e. slightly above average, will be deployed in the selection of the other services, e.g. *hotel, accommodation, reservation, providing facilities for business meetings, conferences and exhibitions and provisions of social function facilities* as such services are not selected frequently, they can be reasonably expensive and can be an important choice; nevertheless, the care and attention used will not be of the highest level.

Comparison of marks

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

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

Application	Earlier mark (series of 2)
	<p data-bbox="810 638 1066 683">metro.co.uk</p> <p data-bbox="810 723 1038 768">metro.com</p>

Overall impression

48. The opponent's earlier mark consists of a series of two. They each contain the word metro. Using the second mark in the series as the basis for comparison, it consists of the word metro presented in lower case followed by the symbol and the word ".com". Given that the symbol and word ".com" will indicate part of an Internet domain name for a commercial company, the word metro will garner more focus in the overall impression. The component ".com" still plays a role as it contributes to the overall impression creating a domain name.

49. The applied for mark consists of a number of elements. One such element is composed of a capital letter M presented in black, in bold and placed centrally within a white square with grey borders. Though the four lines which form the letter M are oblique, creating the impression of a slightly geometric typeface, the stylisation is very

basic and far from remarkable. Below the letter M appear the words METRO HOTELS presented in bold, in capital letters and in the same typeface but in a smaller size. Directly below these components appear the words LIMITED SERVICES also presented in capital letters but in a font which is much smaller and finer than the words which appears above it. All the elements are integrated into a black square with the words METRO HOTELS and LIMITED SERVICES in white.

50. At the hearing Ms Chavda argued that the dominant and distinctive element of the application is the capital letter M and the “distinctive logo” because the word METRO is “generic” (to quote her skeleton):

“The only element common to both the Applicant’s applied-for mark and the Opponent’s relied-on marks is the word METRO. There are no other similarities. The word METRO is a generic word, with a low level of inherent distinctiveness, that achieves no more than to denote that goods and services are related to the “town” “city” or “metropolitan area” and is often associated with transport systems in major cities (such as Paris (Paris Metro); Los Angeles (LA Metro) or Madrid (Metro de Madrid)). Likewise, it is a word used for the free daily newspapers published in major cities across 25 countries including New York, Paris, Milan and Toronto by *Metro International*, and Belgium by *Mass Transit Media*, companies which are neither parent, subsidiary nor sister companies of the Opponent. The word METRO is also used by shops and supermarkets across the world to denote a smaller sized store, for example, TESCO METRO, EUSTON METRO; CAMDEN METRO; and WEST END METRO. The Registry’s search function at www.trademarks.ipa.gov.uk, returns over 300 marks containing the generic word METRO. Further, a search for the word METRO on www.google.co.uk returns 255,000,000 results and includes businesses such as METRO BANK; METRO BLIND SPORT; WY METRO; LONDON METROPOLITAIN UNIVERSITY; METRO GARDEN RESTAURANT AND BAR; METRO LOUNGES; METRO TRANSLINK; METRO CENTRE ONLINE; MIDLAND METRO; METRO BROADCAST and METRO RADIO ARENA. The word METRO is conceptually generic, lacks distinctiveness and is incapable of constituting a dominant element”.

51. The same argument was made in the applicant's counterstatement:

"The word "METRO" on its own is descriptive of most goods and service, as it achieves no more than to denote that such goods or services are related to the "town" or "city" or "metropolitan area". Whilst this may not always be true of all goods and services, it does apply to location-sensitive services such as hotels and other services detailed in the instant application"

52. I do not agree with the applicant's submissions on this point. Even if the letter M is bigger than the other elements of the mark and it is a distinctive component which will make an important contribution to the overall impression conveyed by it, in my view Mr Krause is right in saying that it is clearly intended to mirror the word METRO below. The words LIMITED SERVICES are non-distinctive and have a limited visual impact given that are very faint, much smaller, and appears at the bottom of the mark. The background is limited to a black and a white square and its distinctiveness and relative weight in the overall impression of the mark is, as a consequence, likely to be fairly limited. Whilst the word HOTELS is visually prominent, it is likely to convey no more than the concept of a chain of hotels bearing the name METRO, hence, any distinctiveness the word HOTELS may possess is less than that of the word METRO. Accordingly, I take the view that the word METRO and the letter M make a roughly equal contribution to the overall impression the mark conveys, with the average consumer likely to realise that the letter M stands for METRO.

53. Insofar as the argument that the word METRO is generic is concerned, for reasons that will become apparent, I do not consider that the word METRO lacks distinctiveness.

Visual similarity

54. Visually, both marks contain the word metro/METRO which creates a point of similarity. As notional and fair use means that the earlier mark could be used in upper case, the difference created by the cases as presented above is not relevant. There is, though, a clear visual difference on account of the M element, and further differences, created by the addition/absence of the words HOTELS and LIMITED

SERVICES in the applied for mark, and “.com” in the earlier mark , although I take into account my assessment as to overall impression in assessing the significance of such differences. I consider that the degree of visual similarity is between low and medium.

Aural similarity

55. Aurally, metro.com is a domain name and will be articulated as such. The applied for mark is likely to be referred to as METRO HOTELS. LIMITED SERVICES is unlikely to be articulated. Even if some people may articulate the letter M, the presence in both marks of the word metro/METRO will result in a medium degree of aural similarity.

Conceptual similarity

56. Conceptually, whilst it is conceivable that some consumers may associate the word metro/METRO in the respective marks with the concept of a foreign railway system, others may perceive it as a word with no clear meaning (see below). In this connection, I agree with Mr Krause that whatever significance is attributed to the word metro/METRO by the average consumer, it will be attributed equally to both marks.

57. As I have already found in the preceding paragraph, the word HOTELS in the application is likely to be perceived as referring to a chain of hotels bearing the name METRO. It is therefore descriptive (or highly allusive) in relation to the parties' services in classes 42 and 43 which are all services that could be provided by hotels; whilst it is more distinctive in relation to the parties' services in class 35, it does not instil in the mind of the average consumer a different meaning. The word “.com” in the earlier mark introduces the concept of a domain name and the mark as a whole is likely to be understood as the website address of a company called metro.

58. For those average consumers who will see in the word metro/METRO a reference to a foreign railway system, the marks are conceptually similar to a good degree. For the other group of consumers, who will perceive the word metro/METRO as having no particular meaning in relation to the services concerned, given the reference to other concepts, i.e. the concepts of a chain of hotels and a domain name, the conceptual position will be different.

Distinctive character of the earlier mark

59. 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).”

60. In its submissions, the opponent makes no claim that its earlier trade mark has acquired an enhanced distinctive character through the use made of it; consequently, I have only the inherent characteristics of the trade mark to consider. Insofar as the argument that the word METRO should be accorded very low (or no) distinctiveness is concerned, I make the following observations:

61. The word metro is defined in Collins Online Dictionary as follows:

metro in British

noun plural -ros

an underground, or largely underground, railway system in certain cities, esp in Europe, such as that in Paris

metro in American

adjective

metropolitan

62. The dictionary definition is consistent with the applicant's submission that the term "is associated with transport systems in major cities (such as Paris (Paris Metro); Los Angeles (LA Metro) or Madrid (Metro de Madrid)". However, both the definition and the applicant refer to use outside the UK. There is no evidence that metro is an everyday word used in the UK in relation to public transport systems; from my experience, the terminology used to refer to the underground railway system in London (which is the most well-known UK system) is "the tube" or the "underground", not "the metro" and there is no evidence of use of the word metro in other areas of the UK. Likewise, there is no evidence that metro is understood in the UK as an abbreviation of "metropolitan" and the applicant did not put forward that argument.

63. I also agree with Mr Krause that much of the information provided by Ms Chavda at the hearing is inadmissible in that it should have been filed as evidence. In any event, what she said does not establish whether metro has any meaning for the average consumer in the UK in relation to the registered services.

64. At the hearing, Ms Chavda also cited the decision in *W3 Ltd v Easygroup Ltd & Anor – [2018] EWHC 7 (Ch)*, which concerned whether the word easy was descriptive and invalidly registered in relation to *advertising* and *temporary accommodation*. As the reference was made at the last minute, I allowed two weeks for Ms Krause to file supplementary submissions; these were filed on 16 January 2018. He stated:

"In the first place, it is apparent that the word EASY is not at all similar to the word METRO. The former word is one that is used very frequently in everyday speech by consumers which "conveys to the average consumer of (the)

services the message that the services provided are easy to purchase or use. It is not merely evocative or suggestive, but actually describes the services: the advertising is easy to place, and the temporary accommodation is easy to book.” (Paragraph 167) In contrast, the word METRO is not very commonly used and does not convey an obvious, immediate meaning to consumers.

Secondly, the word EASY is generally descriptive; it can be used in relation to any goods and services. This does not apply to the word METRO to the extent that it is perceived descriptively.

Most importantly, though, in spite of the obviously descriptive nature of the word EASY, the judge had the benefit of a significant body of evidence before him to support this point. Not only was a dictionary definition put in front of him, but he also had the evidence of a linguistics expert as well as evidence of third party use of the name in company names [...]

In summary, the finding by the court that the word EASY is descriptive cannot assist the Applicant. The word is not at all similar to the mark METRO at issue. On the contrary, the approach taken in the court case suggests that, if a party wishes to rely upon the descriptiveness of a word, it will need to provide the tribunal or court with evidence of this in a case where the descriptiveness of the word at issue to the average consumer in respect of the goods/services at issue is not immediately obvious.”

65. I agree with Mr Krause. The analogy drawn by the applicant is unhelpful, particularly where it has provided no evidence. Further, it seems to me that the applicant’s argument is attempting arbitrarily to substitute the words "town" or "city" or "metropolitan area” for the word metro and to assess the distinctiveness of the earlier mark to the exclusion of the word metro. The point under distinctiveness is whether metro is descriptive (or has any suggestive capacity) in relation to the services at issue. In my view, the answer is no. Even allowing for metro to evoke the concept of a foreign railway system, it cannot be regarded as immediately descriptive of the services or of (one of) their characteristics. If what the applicant is saying is that metro when used in relation to hotel services is likely to suggest the concept of an urban environment

where the hotels are located, this would make it, at most, a slightly allusive mark, however, without evidence I am not prepared to accept that submission. Accordingly, I find that the component metro of the earlier mark has an average degree of distinctive character. Thus, the earlier mark is also possessed of an average degree of distinctive character.

Likelihood of confusion

66. 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 marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I must also keep in mind the average consumer for the goods and 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 of them he has retained in his mind.

67. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective goods and services come from the same or a related trade source). In *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 Mr Iain Purvis Q.C. sitting as the Appointed Person noted that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

68. Earlier in my decision I found that most of the respective services are identical and that some are similar to a medium degree. Whilst there may be a slight skew towards the visual impact of the marks taking on more significance, both the visual and aural aspects of the respective marks are important in the purchasing process and the level of attention paid to the selection will range from average to high. In terms of marks, I found that they are visually similar to a low to medium degree and aurally similar to a medium degree. The marks are conceptually similar to a good degree for those consumers whom will associate the word metro/METRO with the concept of a foreign railway system. For the other group of consumers, who will perceive the element metro/METRO in the marks as having no significance, the conceptual position will be different. However, any conceptual difference between the marks is created by i) the element “.com” in the earlier mark, which conveys the idea of a domain name for a company called metro and ii) the element HOTELS in the application, which conveys the idea of a chain of hotels called METRO. Contrary to the applicant’s submission that the shared element metro/METRO is a generic word that, it states, “achieves no more than to denote that goods and services are related to the “town”, “city” or “metropolitan area”, I found that the element metro of the earlier mark possesses an average degree of distinctiveness and will be its primary focal point. Having weighed up all of the competing factors and considering both marks in their totalities, I conclude that even if consumers will, in fact, perceive the marks visually and recall the differences between them, they will still believe that the services provided under the respective marks originate from the same or linked undertakings. This is because the earlier metro.com mark gives the impression of a website address for the marketing of “metro” services and on seeing the applicant’s mark used on identical or similar services, they will perceive it as a variant brand originating from the opponent, leading to indirect confusion. **There is a likelihood of indirect confusion.**

OVERALL CONCLUSION

69. The opposition succeeds.

Final remarks

70. At the hearing Ms Chavda criticised the opponent's conduct during the proceedings. She stated:

“The Opponent has used these opposition proceedings to leverage the progression of its opposed trade marks to full registration. Six of the trade marks cited by the Opponent in its opposition were in fact opposed applications at the time the opposition was made. As a result, the Applicant has been forced to delay the progress of its business pending the outcome of unrelated third party proceedings, which is unfair, unreasonable and in contravention of the laws of natural justice. Thirdly, the Opponent misrepresented to the Registry that the parties agreed to mediate. No such request was forthcoming from the Opponent and the Applicant was forced to waste time and costs whilst the Registry reviewed the position. The Applicant submits that it has been unfairly prejudiced as a result of the Opponent's delaying tactics and misuse of proceedings”

71. Mr Krause denied these allegations. There was a brief exchange in relation to the issue of mediation in the course of which Ms Chavda referred to an official letter which was sent by the Tribunal to the parties on 3 May 2017. This states:

“It has been brought to the Registry's attention that the parties have agreed to mediate in the above proceedings. In view of this, the proceedings will be suspended for a further two months and reviewed again on **3 July 2017**.”

72. I have carefully reviewed the file and there is no trace of any correspondence sent by the opponent referring to a possible mediation between the parties. Regardless of whether the Tribunal's letter contained an error or not, the present proceedings were suspended pending the outcome of proceedings relating to the opponent's applications (which are now registered marks) and were resumed following their withdrawal. Whilst the opponent has made a number of requests to suspend the proceedings, they were all legitimately made and considered by the Tribunal. There is

nothing before me to indicate that the opponent has attempted to delay the proceedings or breach the rules. Accordingly, I dismiss the applicant's allegations.

COSTS

73. As the opponent has been successful, it is entitled to a contribution towards its costs. In relation to the supplementary submissions filed on 16 January 2018 the opponent suggested an award of £400. Given the limited value of the submissions to the case, I will award the sum of £200. I award costs on the following basis:

Official fees ³ :	£100
Preparing the statement and considering the other side's statement	£200
Filing of evidence	£500
Attending a hearing and filing skeleton arguments:	£800
Filing of supplementary submissions:	£200
Total	£1,800

74. I order London Hotels Corporation Limited to pay Associated Newspapers Limited the sum of £1,800 as a contribution towards its costs. This sum is to 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 27th day of February 2018

Teresa Perks

For the Registrar

The Comptroller General

³ Although a fee of £200 was paid, the opponent is not entitled to this full fee as such a fee is only required for oppositions based on grounds other than 5(1)/5(2) – although other grounds were initially pleaded, they were struck out as no evidence was filed.

Annex

2654145



Filing date: 01 February 2013

Date of entry in register: 30 June 2017

Goods and services:

Class 9: Computer software namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases and the Internet, computer software for providing integrated telephone communication with computerized global information networks; software relating to handheld digital electronic devices; computer programs; telephone-based information retrieval software; software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; software for the synchronization of data between a remote station or device and a fixed or remote station or device; electronic images; on-line electronic publications; electronic publications (downloadable); electronic newspapers, sections, columns and articles; games software; downloadable games; CDs; optical and magnetic discs and other recordable media; CD-Roms; DVDs; data storage media; fonts, typefaces, type designs and symbols in the form of recorded data; pre-recorded video tapes and cassettes; modems; discs; compact discs, tapes, all for bearing encoded programmes for computers; digital music (downloadable) provided from the Internet; digital music (downloadable) provided from MP3 Internet web sites; video tapes, games and cassettes; non tangible computer accessories such as screen savers, magnetic data carriers; recording discs; parts and fittings for all the aforesaid goods.

Class 16: Printed matter; printed publications, including sections, columns and articles; periodical publications; newspapers, magazines, supplements, posters, periodicals, books, notebooks, reference books; brochures, leaflets, user guides and training manuals; instructional and teaching materials (other than apparatus); maps, holiday and travel guides, calendars, diaries and printed stationery; parts and fittings for all the aforesaid goods, travel publications.

Class 35: Advertising services; marketing, public relations, publicity and promotional services; business services; advertising and business services provided on-line from a computer database or from the Internet; business information services; business management and administration; compilation and provision of business information, advice and statistics; business research; business organisation and management consultancy services; economic forecasting; computerised business information storage and retrieval services; classified advertising services; market studies and analysis; rental of advertising space, dissemination of advertising matter; compilation of advertisements for use as web pages on the Internet; advertising mail order; provision of commercial information; provision of advertisement programmes; organization of exhibitions and trade fairs for commercial or advertising purposes; television, radio and satellite commercials; news clipping services; retail services provided through a television shopping channel, internet website, mail order catalogue, magazine or newspaper publication, in connection with the sale of beauty products, toiletries, domestic cleaning products, downloadable music files (including MP3), downloadable video files, publications, leather goods, luggage, textiles, clothing, footwear, on-line ordering services in relation to printed matter, newspapers, books and other related publications in both printed and digital format; computerised accounting; computerised database management; computerised data processing and business management advice and consultancy; providing an on-line directory; advice and assistance relating to the establishment of on-line retail stores in relation to printed matter, newspapers, books and other related publications; search and retrieval of information; storage of information; provision of a database; public relations services; price comparison services; consumer advice services; recruitment, employment and personnel management services; career information and advice;

information, advisory and consultancy services relating to all the aforesaid services; all the aforementioned services also provided on-line from a computer database or from the Internet; promotion and advertising of travel and travel offers.

Class 38: Telecommunications; communication and telecommunication services; telecommunication access services; communications by computer; communication between computers; electronic sending of data and documentation via the Internet or other databases; supply of data and news by electronic transmission; providing access to websites and electronic news services online allowing the download of information and data; providing access to web sites on the Internet; delivery of digital music by telecommunications; providing wireless telecommunications via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; one-way and two-way paging services; communication by computer, computer intercommunication; telex, telegram and telephone services; broadcasting or transmission of radio and television programmes; time sharing services for communication apparatus; provision of telecommunications access and links to computer databases and the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; web casting services; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing access to digital music web sites on the Internet; providing access to MP3 web sites on the Internet; delivery of digital music by telecommunications; provision of telecommunications connections to the Internet or computer databases; providing user access to the Internet (service providers); electronic mail services; telecommunication of information (including web pages); video broadcasting, broadcasting prerecorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global

computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programmes, broadcasting prerecorded videos featuring music and entertainment, television programmes, motion pictures, news, sports, games, cultural events, and entertainment-related programmes of all kinds, via computer and other communications networks; streaming of audio content via a global computer network; electronic transmission of audio and video files via communications networks; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic news services; electronic communications consultancy; facsimile, message collection and transmission services; transmission of data and of information by electronic means, computer, cable, radio, teleprinter, teletype, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; transmission of data by audio-visual apparatus controlled by data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid; provision of access time to web-sites featuring multimedia materials; providing access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users.

Class 41: Education and entertainment services; betting services, gaming services; gambling services; electronic games services provided by means of the Internet or telecommunications; game services provided on-line Internet games (non-downloadable); provision of games by means of a computer based system; telephone games; amusement services; publishing services; publishing through a website or other medium accessible by means of a telecommunications device, including the publishing of a news publication through a website or other medium

accessible by means of a telecommunications device; publishing of information, including the publishing of information on news, sport, show business, finance, health, weather, fashion and travel through a website, or other medium accessible by means of a telecommunications device; publication of printed matter and printed publications; publishing and publication services; electronic publishing services; providing on-line electronic publications (not downloadable); publication of electronic books and journals on-line; organisation of exhibitions and shows; provision of information relating to education, sporting events, national and local politics, current affairs, cultural activities and entertainment; news services; news reporters services; news programme services for radio or television; commissioned writing; sports information services; organisation of competitions, quizzes, games and recreational and cultural facilities; ticket reservation services; booking services; arranging of tickets for sporting, cultural and entertainment, events, concerts and shows; electronic game services provided by means of the Internet; production of shows and radio and television programmes; cable television, television and radio entertainment services; syndicated writing services concerning the Internet and on-line computer services; providing digital music (not downloadable) from the Internet; providing digital music (not downloadable) from MP3 Internet web sites; information, advisory and consultancy services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the Internet; live entertainment services; publication of travel guides and travel offers; publication of information, advice and articles in the field of travel.

Class 42: Computer and Internet services; hosting online facilities for others; rental or leasing of non-downloadable software online for others; design of computer databases; providing search engines for the Internet; design of games; creation of computer programmes, including programmes for games and gambling; technical consultancy and advice in the establishment of an on-line retail store in relation to printed matter, newspapers, book and other related publications; creating and maintaining web sites; hosting the websites of others; downloading of information from a database; computer services, namely hosting websites enabling the use of on-line directories; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; information, advisory and consultancy services

relating to all the aforesaid services; all the aforesaid services also provided online from a computer database and/or from the Internet; design and development of computer software and software applications

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metro.co.uk metro.com

Filing date: 22 May 2000

Date of entry in register: 17 March 2017

Goods and services:

Class 9: Software, electronic publications, CD-Roms, computer software to enable searching of data and connection to databases and the internet; pre-recorded video tapes and cassettes; video tapes, games and cassettes; non-tangible computer accessories, such as screen savers.

Class 16: Printed matter; printed publications; newspapers, magazines, supplements, posters, periodicals, books, brochures, leaflets, user guides and training manuals, maps, holiday and travel guides, calendars, diaries and printed stationery.

Class 35: Retail services provided through a television shopping channel, general merchandise internet website, mail order catalogue and a newspaper publication, in connection with the sale of beauty products, toiletries, domestic cleaning products, leather goods, luggage, textiles, clothing, footwear, on-line ordering services in relation to printed matter, newspapers, books and other related publications in both printed and digital formats; providing an on-line directory; advice and assistance relating to the establishment of on-line retail stores in relation to printed matter, newspapers, books and other related publications; search and retrieval of information; business services; business services provided on-line from a computer database or from the internet; information services relating to all the aforesaid services; provision of a database; compilation and provision of business information, advice and statistics; business research; provision of commercial information; business information services; public relations services; recruitment, employment and personnel management services; information relating to all the

aforesaid services; career information and advice; all the aforesaid services also provided on-line from a computer database or the internet; advertising services and classified advertising services of and relating to advertising in printed media; promotion services relating to advertising in printed media; the organisation of exhibitions and trade fairs for commercial and advertising purposes.

Class 36: Analysis, evaluation, information and advice relating to insurance and financial services; financial management services, financial advisory services; financial services relating to credit card services, investment schemes and accounts; bank card and debit card services; cheque verification and cheque cashing, issuing and redemption of travellers cheques and travel vouchers and advisory services relating thereto; on-line financial banking, savings, payments and credit facilities; home banking and internet banking; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the internet.

Class 38: Search engine services; electronic mail services; provision of telecommunications access and links to computer databases and the internet; providing user access to the internet; telephone rental services; provision and rental of telephone chat lines; providing an on-line directory; Telecommunication or communication services provided on-line: telecommunication of information including web pages, computer programs and any other data; communication services, all provided on-line from a computer database or from the internet; providing an on-line portal network site; provision of web pages; computer bulletin and message boards; telecommunications services provided in relation to the internet; providing access to digital music web sites on the internet; providing access to MP3 web sites on the internet; news agency services; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the internet.

Class 39: Travel agency services; tourism and tour operation services; travel information services; arranging of holidays, cruises, journeys, visits, tours and trips; travel and transport reservation services; passenger transport services; escorting of

travellers; booking of seats for travel; information services relating to all the aforesaid services; provision of information relating to journeys, tariffs, timetables and methods of transport; all the aforesaid services also provided on-line from a computer database or from the internet.

Class 41: Education services; publishing services; publication of printed matter and printed publications; publishing and publication services; electronic publishing services; providing on-line electronic publications (not downloadable); publication of electronic books and journals on-line; organisation of competitions, quizzes and games; organisation of exhibitions; provision of information relating to education; all the aforesaid services also provided on-line from a computer database or from the internet; information services relating to all the aforesaid services; electronic game services provided by means of the internet.

Class 42: Provision of a database; design of computer databases; providing search engines for the internet; providing an on-line portal network site; technical consultancy and advising in the establishment of an on-line retail store in relation to printed matter, newspapers, books and other related publications; providing on-line computer facilities for real time interaction with other computer users concerning topics of general interest and playing games; creating and maintaining web sites; hosting the websites of others; leasing access time to a computer database; information and advice relating to the weather; information and advice relating to healthcare and beauty care; cookery information and advice; fashion information and advice; gardening information and advice; information relating to hotels; medical information and advice; news services; healthcare, beauty care, cookery, careers, fashion, gardening, hotels, medical matters and news services, also provided on-line from a computer database or from the internet; news reporter services and printing services; news clipping services; commissioned writing services; syndicated writing services concerning the internet and on-line computer services, all these services also provided on-line from a computer database and/or the internet; providing access to and leasing access time to computer databases; design, drawing and commissioned writing, all for the compilation of web pages on the internet; reservation of accommodation; restaurant, canteen, snack bar, cafe,

cafeteria, wine bar, nightclub, public house and catering services; catering services for the provision of food and drink; information relating to all the aforesaid services, also provided on-line from a computer database or from the internet.

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METRO LONDON

Filing date: 22 March 1999

Date of entry in register: 17 March 2017

Goods and services:

Class 9: Software; electronic publications; CD-Roms; computer software to enable searching of data and connection to databases and the Internet; pre-recorded video tapes and cassettes; digital music [downloadable] provided from the Internet; digital music [downloadable] provided from MP3 Internet web sites; video tapes, games and cassettes; non-tangible computer accessories, such as screen savers.

Class 16: Printed matter; printed publications; newspapers; magazines; supplements; posters; periodicals; books; brochures; leaflets; user guides and training manuals; maps; holiday and travel guides; calendars; diaries and printed stationery.

Class 35: Advertising, promotion and business services; advertising and business services provided on-line from a computer database or from the Internet; compilation of advertisements for use as web pages on the Internet; information services relating to all the aforesaid services; compilation and provision of business information, advice and statistics; business research; provision of commercial information; business information services; public relations services; classified advertising services; organisation of exhibitions and trade fairs for commercial and advertising purposes; recruitment, employment and personnel management services; information relating to all the aforesaid services; advice and assistance relating to the establishment of on-line retail stores in relation to printed matter, newspapers, books and other related publications; on-line ordering services in relation to printed matter, newspapers, books and other related publications in both printed and digital

formats; retail services connected with the sale of beauty products, toiletries, domestic cleaning products, publications, leather goods, luggage, textiles, clothing, footwear, digital music and video files; all the aforesaid services also provided on-line from a computer database or from the Internet.

Class 36: Insurance and financial services; analysis, evaluation and advice relating thereto; financial management services; financial advisory services; financial services relating to credit card services, investment schemes and accounts; bank card and debit card services; cheque verification and cheque cashing, issuing and redemption of travellers cheques and travel vouchers and advisory services relating thereto; on-line financial, banking, savings, payment and credit facilities; home banking and Internet banking; information services relating to all the aforesaid services; all the aforesaid services also provided on-line from a computer database or from the Internet.

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

Class 42: Search engine services; information services; provision of a database; downloading of information from a database; computer services, namely providing an on-line directory and search engine service; search and retrieval of information;

providing an on-line portal network site; technical consultancy and advising in the establishment of on-line retail stores in relation to printed matter, newspapers, books and other related publications; computer bulletin and message boards; providing on-line facilities for real time interaction with other computer users concerning topics of general interest and playing games; creating and maintaining web sites; hosting the web sites of others; leasing access time to a computer database; information and advice relating to the weather; information and advice relating to healthcare and beauty care; cookery information and advice; career information and advice; fashion information and advice; gardening information and advice; information relating to hotels; medical information and advice; news services; healthcare, beauty care, cookery, careers, fashion, gardening, hotels, medical matters and news services, also provided on-line from a computer database or from the Internet; news reporters and printing services; news clipping services; commissioned writing services, syndicated writing services concerning the Internet and on-line computer services, all these services also provided on-line from a computer database and/or the Internet; providing access to and leasing time to computer databases; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; information relating to all the aforesaid services, also provided on-line from a computer database or from the Internet.