

O-098-19

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3242204 BY
EMERGENCY RESPONSE DRIVER TRAINING LTD
TO REGISTER:**

ERDT

AS A TRADE MARK IN CLASS 41

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 410521
BY
EMERGENCY SERVICES TRAINING AND RESILIENCE LIMITED**

1. On 12 December 2018, I issued an interim decision in these proceedings (BL O-792-18 refers). In that decision, I stated:

“Provisional conclusion under sections 3(1)(b) and (c) of the Act

81. The applicant’s services are broad enough to include education and training in relation to emergency response driving. Consequently, as matters stand, the application will be refused for all the services for which registration has been sought.”

And:

“83. I think it most unlikely that an ordinary member of the general public would be aware that the letters ERDT are used as an acronym for Emergency Response Driver Training. Similarly, as far as I am aware, the letters ERDT are neither descriptive of nor non-distinctive for a wide range of educational and training services not relating to driving. For example, the trade mark the subject of the application is likely to be distinctive in relation to education and training in the field of carpentry.

84. However, inter alia, exhibit SC4 to the statement of Mr Curley strongly suggests (unsurprisingly), that the applicant’s commercial interests lie in the field of broadly speaking, education and training in relation to the driving of motor vehicles; I say motor vehicles having noted that collinsdictionary.com defines “motor vehicle” as “a road vehicle driven by a motor or engine, esp. an internal-combustion engine”.

85. In his evidence (paragraph 28 refers), Mr Milton identifies a range of other courses the applicant provides. However, it appears to me that, for example, 4x4 and 6x6 off-road driving could all constitute part of emergency response driver training. Given the conclusions I have already reached, none of the limited

specifications suggested by the applicant are, in my view, sufficient to overcome the objections. If the application is to proceed to registration on some basis, it will be necessary for the applicant to review its position and offer a revised specification/revised specifications, keeping in mind the comments of Arnold J in *Omega SA (Omega AG) (Omega Ltd) v Omega Engineering Incorporated* [2012] EWHC 3440 (Ch), in relation to the application of the principle in *POSTKANTOOR*. In this regard, it may be more productive for the applicant to consider offering a positively limited specification(s) rather than exclusions.

Next steps

86. With the above in mind, the applicant is allowed 14 days from the date of this interim decision to offer a revised specification/revised specifications. Any such revised specification/specifications offered should be copied to the opponent who will then be allowed a period of 14 days from the date that it receives a copy of the revised specification/specifications to provide comments. At the conclusion of that period, I will review any submissions the parties may make and issue a supplementary decision, in which I will deal with costs and set the period for appeal.”

2. The applicant responded to that invitation in an email dated 24 December 2018, to which the opponent responded in a letter dated 4 January 2019. In an email dated 6 January 2019, the applicant commented on the opponent’s observations. Although not provided for in paragraph 86 of my interim decision, as the opponent has not objected to the applicant’s comments in reply, I will also take these submissions into account.

3. In reaching a conclusion, I will bear in mind the opponent’s submissions that, inter alia, the revised specification does not assist the applicant because all of the services listed relate to driving, with some specifically mentioning services I regarded as being objectionable in my interim decision. I will also keep in mind, the applicant’s response to the effect that given the basis of the opposition (see below), it is permissible for the

applicant to retain services relating to driving to which that specific objection does not apply.

4. I begin by reminding myself that in its Notice of opposition, the opponent stated that the letters ERDT were devoid of any distinctive character under section 3(1)(b) of the Act because they:

“would be commonly recognised by the relevant public as a descriptive abbreviation of “emergency response driver training”, a term that is well used within the emergency training services industry...ERDT is a description of a service which could equally apply to any undertaking in the field, in that all emergency response driver training providers use the term ERDT as the commonly understood abbreviation of “emergency response driver training.”

5. In relation to its objection based upon section 3(1)(c) of the Act, it further stated that the letters ERDT are:

“used to exclusively describe/designate the kind of services offered by the applicant. The applicant’s services applied for relate to training services concerning emergency response drivers; this is the literal derivation of the abbreviation “ERDT” and the commonly understood phrase “emergency response driver training”. It is the opponent’s belief that the relevant public will recognise “ERDT” and “emergency response driver training” as a description of the kind of services offered and should therefore be free to use by all traders providing such services and not be monopolised by any one undertaking”

6. I also remind myself of the following paragraphs which appeared in my interim decision:

“28. Mr Milton explains the applicant’s customers include the emergency services, blue light users, security services, the United Nations and the general

public. He states that the applicant offers 29 different courses to its customers. Of these 29 courses, Mr Milton states that “16 are emergency response high speed driving courses”. Other courses include: security protection defensive driving, armoured vehicle defensive driving, defensive and advanced driving, 4x4 and 6x6 off-road driving, floodwater driving and train the trainer on all the applicant’s courses. Mr Milton states:

“9. The public that are looking to source one of the 13 non-emergency driving courses we offer would have no knowledge of any potential link between ERDT and the emergency services”.

7. In its email of 24 December, the applicant provided a list of services it considered escaped objection under sections 3(1)(b) and (c) of the Act. The revised specification is as follows:

Driver training for members of the public; Driver training for members of the armed forces; Driver training for security personnel; Driver training for local authority personnel; Driver training for highways agency personnel; Driver training for environmental agency personnel; Driver training for utility company personnel; Driver training for NHS personnel; Driver training for mountain search and rescue teams; Driver training for government authorities and agencies; Driver training for the emergency services (other than emergency response driving); Driver training for business drivers; Driver training for airport personnel; Driver training for United Nations and Aid Agency personnel; Training for driving instructors; Training for driving trainers; Training for driving assessors; Training for driving in floodwater; Training in airside defensive driving and safety awareness; Training in defensive driving techniques; Training for avoiding and correcting skids while driving; Training for defensive security protection driving; Training for driving armoured vehicles; Training for driving 4 x 4 vehicles off-road; Training for driving 6 x 6 vehicles off-road; Training in patient care services ambulance driving (non-emergency); Training in driving light commercial vehicles

and vans; Training in driving minibuses and coaches; Training in driving heavy/large goods vehicles (HGV/LGV); Training in driving passenger carrying vehicles (PCV/PSV); Training in vehicle familiarisation; Training in vehicle crash investigation; Training for the CI medium lorry driving licence.

8. For the reasons identified, the following services are not acceptable:

1. Driver training for members of the armed forces - **(this would include the MOD – paragraph 34 of the interim decision refers).**

2. Driver training for security personnel – **(this would include emergency response drivers in, for example, the police force).**

3. Driver training for local authority personnel - **(this would include emergency response drivers in the employ of local authorities).**

4. Driver training for highways agency personnel – **(this would include, for example, Traffic Officers who attend scenes of accidents).**

5. Driver training for NHS personnel – **(this would include emergency response drivers in the employ of NHS Trusts).**

6. Driver training for mountain search and rescue teams - **(paragraph 72 of the interim decision refers).**

7. Driver training for government authorities and agencies - **(this would include, inter alia, training for emergency response drivers in the MOD).**

8. Driver training for the emergency services (other than emergency response driving) - **(given the clear meaning of the letters ERDT in this area of trade,**

the exclusion suggested is likely to result in the trade mark being deceptive and open to objection under section 3(3)(b) of the Act).

9. Driver training for airport personnel - **(see, inter alia, paragraph 43 of the interim decision).**

10. Driver training for United Nations and Aid Agency personnel - **(this would include individuals from the United Kingdom who have a background in emergency response driving and are familiar with the letters ERDT and their meaning).**

11. Training for driving instructors, (12) Training for driving trainers, (13) Training for driving assessors - **(11, 12 and 13 would include the training of instructors, trainers and assessors in emergency response driving).**

14. Training for driving in floodwater - **(paragraph 85 of the interim decision refers).**

15. Training in airside defensive driving and safety awareness - **(as 9 above).**

16. Training in defensive driving techniques. (My understanding of the term “defensive training” is that it relates to techniques which assist one to become a more effective driver by better understand prevailing conditions and their interaction with others).

17. Training for avoiding and correcting skids while driving - **(both 16 and 17 would include such techniques as they apply to emergency response driving).**

18. Training for defensive security protection driving – **(as 2 above).**

19. Training for driving armoured vehicles - **(this would include, for example, the drivers of armoured ambulances who would be familiar with the letters ERDT and their meaning).**

20. Training for driving 4 x 4 vehicles off-road, (21) Training for driving 6 x 6 vehicles off-road - **(paragraph 85 of my interim decision refers to both 20 and 21).**

22. Training in patient care services ambulance driving (non-emergency) - **(as 8 above).**

23. Training in driving light commercial vehicles - **(paragraph 14 of the interim decision in relation to the South Wales Fire and Rescue Service refers).**

24. Training in driving heavy/large goods vehicles (HGV/LGV) - **(as 23 above).**

25. Training in driving passenger carrying vehicles (PCV/PSV) – **(as 23 above).**

26. Training in vehicle familiarisation - **(this would include familiarisation with emergency response vehicles).**

9. That leaves the following terms to be considered:

Driver training for members of the public; Driver training for environmental agency personnel; Driver training for utility company personnel; Driver training for business drivers; Training in driving vans; Training in driving minibuses and coaches; Training in vehicle crash investigation; Training for the CI medium lorry driving licence.

10. In paragraph 17 of my original decision, I referred to exhibit SC5 which consisted of a page from the applicant's website which included the following:

“Please Note: Emergency response driver training courses using blue lights & sirens are not available to members of the public and any course enquiry must be submitted through your Emergency Service or organisation.”

11. It appears from the above that access to emergency response driver training may be restricted. Regardless, the fact remains that an average consumer who may wish to avail themselves of the named driver training mentioned in paragraph 9 (in particular those who are currently engaged in professional driving roles and may wish to increase their skill set), may also wish to be trained in emergency response driving. For such individuals, who are likely by that point to be familiar with the letters ERDT and their meaning, the applicant’s trade mark would create a clear expectation of the kind of driving course that would be provided; a clear expectation which would not be fulfilled if the specification was limited in the manner the applicant suggests. Given the clear meaning of the letters ERDT, such limitations are also, in my view, likely to render the application deceptive and open to objection under section 3(3)(b) of the Act.

12. However, that conclusion does not, in my view apply to “training in vehicle crash investigation” which relates to training in establishing why a crash has occurred, rather than in how one should drive when responding to an emergency.

Overall conclusion

13. Subject to any successful appeal, the opposition based upon sections 3(1)(b) and (c) of the Act succeeds in relation to:

Driver training for members of the public; Driver training for members of the armed forces; Driver training for security personnel; Driver training for local authority personnel; Driver training for highways agency personnel; Driver training for environmental agency personnel; Driver training for utility company personnel; Driver training for NHS personnel; Driver training for mountain search and rescue teams; Driver training for government authorities and agencies;

Driver training for the emergency services (other than emergency response driving); Driver training for business drivers; Driver training for airport personnel; Driver training for United Nations and Aid Agency personnel; Training for driving instructors; Training for driving trainers; Training for driving assessors; Training for driving in floodwater; Training in airside defensive driving and safety awareness; Training in defensive driving techniques; Training for avoiding and correcting skids while driving; Training for defensive security protection driving; Training for driving armoured vehicles; Training for driving 4 x 4 vehicles off-road Training for driving 6 x 6 vehicles off-road; Training in patient care services ambulance driving (non-emergency); Training in driving light commercial vehicles and vans; Training in driving minibuses and coaches; Training in driving heavy/large goods vehicles (HGV/LGV); Training in driving passenger carrying vehicles (PCV/PSV); Training in vehicle familiarisation; Training for the CI medium lorry driving licence.

The application may, however, proceed to registration in respect of:

Training in vehicle crash investigation.

Costs

14. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Although the applicant has succeeded in preserving part of its specification, the opponent has been overwhelmingly successful. Making a “rough and ready” reduction to the award I would have otherwise made to the opponent to reflect the very limited extent of the applicant’s success, but keeping in mind the additional costs associated with the written submissions mentioned, having applied the guidance in the TPN, I award costs to the opponent on the following basis:

Preparing a Notice of Opposition and reviewing the counterstatement:	£400
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Official fee: £200

Preparing evidence and considering and
commenting on the other side's evidence
(including the filing of three sets of written
submissions): £1000

15. I order Emergency Response Driver Training Ltd to pay to Emergency Services Training and Resilience Limited the sum of **£1600**. 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 20th day of February 2019

C J BOWEN

For the Registrar