

**O/549/21**

**CONSOLIDATED PROCEEDINGS**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NOS. UK00003456087**

**AND UK00003455998**

**BY THIS IS THE BIG DEAL LIMITED**

**TO REGISTER:**

**LOOK AFTER MY BILLS**

**AND**

A circular logo where the words 'LOOK', 'AFTER MY', and 'BILLS' are arranged in a circle. 'LOOK' is at the top, 'AFTER MY' is on the left side, and 'BILLS' is on the right side. The letters are in a bold, sans-serif font.

**AS TRADE MARKS IN CLASSES 9, 35, 36, 39 AND 42**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NOS. 420009 AND 420010 BY**

**WONDERBILL LIMITED**

## BACKGROUND AND PLEADINGS

1. On 7 January 2020, This Is The Big Deal Limited (“the applicant”) applied to register the following trade marks in the UK:

LOOK AFTER MY BILLS  
 (“the applicant’s first mark”)



(“the applicant’s second mark”)

2. The applications were published for opposition purposes on 17 January 2020 and registration is sought for the goods and services shown in the **Annex** to this decision. I note that the applicant’s marks’ specifications are identical.
3. On 3 April 2020, the applications were opposed by WonderBill Limited (“the opponent”). The oppositions were initially based on sections 3(1)(b), 3(1)(c) and 3(1)(d) of the Trade Marks Act 1994 (“the Act”). However, in its written submissions, the opponent elected not to pursue the section 3(1)(d) ground.
4. In respect of its section 3(1)(b) opposition against the applicant’s first mark, the opponent states as follows:

“The application does not serve to identify the goods and services applied for as originating from a particular undertaking and thus distinguish the applied for goods and services from those of other undertakings, including the opponent. The phrase LOOK AFTER MY BILLS is generally used and understood as a promotional message, the function of which is to communicate a feature of the goods and services applied for. The average consumer will not tend to perceive any particular indication of commercial origin in the application beyond the promotional information conveyed, which merely serves to highlight the aspects of the goods and services applied for, namely that they are provided to looks after bills.

There is nothing about the phrase LOOK AFTER MY BILLS that might, beyond its obvious promotional meaning, enable the average consumer to memorise

the sign easily and instantly as a distinctive trade mark for the goods and services applied for.”

5. The opponent continues in respect of its opposition against the applicant’s first mark based upon section 3(1)(c):

“The phrase LOOK AFTER MY BILLS has a clear descriptive meaning that the average consumer would perceive as providing information that the goods and services applied for function to look after bills, e.g. the management of household bills. As such, the application describes, inter alia, the kind, a quality and the intended purpose of the goods and services applied for.”

6. The opposition aimed at the applicant’s second mark relies on the same arguments that I have set out above. However, in addition, each statement includes a claim that the stylisation does nothing to alter the arguments raised.
7. The applicant filed a counterstatement denying the claims made and claimed that its marks had, before the date of the applications, acquired distinctive character as a result of the use made of them and should not, therefore, be refused registration by virtue of sections 3(1)(b) and 3(1)(c) of the Act.
8. The opponent is represented by Osborne Clarke LLP and the applicant is represented by Womble Bond Dickinson (UK) LLP. Both parties filed evidence in chief. During the evidence rounds, the applicant filed written submissions. No hearing was requested and both parties filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

## **EVIDENCE**

### The opponent’s evidence in chief

*The Witness Statement of Sian Edmonds dated 29 October 2020*

9. Ms Edmonds is a Chartered Trade Mark Attorney for the opponent’s representative. Ms Edmonds introduces evidence with a view to breaking down the

meaning of 'LOOK AFTER' and 'MY BILLS'. Ms Edmonds undertook an internet search on 27 September 2020 wherein she searched the Cambridge online dictionary for 'LOOK AFTER', which returned the results that it was a phrasal verb meaning 'to take care of or be in charge of something.'<sup>1</sup> A search was also undertaken on 9 October 2021 regarding the meaning of the term 'BILL'. A number of definitions were returned in the results but, notably, the first definition was 'a request for payment of money owed, or the piece of paper on which it is written'.<sup>2</sup> While these searches were undertaken after the filing date of the applications in issue, I accept them as definitions of these separate terms.

10. Ms Edmonds also introduces evidence from an online article regarding the common bills that a member of the general public would be expected to pay as a homeowner. I note that, amongst others, gas and electricity bills and insurance and mortgage payments are shown as results.<sup>3</sup>

11. The stylisation used on the applicant's second mark is then discussed. Ms Edmonds states that it is the sideways figure of eight, which is a mathematical symbol commonly used to represent 'infinity'. The applicant's second mark is expanded on further with reference to the applicant's Facebook page and a post dated 2 April 2019 wherein the new symbol is introduced together with an explanation that the infinity symbol represents the applicant's commitment to 'always look after' the user's bills.<sup>4</sup>

12. Ms Edmonds then goes on to discuss the applicant's website and social media pages and notes the use of the heading "Manage my bills every year please" on the applicant's website<sup>5</sup> and the use of the words 'GET BETTER ENERGY DEAL' in juxtaposition with 'LOOK AFTER MY BILLS' in an advertisement from the applicant's facebook page which is dated 21 July.<sup>6</sup> While the year is not shown, given the date of the witness statement, it is reasonable to assume that the post was dated 2020. Finally, Ms Edmonds has provided a video showing the BBC

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<sup>1</sup> Exhibit SE1

<sup>2</sup> Exhibit SE2

<sup>3</sup> Exhibit SE3

<sup>4</sup> Exhibit SE7

<sup>5</sup> Exhibit SE5

<sup>6</sup> Exhibit SE6

programme Dragon's Den wherein the co-founders of the applicant appeared to make a pitch.<sup>7</sup> This video was uploaded to YouTube on 19 August 2018 but it is not clear from the evidence when the programme aired on BBC.

### The applicant's evidence in chief

#### *The Witness Statement of Henry George De Zoete dated 15 February 2021*

13. Mr De Zoete is one of the co-founders of the applicant and was a director and shareholder from the date of the applicant's incorporation on 6 April 2016 until it was sold to Gocompare.com on 9 July 2019. Mr De Zoete states that the absolute grounds of the oppositions should not apply because the applicant's marks had acquired a distinctive character as a result of the use made of them either for all of the goods and services in the applicant's marks' specifications or, at least for those goods and services covered by the applicant's marks' specifications as the Tribunal might otherwise consider are described by, and/or non-distinctive in relation to such signs.
14. Mr De Zoete states that in January 2018, the applicant launched an auto-switching platform. The evidence indicates that this platform is a service where a user signs up and the applicant locates the cheapest gas and electricity deal for them and then switches the user onto those deals automatically. At the expiration of the deal, the applicant reviews the user's deal again and, if necessary, switches them onto a cheaper deal without the user actually having to do anything. Screenshots from prior to the date of the application were obtained from the online archive facility, the Wayback Machine, and copies of these are provided.<sup>8</sup> I note that the websites show use of the applicant's marks prior to the relevant date. I also note that on the earliest screenshots of the applicant's website, being 21 March 2018 and 1 April 2018,<sup>9</sup> the header of the page reads 'THE BIG DEAL brings you Look After My Bills' with the words 'THE BIG DEAL' displayed inside a number of coloured speech boxes. However, from June 2018, this was changed to, simply, 'Look After My

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<sup>7</sup> Exhibit SE8

<sup>8</sup> Exhibit HGZ3

<sup>9</sup> Pages 18 and 21 of Exhibit HGZ3 of the Witness Statement of Henry George De Zoete

Bills', before being changed to the applicant's second mark from April 2019 onwards.

15. Also provided are a number of screenshots that show what Mr De Zoete refers to as the user's 'journey' when signing up to the applicant's services. Screenshots showing the current sign up process from April 2019 onwards and the previous sign up process from between approximately July 2018 and April 2019.<sup>10</sup> I note that the first and last pages shown for the process between July 2018 and April 2019 show the applicant's first mark but that the pages in between do not. However, for the current process, the applicant's second mark is featured throughout.

16. The number of members who subscribe to the applicant's platform are then discussed. I note that at around November 2018, the applicant had over 100,000 members and that this steadily grew to over 350,000 members by 7 January 2020, being the date of the applications at issue. Mr De Zoete states that these membership numbers show the investment that the applicant has made in its marks, the breadth of exposure that the marks have enjoyed and the recognition that they have obtained with the UK public.

17. Revenue is then discussed and Mr De Zoete states that the applicant's revenue is generated from commission from the utility companies and that between the dates of 1 January 2018 and the date of the applications at issue, the revenue exceeded £10,875,000 with a peak monthly revenue of £1,291,000 in August 2019. Mr De Zoete goes on to state that it is his understanding that this is the total revenue of all goods and services offered and that the applicant is unable to split out the revenue specifically. However, Mr De Zoete states that:

“[G]iven that the platform bearing the Trade Mark is The Big Deal's primary revenue-generating offering, and there are no other "products" as such offered by The Big Deal, the Finance team cannot think of any other "product" to which such turnover could be attributed.”<sup>11</sup>

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<sup>10</sup> Exhibit HGZ4

<sup>11</sup> Paragraph 15 of the Witness Statement of Henry George De Zoete dated 15 February 2021

18. Mr De Zoete discusses the applicant's appearances in national press since around February 2018 and provides copies of various press coverage from between the dates of 20 February 2018 and 9 October 2019.<sup>12</sup> Mr De Zoete claims that the extent of this coverage shows the extensive exposure that the applicant's marks have achieved prior to the date of the applications at issue. I note that there are 200 pages of press coverage and that these are from various UK wide publications such as The Sun, Evening Standard, Daily Mail Online and the BBC, amongst others as well as more regional publications such as City AM and the Bristol Post, amongst others. While I note that not all of the press coverage is about the applicant specifically, they do mention the applicant's LOOK AFTER MY BILLS business.

19. The applicant's co-founders' appearance on the second episode of the sixteenth season of the BBC show, Dragons' Den, is then discussed. The episode was aired on 19 August 2018 and Mr De Zoete refers to Wikipedia viewing figures that show that this episode attracted 3.16 million viewers.<sup>13</sup> He also states that it is within his knowledge that the episode was aired twice more on the BBC. Versions of the co-founders' appearance on Dragon's Den was uploaded to YouTube by Dragons' Den's account and the BBC's own account and has been watched 600,000 times and 1.38 million times, respectively. Screenshots of the YouTube pages showing these videos are provided.<sup>14</sup> While both videos were posted prior to the relevant date, the screenshots are dated 15 February 2021, which is over a year after it. Therefore, it is possible that a number of the views came after the relevant date.

20. Mr De Zoete goes on to discuss the circulation of newspapers that had coverage of the applicant's business and provides supporting evidence of the same by way of data taken from the website Statista.<sup>15</sup> While the figures are noted, Mr De Zoete cross references them with various articles that I have referred to at paragraph 18 above, which are online articles. There is no evidence to suggest that these articles

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<sup>12</sup> Exhibit HGZ6

<sup>13</sup> Exhibit HGZ7

<sup>14</sup> Exhibit HGZ7

<sup>15</sup> Exhibit HGZ9

were contained within the physical newspapers in circulation. Therefore, I do not consider that this evidence assists the opponent.

21. The applicant's advertising and marketing investment is then discussed. Mr De Zoete states that between 1 January 2018 and 31 December 2019, the applicant spent approximately £5.5 million on advertising. This is broken down into £3.31 million on affiliate advertising, £1.97 million on social media advertising, £190,000 on customer incentives and £30,000 on other advertising costs.

22. Mr De Zoete goes on to discuss its online advertising in more detail. Throughout this section of the evidence, Mr De Zoete refers to 'click-through-rates', which is a percentage figure of people who view the advert and then click through to visit the applicant's website. In respect of the applicant's advertising, I note the following:

- a. On Facebook, there has been almost 2.5 million clicks with an average click-through-rate of 4%;
- b. On pay-per-click advertising on search engines Google and Bing, there have been over 500,000 clicks and an average click through rate of 6.31%;
- c. On Awin (which is a global affiliate marketing network), there have been nearly 250,000 clicks;
- d. On Nextdoor (a localised social networking service), there have been over 50,000 impression (or appearances) of the applicant's advertising with a click through rate of 0.67%; and
- e. Through advertising on the online publications Evening Standard and the Independent, there have been around 675,000 impressions (or appearances) with an average click through rate of 0.67%.

23. The applicant's social media presence is then discussed and screenshots are shown of its pages on Facebook, Instagram, Twitter and LinkedIn.<sup>16</sup> While I note the number of followers on these pages, the screenshots are dated 8 February 2021, over a year after the relevant date meaning that it is likely that a number of the followers began following the applicant after the relevant date. Further, despite

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<sup>16</sup> Exhibit HGZ11



the applicant being a UK based company, these social media websites are global and there is no evidence that the followers of these pages are UK based.

24. In conclusion, Mr De Zoete states that the information and material provided clearly demonstrates that the applicant's marks have become an exclusive indication that the applicant is the origin of the goods and services covered by the applicant's marks' specifications. Further, he believes that the applicant's marks have acquired distinctive character as a result of their widespread, extensive, and continuous use and that they were well-known before the date of the applications at issue.

## **DECISION**

25. Section 3(1) of the Act provides as follows:

“3(1) The following shall not be registered –

(a) [...]

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

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

(d) [...]:

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

26. The relevant date for determining whether the applicant's marks are objectionable under sections 3(1)(b) and 3(1)(c) is the date of the applications at issue, being 7 January 2020.

27. I bear in mind that the above grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c) but still be objectionable under section 3(1)(b): *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P at [25].

28. The position under the above grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect: *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04. The relevant public will vary depending on the particular goods and services concerned. However, in this case, the relevant public will consist of both members of the general public and professional users. I consider that the degree of attention being paid for a majority of the goods and services for which the applicant's marks are applied for will be medium, however, I acknowledge that for some goods and services, the level of attention paid may be high. For example, goods such as computer software will, generally, attract a medium degree of attention depending on the type of software being selected. Alternatively, investment services will attract a high degree of attention as various factors will be considered during the selection process. Depending on the goods and services selected, the relevant public will have different considerations. For example, in the case of computer software, the relevant public will consider the suitability, reliability and ease of use of the software and in the case of investment services, the average consumer is likely to consider the investment strategy of the provider, the qualifications and accreditations of the provider and its employees, any previous records of investment returned and testimonials from previous and/or currently investors.

### **Section 3(1)(c)**

29. I will begin with the opposition under section 3(1)(c). Section 3(1)(c) prevents the registration of marks which are descriptive of the goods and services, or a characteristic of them. The case law under section 3(1)(c) (corresponding to article

7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the Court of Justice of the European Union (CJEU) in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ( OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more

characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in

Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has

pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

30. The applicant’s first mark is a word only mark consisting of the words ‘LOOK AFTER MY BILLS’. The same words also form the entirety of the word element of the applicant’s second mark, with the only difference being the presentation of those words. There is evidence and submissions that point to the fact that as the words are arranged in the shape of an infinite symbol, the average consumer will recognise it as being a reference to the fact that the applicant will *a/ways* look after the customer’s bills. While this may be the applicant’s intention, I do not consider that the average consumer will recognise this and will, instead, see it as a fanciful presentation of words that takes the form of a figure eight laying on its side. As a result, I consider that the applicant’s second mark is dominated by the word element with the arrangement of those words having a negligible impact on average consumers. The following assessment, therefore, applies to both of the applicant’s marks.

31. The opponent has claimed that ‘LOOK AFTER MY BILLS’ would be perceived by the average consumer as descriptive of the goods and services’ kind, quality and intended purpose. In its submissions, the applicant has argued that by using ‘MY’ instead of ‘YOUR’, the applicant’s marks are not descriptive of any characteristics of its goods and services. The applicant submits further that the relevant public would not make a direct or specific association between ‘LOOK AFTER MY BILLS’

and the goods and services and that the link is not immediately obvious. I agree with these submissions and find that the inclusion of the word 'MY' means that the applicant's marks cannot be said to consist exclusively of signs which may serve, in trade, to designate a characteristic of the goods or services in the applicant's marks' specification due to the grammatical construction of the expression. For example, when the average consumer is confronted by the term 'LOOK AFTER MY BILLS', it will be seen as unusual in its phrasing being a reference to the first person. I am of the view that the average consumer will not be immediately aware that the reference to 'MY BILLS' in the contested marks is actually a reference to their bills or a reference to the bills of the undertaking that is expressing the phrase. This, in my view, will result in a cognitive process on behalf of the average consumer that takes away the likelihood of the applicant's marks being descriptive of the kind, quality and intended purpose of the applicant's goods and services. As a result, the opposition under section 3(1)(c) fails.

### **Section 3(1)(b)**

32. I now turn to the oppositions under section 3(1)(b) of the Act. Section 3(1)(b) prevents registration of marks which are devoid of distinctive character. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

33.I make the same finding here as I have at paragraph 30 above regarding the stylisation of the applicant's second mark. Therefore, the following assessment applies to both of the applicant's marks.



34. The opponent has pleaded that the phrase 'LOOK AFTER MY BILLS' is "generally used and understood as a promotional message, the function of which is to communicate a feature of the goods and services applied for."

35. The applicant has submitted that it,

"does not consider its use to be as an advertising slogan. However, even if consumers perceived the Trade Marks as such, they would still function as an indication of commercial origin relating solely to the Applicant's Goods and Services – see 21/01/2010, C-398/08 P, *Vorsprung durch Technik*, EU:C:2010:29, §44: "the mere fact that a mark is perceived by the relevant public as a promotional formula, and that, because of its laudatory nature, it could in principle be used by other undertakings, is not sufficient, in itself, to support the conclusion that that mark is devoid of distinctive character". Therefore, it is submitted that, even if the Office considered the Trade Marks to be advertising slogans, this does not render them nondistinctive and incapable of registration."

36. While the reference to the *Vorsprung durch Technik* case is noted, that case hinged on the fact that the mark in that case could be said to have a number of meanings, constitute a play on words or be perceived as imaginative, surprising and unexpected and, in that way, be easily remembered. I do not consider those same characteristics apply to the applicant's marks. The expression does not cease to be a statement about the activities of the goods and services provider simply because of the use of the word 'MY'. In my view, it seems unlikely that average consumers would view the words *prima facie* as simultaneously designating the trade source of the goods or services. This is because I consider the phrase 'LOOK AFTER MY BILLS' to be typical of the language used in the trade of undertakings who provide goods or services that relate to the management of their customer's bills, such as comparison services. Further, I note that not all examples of marks being used as advertising slogans are found to be distinctive.<sup>17</sup> Therefore, I find that the applicant's marks do not serve to indicate the commercial origin of goods

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<sup>17</sup> Cases WE CREATE SPACE (BL O/342/10) and 'NO WIRES, NO WORRIES' BL O/353/10

and services that relate to the management of bills, even as a secondary function. Having said that, there are a number of services that do not relate to the management of bills and, for those services, I am of the view that the applicant's marks do serve to indicate the commercial origin. I will assess these in more detail below.

37. In its submissions, the applicant has proposed a fall-back specification in the event that I find its marks to be objectionable under either section 3(1)(b) or 3(1)(c) of the Act. While these submissions are noted, I consider that the proposed fall-back specification contains goods and services that I consider to be objectionable. Therefore, I do not consider it appropriate to consider the fall-back specification.

38. Before moving on to my assessment of the goods and services, I consider it necessary to determine what type of bills the promotional phrase 'LOOK AFTER MY BILLS' relates to. I am of the view that this includes all types of household bills including energy bills, water bills, internet bills and telephone bills. In addition, while I am of the view that insurance or mortgage payments are not 'bills' in the ordinary sense of the word, I am of the view that the average consumer would still consider them to fall within the category of the bills covered by 'LOOK AFTER MY BILLS'. As a result, the average consumer will perceive 'LOOK AFTER MY BILLS' to not only cover the household bills discussed above but also insurance payments for home, life, car or travel insurance and mortgage payments.

#### Class 9 goods

*Computer software and computer firmware; computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; computer software and computer applications relating to price comparison of the goods or services of other vendors; computer software and computer applications relating to performance comparison of the goods and services of others; computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; computer software and computer applications that allow users to locate, compare, purchase and*

*renew insurance services; computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; parts, fittings and accessories for the aforesaid goods.*

39. The above goods can all be said to cover a broad range of different types of computer software such as software that a user will utilise to manage their bills, be that allowing them to pay their bills, manage them or assist the user in reducing their monthly outgoings. The above goods can also cover computer software that allows a user to compare insurance services with a view to assisting them in making their bills cheaper or software that is used to advertise providers that offer services that are provided for by household bills, being internet, telephony, gas and electricity services, amongst others. In my view, 'LOOK AFTER MY BILLS' is typical of the promotional language of undertakings that provide all of these types of goods. I am also of the view that the average consumer would not perceive 'LOOK AFTER MY BILLS' as being anything other than a promotional message in respect of the above goods. I also make the above findings in respect of the broader terms of "computer software and computer firmware" in that it could reasonably be expected to include the types of goods and services already discussed above. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

*Computer software and computer applications for e-commerce; parts, fittings and accessories for the aforesaid goods.*

40. E-commerce covers the conduct of all trade online, including the buying and selling of goods or services. In my view, this can cover the sale of services including those services that are provided for by household bills, being internet, telephony, gas and electricity services, amongst others. As a result, it is my view that 'LOOK AFTER MY BILLS' is typical of the promotional language of undertakings that provide these types of goods. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of goods and not an indication of their origin. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

*Computer software and computer applications for accessing, browsing and searching online databases; databases; parts, fittings and accessories for the aforesaid goods.*

41. It is my view that if an undertaking offers to look after its user's bills or manage their bills, it is likely that such information will be stored on online databases that can be accessed by the user. For example, part of the management of bills will include the storage of a variety of bills that the user pays in a database for easy access to be able to browse and search them. As a result, it is my view that 'LOOK AFTER MY BILLS' is typical of the promotional language of undertakings that provide these types of goods. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of goods and not an indication of their origin. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

*Computer software and computer applications for financial and financial planning services; data relating to financial and financial planning services recorded in electronic form; parts, fittings and accessories for the aforesaid goods.*

42. Financial planning is a broad type of service that can reasonably be expected to involve the management of bills so that a user can assess their monthly bills in order to plan their finances each month. I am of the view that 'LOOK AFTER MY BILLS' is typical of the promotional language of undertakings that provide these types of goods. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of goods and not an indication of their origin. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

*Computer software and computer applications relating to price analysis services; parts, fittings and accessories for the aforesaid goods.*

43. Goods that relate to price analysis services are used for the purpose of examining and evaluating separate cost elements of various types of services. For example, if a user was considering whether to switch energy tariffs, they would seek to analyse the full cost of the new tariff against the cost of their existing tariff to

analyse which one would be cheaper in the long run. The above describes goods that can assist the user in such a process and I am of the view that an undertaking offering them will use the phrase 'LOOK AFTER MY BILLS' as a promotional message. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of goods and not an indication of their origin. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

*Computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organising text, graphics and images; parts, fittings and accessories for the aforesaid goods.*

44. The above goods, in my view, could reasonably be expected to cover software that a user accesses in order to, create, download, edit, display and organise their monthly bills. For example, this could cover software in which a business user generates bills for its customers. Additionally, the above goods can describe software similar to those discussed at paragraph 41 above in that a user can use it to download and store their monthly bills. In either example, I consider that an undertaking offering these goods will use the phrase 'LOOK AFTER MY BILLS' in promoting them. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of goods and not an indication of their origin. Therefore, I consider the above goods objectionable under section 3(1)(b) of the Act.

#### Class 35 services

*Comparison services, all relating to the characteristics, features and suitability of insurance services; comparison services, all relating to the characteristics, features and suitability of the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; price analysis services; product comparison of the goods or services of other vendors; product information services; price comparison of the goods or services of other vendors; performance comparison of the goods and services of others; advertising of the goods or services*

*of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; provision of ratings, reviews and information regarding businesses and service providers; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, by monitoring all characteristics, features and suitability thereof; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy, by monitoring all characteristics, features and suitability thereof; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; procurement services for others (purchasing goods and services for other businesses); information, consultancy and advisory services relating to all the aforesaid services.*

45. It is my view that the above services all relate directly to the management of the user's bills such as internet, telephone, electricity and gas bills, amongst others. Even where the terms only relate to 'goods and services of other vendors', it can

reasonably be expected to cover those services set out above. 'LOOK AFTER MY BILLS' is typical of the promotional language used by undertakings who provide these types of services. The expression 'LOOK AFTER MY BILLS' is a statement of the activities of the provider in that they are looking after their user's bills by offering such comparison, monitoring, procurement and informational services in relation to the same. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. Therefore, I consider that the above services are objectionable under section 3(1)(b) of the Act.

*Accounting, auditing and book-keeping services; cost price analysis; information, consultancy and advisory services relating to all the aforesaid services.*

46. An undertaking providing these services will be going over the user's accounts and ensuring that all their finances are in order and, in my view, this includes the user's bills. This also applies to auditing and book keeping services in that they will also ensure that the user's bills are in order and 'looked after'. Therefore, I am of the view that undertakings that offer accounting, auditing and book-keeping services will promote them by claiming to look after bills of the user, meaning that 'LOOK AFTER MY BILLS' is typical of the language used in promoting these types of services. In addition, I consider that price analysis services will also be promoted in the same way as a message that the undertaking will look after the user's bills to determine the cost effectiveness of them over the long run. Further, I consider that the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. Therefore, I consider that the above services are objectionable under section 3(1)(b) of the Act.

*Advertising; business management; business administration; office functions; business, advertising and promotional services and information services relating thereto; business and advertising information services, all provided online from a computer database or the Internet; business appraisal services; business consultancy, information and organisation services; business investigation and research; management of consumer and trade schemes; compilation of advertisements for use as web pages on the Internet; devising and up-dating of advertising, promotional and*

*publicity materials; on-line advertising on a computer network; direct mail advertising; outdoor advertising; rental of advertising and promotional space; rental of advertising time on communication media; dissemination of advertising and promotional materials; distribution of samples and promotional items; sales promotion (for others); data searching in computer files (for others); computerised file management; gathering, arranging and disseminating statistical information; compilation and systemisation of information into computer databases; market and market research and studies; franchising consultancy services; public relations; preparation of publicity columns; publication of publicity texts; organisation of exhibitions and trade fairs for commercial advertising purposes; organisation, operation, administration, management and supervision of incentive, reward, bonus, promotional and loyalty schemes; customer loyalty schemes; reward, bonus, promotional and incentive schemes; incentive and loyalty card services; loyalty membership and group schemes; reward membership and group schemes; organisation, operation, administration, management and supervision of consumer and trade schemes, including discounts, vouchers and customer loyalty schemes; loyalty, incentive, reward and bonus program services; promotion through incentive, reward, bonus, promotional and loyalty schemes; personnel assessment, development, deployment, management and utilisation consultancy; personnel recruitment, placement and contracting; employment agencies; labour exchange services; efficiency expert services; human resource development and deployment within business structures, organisations and throughout the labour market; human resources consultancy; human resources assessment; managing and advising on the development of company executives and officers, professional and other individuals within corporate and professional environments; transcription; photocopying; document reproduction; radio and television advertising and commercials; arranging newspaper and publication subscriptions for others; the bringing together, for the benefit of others, of a variety of promotional goods of a general corporate merchandise nature namely pens, pencils, erasers, stationery, bound notebooks, calendars, posters, charts, drinking vessels, mousemats, caps, t-shirts, clothing, badges, cufflinks and tiepins, toys and playthings, umbrellas and parasols, bags, purses and wallets, credit card holders, business card holders, key cases, card and notecases, enabling customers to conveniently view and procure these goods from an Internet web site or by other means of*



*telecommunications; information, consultancy and advisory services relating to all the aforesaid services.*

47. In my view, it cannot be said that 'LOOK AFTER MY BILLS' is a promotional message typical of undertakings that provide the above services. This is on the basis that, in my view, none of the above services have any obvious connection to the management of the user's bills. For this same reason, I do not consider that the average consumer will consider the phrase to be promotional and will, instead, view it as an indication of the origin of the services. Therefore, the services listed above are not objectionable under section 3(1)(b) of the Act.

### Class 36 services

*Provision of advice relating to the supply and change of suppliers of the goods and services by other vendors; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities, being gas, electricity, water and energy; provision of financial advice relating to the supply of the goods and services by other vendors; provision of financial advice relating to the supply of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities, being gas, electricity, water and energy; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities, being gas, electricity, water and energy; information, consultancy and advisory services relating to all the aforesaid services.*

48. It is my view that an undertaking providing these services is likely to advise its user regarding the supply and change of suppliers for various types of household bills. Additionally, I am of the view that the undertaking is expected to act as a broker between the user and the energy supplier. Given these services' direct connection to household bills, I consider 'LOOK AFTER MY BILLS' to be typical of the

language used in promoting them. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. Therefore, I consider the above services to be objectionable under section 3(1)(b) of the Act.

*Insurance services; insurance brokerage, consultancy, information and underwriting services; motor and non-marine general insurance services; fire insurance; health insurance; life insurance; marine insurance; underwriting of motor accident insurance; provision of advice relating to the supply of insurance and insurance products; information services relating to insurance and finance, provided on-line from a computer database or the Internet; disseminating statistical information concerning insurance services; insurance products; information, consultancy and advisory services relating to all the aforesaid services.*

49. The various types of services listed above all relate to insurance. The range of insurance services offered will generally be considered services that are covered by bills, be they general household bills or not. In my view, undertakings that offer insurance services may promote their services as looking after the user's bills by offering cheaper insurance than their competitors. I consider that 'LOOK AFTER MY BILLS' is typical of the language used in promoting such services. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. As a result, I consider that the above services are objectionable under section 3(1)(b) of the Act.

*Financial services; financial affairs; monetary affairs; financial consultancy, information and management services; financial management services; financial evaluation (insurance and real estate); information, consultancy and advisory services relating to all the aforesaid services.*

50. The above services cover a broad range of financial services. In my view, it is common for undertakings that offer a wide range of financial services to promote their services as looking after the user's bills and assisting them in managing their bills (be they household or not) to allow them to better manage their finances.

Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. Therefore, I consider that the above services are objectionable under section 3(1)(b) of the Act.

*Financing of loans; loan, warranty and extended warranty services; information, consultancy and advisory services relating to all the aforesaid services.*

51. When a user seeks a loan, it is common that the repayment of that loan will be done so via monthly repayments. It is my view that those monthly repayments will be considered bills by the user that they are required to accommodate for on a monthly basis. For example, a significant consideration of the user selecting this service will be to ensure that their monthly payments are manageable. It is my view that undertakings providing such a service may promote them using the phrase 'LOOK AFTER MY BILLS. Additionally, this service can also include re-financing of loans for the purpose of reducing the monthly payments of the loan itself. In my view, this service is also one that the phrase 'LOOK AFTER MY BILLS' will be considered typical in promoting. Further, I consider the phrase will be seen by average consumers as a promotional message for these types of services and not an indication of their origin. Therefore, I consider the above service to be objectionable under section 3(1)(b) of the Act.

*Loan, warranty and extended warranty services; information, consultancy and advisory services relating to all the aforesaid services.*

52. In respect of loan services, the findings relied upon in paragraph 51 above also apply here. As for warranty and extended warranty services, I consider these to be services wherein the undertaking provides warranties or extended warranties to its users that covers the maintenance, repairing or replacing of various types of goods. When a user purchases a warranty or an extended warranty for a product, they will not be required to pay for any repair or maintenance bills in respect of that product. In my view, these services are ones that the phrase 'LOOK AFTER MY BILLS' will be considered typical in promoting. In promoting these services in this way, the message to the user will be that, by selecting warranty/extended warrant services,

their repair and maintenance bills will be 'looked after'. Therefore, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. As a result, I consider the above service to be objectionable under section 3(1)(b) of the Act.

*Mortgaging, [...] trusteeship, pension and financial advisory services; information, consultancy and advisory services relating to all the aforesaid services.*

53. The above services can be broken down to include advisory services in relation to mortgages, trusteeship, pensions and finance. I consider that 'LOOK AFTER MY BILLS' is typical of the language used in promoting such services. This is on the basis that mortgage payments are generally considered to fall within the category of household bills. Therefore, advice in relation to mortgages can be said to be a service for which 'LOOK AFTER MY BILLS' is promotional of. This is because the undertaking providing the service will advertise its service in that their advice will assist the user in looking after their bills. Trusteeship is where either an individual or a company is appointed the trustee of someone's personal affairs, including finances. When promoting such services, the undertaking may offer to look after the bills of the user as that will be a key service provided for under the potential trusteeship. Finally, in respect of pensions, an undertaking offering financial advice in relation to the same will offer to assist in managing the user's bills to ensure that their finances are taken care of when relying upon a pension as their sole basis of income. In my view, for all of these services, the phrase 'LOOK AFTER MY BILLS' will be seen by the average consumer as a promotional message and not an indication of their origin. As a result, I consider that these services are objectionable under section 3(1)(b) of the Act.

*Electronic transfer of funds; information, consultancy and advisory services relating to all the aforesaid services.*

54. The above services can reasonably be said to include a service wherein an undertaking arranges for the electronic transfer of funds in relation to the user's household bills. For example, a user may seek such services to ensure that their monthly bills are paid for on time. I consider that 'LOOK AFTER MY BILLS' is

promotional of such a service in that the provider will ensure that the user's bills are 'looked after'. Further, I consider the phrase will also be seen by average consumers as a promotional message for these types of services and not an indication of their origin. As a result, I consider that these services are objectionable under section 3(1)(b) of the Act.

*Real estate affairs; information, consultancy and advisory services relating to all the aforesaid services.*

55. I see no obvious reason why an undertaking that provides real estate affairs would use the phrase 'LOOK AFTER MY BILLS' in promoting its services. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

*Brokerage of stocks, bonds and securities; capital investment; fund investment; Unit trust [...] investment management [...] advisory services; investment services; information, consultancy and advisory services relating to all the aforesaid services.*

56. While the above services relate to finance, I do not consider that the phrase 'LOOK AFTER MY BILLS' will be typical of the language used in promoting them. An undertaking providing these services will not claim to look after bills as they are investment services that aim to make the user money from various types of investments. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

*Financial sponsorship; financial management of consumer and trade schemes; financial services relating to franchising services; information, consultancy and advisory services relating to all the aforesaid services.*

57. As with my findings at paragraph 56 above, even though these services are financial, I do not consider that the undertakings providing them would use 'LOOK AFTER MY BILLS' in promoting them. This is due to the fact that the nature of these services is very specific and, in my view, does not relate to bills in any

obvious way. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

*Charitable fund raising; information, consultancy and advisory services relating to all the aforesaid services.*

58. I see no obvious reason why an undertaking that provides fund raising for charities would use the phrase 'LOOK AFTER MY BILLS' in promoting its services. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

*Issuance of credit cards, charge cards and debit cards; information, consultancy and advisory services relating to all the aforesaid services.*

59. While credit cards often require the payment of the credit card bills themselves, I do not consider that the phrase 'LOOK AFTER MY BILLS' will be used in promoting their issuance. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

*Trade discount card services; information, consultancy and advisory services relating to all the aforesaid services.*

60. The above service describes one where a user that operates in a certain trade may apply for a discount card that offers them certain discounts with the provider. I do not consider that the offering of a discount has any connection with looking after bills. Inevitably, where a user can save money it may assist them in using that money to pay their bills but I consider this a far too tenuous link to make. I do not consider that an undertaking providing such services would use the phrase 'LOOK AFTER MY BILLS' in promoting them. As a result, I do not consider that these services are objectionable under section 3(1)(b) of the Act.

### Class 39

*Information and advice relating to breakdown recovery services; breakdown recovery services; boat rental; booking of seats for travel; car parking; car rental; car transport; chauffeur services; coach rental; courier services (messages or merchandise); delivery of goods; delivery of goods by mail order; garage rental; packaging of goods; parcel delivery; parking place rental; rental of vehicle roof racks; rental of wheelchairs; storage; storage (boat-); storage containers (rental of-); storage information; taxi transport; travel reservation; truck rental; vehicle rental and wrapping of goods; information, consultancy and advisory services relating to all the aforesaid services.*

61. In my view, none of these services relate to the management of bills and it cannot, therefore, be said that the applicant's marks are typical of the language used in the trade for such services. For example, an undertaking providing rental of storage containers is likely to invoice its users on a monthly basis (for long term rentals in particular), however, I do not consider that the billing process and collection of rent can be said to be a service where the undertaking providing it would typically use the phrase 'LOOK AFTER MY BILLS' in promoting it. Therefore, I see no obvious reason as to why applicant's class 39 services would be objectionable under section 3(1)(b) of the Act.

### Class 42

*Computerised business information storage from databanks and databases; electronic data storage services; computerised data storage services; database design and development; technical data analysis services; development and research of new systems of technology; design, maintenance, installation, customisation and development of computer software; design, maintenance, installation, customisation and development of computer applications; design, maintenance, installation, customisation and development of computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organising text, graphics and images; design, maintenance, installation, customisation and development of computer software and computer applications for e-commerce; design, maintenance, installation,*

*customisation and development of computer software and computer applications for searching, authoring, editing, extracting, downloading, viewing and retrieving data; design, maintenance, installation, customisation and development of computer software and computer applications for accessing, browsing and searching online databases; design, maintenance, installation, customisation and development of computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; design, maintenance, installation, customisation and development of computer software and computer applications relating to price analysis services; design, maintenance, installation, customisation and development of computer software and computer applications relating to price comparison of the goods or services of other vendors; design, maintenance, installation, customisation and development of computer software and computer applications relating to performance comparison of the goods and services of others; design, maintenance, installation, customisation and development of computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; design, maintenance, installation, customisation and development of computer software and computer applications for financial and financial planning services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew insurance services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; computer software and computer application support services; application service provider; application service provider services; information, consultancy and advisory services relating to all the aforesaid services.*

62.I consider that the above services to be too far removed from the goods and services that 'LOOK AFTER MY BILLS' would be considered promotional for. For example, 'LOOK AFTER MY BILLS' would not be a phrase used for promoting software design services, even if the software designed is used in relation to the management of household bills. I see no reason why an undertaking offering software design services or any of the other above services would use 'LOOK



AFTER MY BILLS' in promoting them. Therefore, I do not consider them to be objectionable under section 3(1)(b) of the Act.

63. Where I have found goods and/or services to be objectionable under section 3(1)(b) of the Act, they will be refused registration unless they are found to have acquired distinctiveness below. However, for those goods and services which I haven't found to be objectionable under section 3(1)(b) of the Act, they may proceed to registration.

### **Acquired Distinctiveness**

64. I now turn to consider whether the applicant has established acquired distinctiveness for the goods and services in its marks' specifications that I have found to be objectionable under section 3(1)(b) of the Act.

65. The CJEU provided guidance in *Windsurfing Chiemsee*, Joined cases C-108 & C-109/97, about the correct approach with regard to the assessment of the acquisition of distinctive character through use. The guidance is as follows:

"51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: 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 class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that

requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages.

53. As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, Community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down by its own national law, to an opinion poll as guidance for its judgment (see, to that effect, Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 37).”

66. Before assessing whether or not the applicant’s evidence shows that its marks have acquired distinctiveness through use, it is first necessary to assess the type of goods/services the evidence shows to have been provided by the applicant. Based on the evidence, the consumer of the applicant’s goods/services can sign up on the applicant’s website for the applicant to take over management of their gas and electricity bills. The applicant’s service is an auto-switching platform that aims to locate the cheapest gas and electricity deal for their members and then, if required, automatically switches the provider annually. From this description, I consider that the services provided are, essentially, brokerage and procurement services in relation to a user’s household energy bills with a number of ancillary services included, namely comparison services on the user’s behalf, monitoring their energy deals (being gas and electricity bills only), facilitating the switch and providing information regarding the process.<sup>18</sup>

67. While the evidence shows that a user is required to sign up via an online form on the applicant’s website, I do not consider that this constitutes use of any of the types of software for which the applicant seeks to register. This is particularly the case given the wording included on the applicant’s website that explains that the user does not have to fill out forms again, that the applicant takes care of everything

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<sup>18</sup> Pages 58 and 68 of Exhibit HGZ4 of the Witness Statement of Henry George De Zoete refer to the service of reporting back to the consumer so that they are always aware of what’s going on.

and that the user won't need to do anything,<sup>19</sup> for example, there is no requirement to access software or download an application.

68. Further, the applicant's marks' specifications contain services such as "facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors" and "facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy". These are broad terms and, in my view, extend beyond the use shown by the applicant which relates to gas and electricity bills only. Even if I go on to find that the applicant's marks have acquired distinctiveness through use, I do not consider the use would extend to all of these services but to gas and electricity suppliers, only.

69. On the basis of the evidence provided, I consider that the use shown by the applicant covers the following services:

Class 35: Comparison services, all relating to the characteristics, features and suitability of the supply of [...]gas [and] electricity only; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, [namely] the supply of [...] gas [and] electricity [only], by monitoring all characteristics, features and suitability thereof; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors, [namely] the supply of [...] gas [and] electricity [only]; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, [namely] the supply of [...] gas [and] electricity [only]; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, [namely] the supply of [...] gas [and] electricity [only]; information services, all relating to informing consumers of new and changes to existing

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<sup>19</sup> Page 22 of Exhibit HGZ3 of the Witness Statement of Henry George De Zoete

goods and services of other vendors, [namely] the supply of [...] gas [and] electricity [only]; information, consultancy and advisory services relating to all the aforesaid services.

Class 36: Provision of advice relating to the supply and change of suppliers of the goods and services by other vendors for the supply of [...] gas [and] electricity [only]; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors for the supply of [...] being gas [and] electricity [only]; information, consultancy and advisory services relating to all the aforesaid services.

70. I note that the evidence points to advice and information that is provided on an ongoing basis to the user in that the user will be kept up to date of the process regarding the switch of energy suppliers.<sup>20</sup> As consulting services are, essentially, services that cover the provision of advice, I consider that this service is covered also. It is for this reason that the terms “information, consultancy and advisory services relating to all the aforesaid services” at the end of the applicant’s class 35 and 36 services, are included within the above list of services for which the evidence shows use.

71. Further to my comments at paragraph 37 above regarding the applicant’s proposed fall-back specification, I also note that an additional fall-back specification has been provided where the applicant believes it has demonstrated acquired distinctiveness. While the submissions are noted, the proposed fall-back specification is too broad and includes goods and services that, in my view, the evidence does not show. I do not, therefore, consider the proposed fall-back specification to be appropriate.

72. Moving on to the level of use shown in the evidence, I note that the applicant has been in business since January 2018. This is only two years prior to the relevant date, which I note is not a significant length of time. I note that no evidence is provided in respect of the market share. Further, no evidence is provided regarding

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<sup>20</sup> *idem* ref. 17

the size of the relevant market. The opponent submits that the relevant market would be every household in the UK, which is around 30 million. While I appreciate that not every household in the UK uses price comparison services or services relating to the management of their household bills, it is a service that is aimed at all of those households. Therefore, I agree with the opponent's submissions that the relevant market covers every household in the UK which, even if it is not in the region of the number of 30 million as submitted by the opponent, it will not be too far removed from that figure. As at the relevant date, the applicant's services had 350,000 members. While this is small in relation to the size of the relevant market, it is not insignificant.

73. The turnover figures between January 2018 and the relevant date exceeds £10.85 million. These figures are not to be compared with the amount of money the UK public at large spend on energy bills, as the turnover is generated in the form of commission from the suppliers. Further, the amount invested by the applicant in promoting the applicant's marks is £5.5 million. While I have no figures in respect of the relevant market with which to compare the applicant's turnover/advertising expenditure, I consider these figures to be significant.

74. I note that the opponent has taken issue with these figures in that they are inconsistent with the evidence provided. While these comments are noted, I do not see any reason why the overall figure of 350,000 members by January 2020 should be brought into question, particularly given that the evidence is supported by a signed statement of truth. Further, the opponent submits that the general turnover and advertising figures provided relate to the applicant's entire business as a whole and no breakdown is provided in relation to use derived from the applicant's marks themselves. While these submissions are noted, I am satisfied that the applicant's figures do relate to use of the marks and the services set out at paragraph 69 above. This is on the basis that (1) I accept the explanation provided by the applicant (that I have set out in paragraph 17 above) in that there are no other 'products' offered by the applicant outside the services shown in its evidence that contribute to the overall figures provided and (2) the applicant's mark is shown throughout the sign-up process of its services. I am, therefore, content to conclude that the figures provided relate to the services set out at paragraph 69 above.

75. While I have no specific evidence pointing to the geographical spread of the applicant's customers across the UK, I do note that the applicant has provided evidence of press coverage in both national online publications and local publications. Further, I note the applicant's appearance on the nationally broadcast 'Dragons' Den' and the significant viewership figures for that episode which would have exposed the applicant's first mark to a nationwide audience. I am, therefore, satisfied that the applicant's use of its marks is not limited to regional use.

76. While the use of the applicant's services is not particularly long standing, I am of the view that the turnover figures and advertising expenditure are significant, particularly given that they were accrued/incurred over such a short period of time. Further, I note the applicant's expanding user base over that same period. In my view, these figures demonstrate sufficiently intensive use in the UK. Therefore, I am of the view that, taking the evidence as a whole, the applicant has demonstrated that its marks have acquired a level of distinctive character to the point that the marks will be seen as indicators that the applicant's services listed at paragraph 69 above are provided by a single undertaking.

77. As a result of my findings above, the oppositions fail in respect of the services for which the applicant has demonstrated acquired distinctive character and those services that I have not found to be objectionable under section 3(1)(b) of the Act. However, for the remaining goods and services which I have found to be devoid of any distinctive character and where the evidence does not prove acquired distinctiveness, the oppositions succeed.

## **CONCLUSION**

78. The oppositions have succeeded in part. In respect of the following goods and services, the applications are refused:

Class 9: Computer software and computer firmware; computer software and computer applications for e-commerce; computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing

and organising text, graphics and images; databases; computer software and computer applications for accessing, browsing and searching online databases; computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; computer software and computer applications relating to price analysis services; computer software and computer applications relating to price comparison of the goods or services of other vendors; computer software and computer applications relating to performance comparison of the goods and services of others; computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; computer software and computer applications for financial and financial planning services; data relating to financial and financial planning services recorded in electronic form; computer software and computer applications that allow users to locate, compare, purchase and renew insurance services; computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; parts, fittings and accessories for the aforesaid goods.

Class 35: Accounting, auditing and book-keeping services; cost price analysis; comparison services, all relating to the characteristics, features and suitability of insurance services; comparison services, all relating to the characteristics, features and suitability of the supply of Internet services, telephony, telecommunication services and water; price analysis services; product comparison of the goods or services of other vendors; product information services; price comparison of the goods or services of other vendors; performance comparison of the goods and services of others; advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; provision of ratings, reviews and information regarding businesses and service providers; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, by

monitoring all characteristics, features and suitability thereof; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and water, by monitoring all characteristics, features and suitability thereof; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and water; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and water; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and water; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and water; procurement services for others (purchasing goods and services for other businesses); information, consultancy and advisory services relating to all the aforesaid services.

Class 36: Loan, warranty and extended warranty services; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services,



insurance and water; provision of financial advice relating to the supply of the goods and services by other vendors; provision of financial advice relating to the supply of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and water; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and water; insurance services; financial services; financial affairs; monetary affairs; motor and non-marine general insurance services; fire insurance; health insurance; life insurance; marine insurance; provision of advice relating to the supply of insurance and insurance products; information services relating to insurance and finance, provided on-line from a computer database or the Internet; insurance brokerage, consultancy, information and underwriting services; underwriting of motor accident insurance; financial consultancy, information and management services; financial management services; financing of loans; mortgaging, trusteeship, pension and financial advisory services; issuance of credit cards, charge cards and debit cards; trade discount card services; financial evaluation (insurance and real estate); electronic transfer of funds; disseminating statistical information concerning insurance services; insurance products; information, consultancy and advisory services relating to all the aforesaid services.

79. In respect of the following goods and services, the applicant's marks may proceed to registration:

Class 35: Advertising; business management; business administration; office functions; business, advertising and promotional services and information services relating thereto; business and advertising information services, all provided online from a computer database or the Internet; business appraisal services; business consultancy,

information and organisation services; business investigation and research; management of consumer and trade schemes; compilation of advertisements for use as web pages on the Internet; devising and updating of advertising, promotional and publicity materials; on-line advertising on a computer network; direct mail advertising; outdoor advertising; rental of advertising and promotional space; rental of advertising time on communication media; dissemination of advertising and promotional materials; distribution of samples and promotional items; sales promotion (for others); data searching in computer files (for others); computerised file management; gathering, arranging and disseminating statistical information; compilation and systemisation of information into computer databases; market and market research and studies; franchising consultancy services; public relations; preparation of publicity columns; publication of publicity texts; organisation of exhibitions and trade fairs for commercial advertising purposes; organisation, operation, administration, management and supervision of incentive, reward, bonus, promotional and loyalty schemes; customer loyalty schemes; reward, bonus, promotional and incentive schemes; incentive and loyalty card services; loyalty membership and group schemes; reward membership and group schemes; organisation, operation, administration, management and supervision of consumer and trade schemes, including discounts, vouchers and customer loyalty schemes; loyalty, incentive, reward and bonus program services; promotion through incentive, reward, bonus, promotional and loyalty schemes; personnel assessment, development, deployment, management and utilisation consultancy; personnel recruitment, placement and contracting; employment agencies; labour exchange services; efficiency expert services; human resource development and deployment within business structures, organisations and throughout the labour market; human resources consultancy; human resources assessment; managing and advising on the development of company executives and officers, professional and other individuals within corporate and professional environments; transcription; photocopying; document reproduction; radio and television advertising and

commercials; arranging newspaper and publication subscriptions for others; the bringing together, for the benefit of others, of a variety of promotional goods of a general corporate merchandise nature namely pens, pencils, erasers, stationery, bound notebooks, calendars, posters, charts, drinking vessels, mousemats, caps, t-shirts, clothing, badges, cufflinks and tiepins, toys and playthings, umbrellas and parasols, bags, purses and wallets, credit card holders, business card holders, key cases, card and notecases, enabling customers to conveniently view and procure these goods from an Internet web site or by other means of telecommunications; comparison services, all relating to the characteristics, features and suitability of the supply of gas and electricity services only; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, namely the supply of gas and electricity only, by monitoring all characteristics, features and suitability thereof; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors, namely the supply of gas and electricity only; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, namely the supply of gas and electricity only; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, namely the supply of gas and electricity only; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors, namely the supply of gas and electricity only; information, consultancy and advisory services relating to all the aforesaid services.

Class 36: Real estate affairs; brokerage of stocks, bonds and securities; capital investment; fund investment; investment services; financial sponsorship; charitable fund raising; financial services relating to franchising services; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors for the supply of gas and electricity only; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors for the supply of

gas and electricity only; issuance of credit cards, charge cards and debit cards; trade discount card services; financial management of consumer and trade schemes; unit trust and investment management advisory services; information, consultancy and advisory services relating to all the aforesaid services.

Class 39: Information and advice relating to breakdown recovery services; breakdown recovery services; boat rental; booking of seats for travel; car parking; car rental; car transport; chauffeur services; coach rental; courier services (messages or merchandise); delivery of goods; delivery of goods by mail order; garage rental; packaging of goods; parcel delivery; parking place rental; rental of vehicle roof racks; rental of wheelchairs; storage; storage (boat-); storage containers (rental of-); storage information; taxi transport; travel reservation; truck rental; vehicle rental and wrapping of goods; information, consultancy and advisory services relating to all the aforesaid services.”

Class 42: Computerised business information storage from databanks and databases; electronic data storage services; computerised data storage services; database design and development; technical data analysis services; development and research of new systems of technology; design, maintenance, installation, customisation and development of computer software; design, maintenance, installation, customisation and development of computer applications; design, maintenance, installation, customisation and development of computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organising text, graphics and images; design, maintenance, installation, customisation and development of computer software and computer applications for e-commerce; design, maintenance, installation, customisation and development of computer software and computer applications for searching, authoring, editing, extracting, downloading, viewing and retrieving data; design, maintenance, installation, customisation and development of computer software and

computer applications for accessing, browsing and searching online databases; design, maintenance, installation, customisation and development of computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; design, maintenance, installation, customisation and development of computer software and computer applications relating to price analysis services; design, maintenance, installation, customisation and development of computer software and computer applications relating to price comparison of the goods or services of other vendors; design, maintenance, installation, customisation and development of computer software and computer applications relating to performance comparison of the goods and services of others; design, maintenance, installation, customisation and development of computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; design, maintenance, installation, customisation and development of computer software and computer applications for financial and financial planning services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew insurance services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; computer software and computer application support services; application service provider; application service provider services; information, consultancy and advisory services relating to all the aforesaid services.

## **COSTS**

80. Both parties have achieved a degree of success. However, on balance, I am of the view that applicant has achieved a greater degree of success. As a result, the applicant is entitled to a contribution towards its costs based upon the scale

published in Tribunal Practice Notice 2/2016. However, I consider it necessary to reduce the amount of costs by 50% to reflect the partial degree of success enjoyed by the opponent. In the circumstances, I award the applicant the sum of **£600** as a contribution towards its costs. The sum is calculated as follows:

Considering the notices of opposition and preparing the counter statements:	£150
Preparing evidence:	£300
Preparing submissions in lieu of a hearing:	£150
<b>Total</b>	<b>£600</b>

81. I therefore order WonderBill Limited to pay This is The Big Deal Limited the sum of £600. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 22nd day of July 2021**

**A COOPER**  
**For the Registrar**

## **ANNEX**

### Class 9

Computer software and computer firmware; computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organising text, graphics and images; computer software and computer applications for e-commerce; computer software and computer applications for searching, authoring, editing, extracting, downloading, viewing and retrieving data; databases; computer software and computer applications for accessing, browsing and searching online databases; computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; computer software and computer applications relating to price analysis services; computer software and computer applications relating to price comparison of the goods or services of other vendors; computer software and computer applications relating to performance comparison of the goods and services of others; computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; computer software and computer applications for financial and financial planning services; data relating to financial and financial planning services recorded in electronic form; computer software and computer applications that allow users to locate, compare, purchase and renew insurance services; computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; parts, fittings and accessories for the aforesaid goods.

### Class 35

Advertising; business management; business administration; office functions; comparison services, all relating to the characteristics, features and suitability of insurance services; comparison services, all relating to the characteristics, features and suitability of the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; price analysis services; product comparison of the goods or services of other vendors; product information services; price comparison of the goods or services of other vendors; performance

comparison of the goods and services of others; advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; business, advertising and promotional services and information services relating thereto; business and advertising information services, all provided online from a computer database or the Internet; provision of ratings, reviews and information regarding businesses and service providers; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, by monitoring all characteristics, features and suitability thereof; monitoring services, all relating to the supply to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy, by monitoring all characteristics, features and suitability thereof; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors; procurement services, all relating to the procurement of suppliers and the change of suppliers to consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; facilitating the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors; advising on, and arranging on behalf of consumers, the supply and change of suppliers on behalf of consumers of the goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors; information services, all relating to informing consumers of new and changes to existing goods and services of other vendors, including the supply of Internet services, telephony, telecommunication services and utilities, being gas, electricity, water and energy; accounting, auditing and book-keeping services; business appraisal services; business consultancy, information and organisation services; business investigation and research; management of consumer and trade schemes; compilation of



advertisements for use as web pages on the Internet; devising and up-dating of advertising, promotional and publicity materials; on-line advertising on a computer network; direct mail advertising; outdoor advertising; rental of advertising and promotional space; rental of advertising time on communication media; dissemination of advertising and promotional materials; distribution of samples and promotional items; sales promotion (for others); data searching in computer files (for others); computerised file management; gathering, arranging and disseminating statistical information; compilation and systemisation of information into computer databases; market and market research and studies; cost price analysis; franchising consultancy services; public relations; preparation of publicity columns; publication of publicity texts; organisation of exhibitions and trade fairs for commercial advertising purposes; organisation, operation, administration, management and supervision of incentive, reward, bonus, promotional and loyalty schemes; customer loyalty schemes; reward, bonus, promotional and incentive schemes; incentive and loyalty card services; loyalty membership and group schemes; reward membership and group schemes; organisation, operation, administration, management and supervision of consumer and trade schemes, including discounts, vouchers and customer loyalty schemes; loyalty, incentive, reward and bonus program services; promotion through incentive, reward, bonus, promotional and loyalty schemes; personnel assessment, development, deployment, management and utilisation consultancy; personnel recruitment, placement and contracting; employment agencies; labour exchange services; efficiency expert services; human resource development and deployment within business structures, organisations and throughout the labour market; human resources consultancy; human resources assessment; managing and advising on the development of company executives and officers, professional and other individuals within corporate and professional environments; transcription; photocopying; document reproduction; procurement services for others (purchasing goods and services for other businesses); radio and television advertising and commercials; arranging newspaper and publication subscriptions for others; the bringing together, for the benefit of others, of a variety of promotional goods of a general corporate merchandise nature namely pens, pencils, erasers, stationery, bound notebooks, calendars, posters, charts, drinking vessels, mousemats, caps, t-shirts, clothing, badges, cufflinks and tiepins, toys and playthings, umbrellas and parasols, bags, purses and wallets, credit card holders, business card holders, key cases, card and

notecases, enabling customers to conveniently view and procure these goods from an Internet web site or by other means of telecommunications; information, consultancy and advisory services relating to all the aforesaid services.

### Class 36

Insurance services; financial services; financial affairs; monetary affairs; real estate affairs; motor and non-marine general insurance services; fire insurance; health insurance; life insurance; marine insurance; provision of advice relating to the supply of insurance and insurance products; information services relating to insurance and finance, provided on-line from a computer database or the Internet; insurance brokerage, consultancy, information and underwriting services; underwriting of motor accident insurance; brokerage of stocks, bonds and securities; financial consultancy, information and management services; capital investment; fund investment; loan, warranty and extended warranty services; financing of loans; investment services; financial management services; unit trust, mortgaging, investment management, trusteeship, pension and financial advisory services; financial sponsorship; issuance of credit cards, charge cards and debit cards; trade discount card services; financial evaluation (insurance and real estate); financial management of consumer and trade schemes; electronic transfer of funds; charitable fund raising; financial services relating to franchising services; disseminating statistical information concerning insurance services; insurance products; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors; provision of advice relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities, being gas, electricity, water and energy; provision of financial advice relating to the supply of the goods and services by other vendors; provision of financial advice relating to the supply of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities, being gas, electricity, water and energy; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors; provision of brokerage services relating to the supply and change of suppliers of the goods and services by other vendors including the supply of Internet services, telephony, telecommunication services, insurance and utilities,

being gas, electricity, water and energy; information, consultancy and advisory services relating to all the aforesaid services.

### Class 39

Information and advice relating to breakdown recovery services; breakdown recovery services; boat rental; booking of seats for travel; car parking; car rental; car transport; chauffeur services; coach rental; courier services (messages or merchandise); delivery of goods; delivery of goods by mail order; garage rental; packaging of goods; parcel delivery; parking place rental; rental of vehicle roof racks; rental of wheelchairs; storage; storage (boat-); storage containers (rental of-); storage information; taxi transport; travel reservation; truck rental; vehicle rental and wrapping of goods; information, consultancy and advisory services relating to all the aforesaid services.

### Class 42

Computerised business information storage from databanks and databases; electronic data storage services; computerised data storage services; database design and development; technical data analysis services; development and research of new systems of technology; design, maintenance, installation, customisation and development of computer software; design, maintenance, installation, customisation and development of computer applications; design, maintenance, installation, customisation and development of computer software and computer applications for creating, authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organising text, graphics and images; design, maintenance, installation, customisation and development of computer software and computer applications for e-commerce; design, maintenance, installation, customisation and development of computer software and computer applications for searching, authoring, editing, extracting, downloading, viewing and retrieving data; design, maintenance, installation, customisation and development of computer software and computer applications for accessing, browsing and searching online databases; design, maintenance, installation, customisation and development of computer software and computer applications relating to comparison services, all relating to the characteristics, features and suitability of insurance services; design, maintenance, installation, customisation and development of computer software and computer applications relating to price analysis services; design, maintenance,

installation, customisation and development of computer software and computer applications relating to price comparison of the goods or services of other vendors; design, maintenance, installation, customisation and development of computer software and computer applications relating to performance comparison of the goods and services of others; design, maintenance, installation, customisation and development of computer software and computer applications relating to advertising of the goods or services of other vendors, enabling customers to conveniently view and compare the goods or services of those vendors; design, maintenance, installation, customisation and development of computer software and computer applications for financial and financial planning services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew insurance services; design, maintenance, installation, customisation and development of computer software and computer applications that allow users to locate, compare, purchase and renew the supply of goods or services of other vendors; computer software and computer application support services; application service provider; application service provider services; information, consultancy and advisory services relating to all the aforesaid services.