

O/0218/23

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3660388
BY BAYES BUSINESS SCHOOL LTD**

TO REGISTER:

Bayes Business School

AS A TRADE MARK IN CLASSES 16, 26, 36, 42, 43 & 45

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 428545 BY
CITY, UNIVERSITY OF LONDON**

BACKGROUND AND PLEADINGS

1. Bayes Business School Ltd (“the applicant”) applied to register **Bayes Business School** as a trade mark in the United Kingdom on 24 June 2021. The application was accepted and published on 27 August 2021 in respect of goods and services in Classes 16, 25, 36, 42, 43 and 45. The full specification can be seen in Annex A to this decision.

2. The application was opposed by City, University of London (“the opponent”). The opponent operates a business school which had previously been named after a historical figure, Sir John Cass. This name was adopted when the university entered into agreement with the Sir John Cass Foundation, a charitable body that funded educational opportunities among underprivileged groups. However, increasing awareness of links between Sir John Cass and the slave trade prompted the university to announce in July 2020 that it intended to rename its business school. A consultation exercise was undertaken with four possible names identified. On 11 March 2021, the opponent issued a survey to its alumni with these four names and “Bayes Business School” was revealed as the new name on 21 April 2021.

3. The opponent is the proprietor of the three UK trade marks (“UKTMs”) shown below.

UKTM No. 3607881 (“the 881 mark”)

BAYES BUSINESS SCHOOL

Application date: 10 March 2021

Registration date: 15 October 2021

Registered for services in Classes 35 and 41 (a full specification is in Annex B).

UKTM No. 3632607 (“the 607 mark”)



Application date: 26 April 2021

Registration date: 24 September 2021

Registered for services in Classes 35 and 41 (a full specification is in Annex C).

UKTM No. 3632620 (“the 620 mark”)



Application date: 26 April 2021

Registration date: 24 September 2021

Registered for services in Classes 35 and 41 (the specification is identical to that of the 607 mark).

4. It relies on the first of these under section 5(2)(a) and the second and third under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The marks all qualify as earlier marks under section 6 of the Act by virtue of their earlier application dates. Under sections 5(2)(a) and 5(2)(b), the following goods and services are opposed:

Class 16

Printed matter; books; instructional and teaching material (except apparatus); advertisement boards of paper or cardboard; school supplies [stationery]; printed matter; printed publications; handbooks; journals; teaching materials [except apparatus]; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare,

civil defence, policing or food science; entertainment guides [printed matter]; advertising display boards of paper or cardboard [non-luminous]; advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications.

Class 36

Providing financial information via a web site; information and advisory services relating to the aforesaid services; providing student loans; providing educational scholarships; letting and rental of permanent accommodation.

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services; bacteriological research; biological research; chemical research; conversion of data or documents from physical to electronic media; cosmetic research; data conversion of computer programs and data; electronic data storage; geological research; mechanical research; physics [research]; research and development of new products for others; research in the field of environmental protection; scientific research; technical research.

Class 43

Boarding houses; providing campground facilities; day-nurseries; crèches; rental of lighting apparatus; provision of facilities for conventions, conferences, lectures, exhibitions, day schools, workshops and seminars.

Class 45

Baby sitting; chaperoning.

5. The opponent claims that the contested mark is identical or highly similar to the three earlier marks and that the goods and services listed in paragraph 4 above are similar and complementary to the services covered by the earlier marks. Consequently, it claims that there exists a likelihood of confusion on the part of the relevant public in the UK and so registration of the contested mark would offend against the provisions of sections 5(2)(a) and 5(2)(b) of the Act.

6. The opponent also claims that registration of the contested mark would be contrary to section 3(6) of the Act as the application was made in bad faith. The opposition under this ground is to the contested mark in its entirety. The opponent claims that the sole Director of the applicant, a Mr Dinesh Advani, who is an alumnus of the “Cass Business School”, filed its application to seek to prevent or dissuade the opponent from using the name “Bayes Business School” and/or to prevent the opponent from obtaining its own registered rights in “Bayes Business School”. In addition, or alternatively, the opponent claims that the applicant has no genuine intention to use the mark.

7. It notes that the applicant had filed a Form TM7F and Statement of Grounds of Opposition to the opponent’s application for UKTM No. 3607881, relying on an alleged unregistered mark. The Tribunal had required the applicant to file an amended statement of grounds as fast-track oppositions can only be brought on the basis of an earlier registered trade mark or an earlier application for a trade mark. This opposition was then withdrawn.

8. The opponent claims that Mr Advani set up a Facebook group called “Bring The Cass Business School Name Back” and encouraged others to sign a petition supporting that proposition. On 15 March 2021, he registered all the names that were being considered for the opponent’s business school at Companies House. The opponent also says that on 21 April 2021 (the day that it announced the new name of its business school), the applicant made its first Instagram post. Two months later, on 24 June 2021, the application at issue in the present proceedings was filed.

9. The applicant filed a defence and counterstatement denying the claims made. However, it accepted that the Class 42 services opposed under section 5(2)(a) and (b) and *Providing campground facilities* were similar to services covered by the opponent’s marks and agreed to remove them from the application. It denied that the contested mark was identical to the 881 mark and claimed that the contested mark was different from all the earlier marks, which, in its view, were not distinctive. It said that it had been using the name first, with Twitter and YouTube accounts dating back to January 2021 and that the opponent had had the applicant’s Facebook page taken down, despite it

containing videos from individuals who said they studied with the organisation in 2019 or 2020.

10. In response to the opponent's claim under section 3(6), the applicant submits that the opponent has no credible reason for a change of its name. It claims that since July 2020, the opponent has used four different names online: Cass Business School, then City's Business School, then The Business School, and finally Bayes Business School. It describes this as "an apparent attempt to obfuscate their business practices".

11. The applicant also made a series of allegations about the conduct of the opponent. It claimed that it was unable to find evidence of the social media activity referred to by the opponent and requested that the Tribunal look for this evidence as soon as possible. The applicant was advised on 17 May 2022 in the letter admitting its defence that the Tribunal would not undertake any independent research and it would be for the applicant to file the online search. In particular, the applicant denies creating a Facebook group under the name "Bring the Cass Business School Name Back". The applicant states that there have been instances of misdirected mail and emails, which have been forwarded to the opponent, thus indicating that the applicant has not been acting in bad faith.

12. Mr Advani has made a number of other allegations, in particular that he was the subject of abuse during and after his time as a student at the business school. These are, however, not issues that I am required to address in my decision. I have, however, taken note of them as part of the context of these proceedings.

13. The applicant requested that the opponent provide proof of use of these marks, but, as they had not been registered for more than five years before the date of application of the contested mark, such proof is not required. The applicant was also informed of this on 17 May 2022.

14. Both parties filed evidence and I summarise it briefly below.

15. Neither side requested a hearing, and so I make my decision after a careful consideration of the papers. The opponent filed written submissions in lieu of a hearing

on 9 December 2022. The applicant filed a response on 13 December. However, as this was received after the deadline for filing submissions in lieu, I have not taken account of it.

16. In these proceedings, the opponent is represented by DLA Piper UK LLP, while the applicant is unrepresented.

EVIDENCE

17. The opponent filed evidence in the form of a witness statement from Tim Longden, Director of Marketing & External Relations for the opponent, dated 15 July 2022. It is accompanied by 11 exhibits and goes to the adoption of the new name and the claim that the applicant was acting in bad faith.

18. The applicant's evidence comes in the form of a witness statement from Dinesh Advani, Director of M&Advisory, the parent company of the applicant. It is dated 19 September 2022 and responds to statements made by Mr Longden. The opponent claims that this witness statement was submitted late and so had not been admitted into proceedings. The opponent's evidence was due on 18 July 2022, and the applicant's two months after receipt of that evidence. However, 18 September 2022 was a Sunday. Section 80(2) of the Act provides that "*where the time for doing anything under this Act expires on a day which is not a business day, that time shall be extended to the next business day.*" As Sundays are not business days, Mr Advani's statement was therefore admitted and I have considered it when making my decision.¹

DECISION

Section 5(2)(a)

19. Section 5(2)(a) of the Act is as follows:

¹ See Trade Mark Direction "Hours of Business and Business Days", published on July 2011 pursuant to section 80(1) of the Act, www.gov.uk/government/publications/directions-hours-of-business-and-business-days/directions-hours-of-business-and-business-days.

“A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

...

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

20. In considering the opposition under section 5(2), I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v OHIM* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):²

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

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

² Section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts, although the UK has left the EU.

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

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

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

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

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

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

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

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

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

Comparison of marks

21. The respective marks are shown below:

Earlier mark	Contested mark
BAYES BUSINESS SCHOOL	Bayes Business School

22. The applicant claims that these marks are not identical and refers to comments made by an employee of the Intellectual Property Office:

“The marks differ in their material particulars, this is because the first mark contains the stylized word[s BAYES BUSINESS SCHOOL] all capital letters while the second mark consists solely of the word[s Bayes Business School] zero stylization and a combination of upper and lower case lettering in a basic text font. The marks are visually different each other and so would be perceived differently by the average consumer.”³

23. I have been unable to find this comment on the case file, but even if I had I am required to apply the law as it is found in both the legislation and the case law of the courts. The sole difference between the marks shown above is that the earlier mark is in upper case, while the contested mark is in title case. Both are word marks. In *LA Superquimica v European Union Intellectual Property Office (EUIPO)*, Case T-24/17, the General Court held that such plain word marks protected the word or words contained in the mark in whatever form, colour or typeface.⁴ As the words are identical, I find that the marks are identical.

Distinctiveness of the earlier mark

24. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

³ Counterstatement, which can be found in Appendix 2 to the TM8. Unfortunately it has no page or paragraph numbers, but the extract is taken from the second paragraph on the first page of the Appendix.

⁴ Paragraph 39.

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

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

25. Registered trade marks possess varying degrees of inherent distinctive character, perhaps lower where a mark may be suggestive of, or allude to, a characteristic of the goods or services, ranging up to high for invented words which have no allusive qualities.

26. The applicant submits that “Bayes Business School” is not a distinctive name:

“... the name is descriptive of the services the Opponent’s organisation supplies given that they teach topics including business an [sic] Bayesian statistics, a school of thinking known as the Bayes School or Bayes-Nash School, which are typical subjects for business schools to teach.”⁵

⁵ Counterstatement, second page of Appendix 2.

27. I take from Mr Longden’s evidence for the opponent that the inspiration for the name “Bayes Business School” was mathematician Thomas Bayes. The press release announcing the new name stated that:

“Thomas Bayes (1702-1761) was a nonconformist theologian and mathematician best known for his foundational work on conditional probability. His grave is in Bunhill Fields, opposite the Business School. Bayes’ theorem suggests that we get closer to the truth by constantly updating our beliefs in proportion to the weight of new evidence. It is this idea – not only the person – that is the motivation behind adopting this name.

Bayes’ ideas are central to Finance, Actuarial Science and many branches of Management, the core disciplines of the Business School. They are also the foundation of artificial intelligence and machine learning.”⁶

28. Even were I inclined to think that the earlier mark was not a distinctive name for the services for which it is registered, it is not open to me to make that finding. A registered trade mark must be assumed to have at least some distinctive character, as the CJEU held in *Formula One Licensing BV v OHIM*, Case C-196/11 P, paragraphs 41-44. I accept that for some of the services the words “business school” may be descriptive, but I must consider the mark as a whole. I agree with the opponent that “Bayes” will be understood to be a surname, although I do not believe it to be a particularly common one. In my view, the mark has a medium level of inherent distinctive character. I note that the opponent does not rely on enhanced distinctiveness.

Comparison of goods and services

29. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These may include the nature of the goods and services, their purpose, their users and method of use, the trade channels through

⁶ Exhibit TL5, page 46.

which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. Goods and services are complementary when

“... there is a close connection between them in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”⁷

30. Section 60A of the Act states that:

“(1) For the purposes of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification;

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

31. It follows from this provision that goods and services are not dissimilar purely on the grounds that one is a good and the other is a service, as submitted by the applicant at various points in its counterstatement.

32. I must also explain that my comparison needs to be on the basis of the terms in the specification, regardless of whether a party is currently using them for those goods

⁷ *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82.

or services. Any applicant should either be using the mark for the goods or services applied for or have a *bona fide* intention to do so: see section 32(3) of the Act. However, there is a period of five years from the registration of the mark before a proprietor may be required to prove they have used it.

33. In construing the meaning of terms, I keep in mind the guidance given by Floyd J (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”⁸

34. In *Sky Plc & Ors v Skykick UK Ltd & Anor* [2020] EWHC 990 (Ch), Arnold LJ considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment, he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

⁸ Paragraph 12.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”⁹

Class 16

35. The opponent submits that the applicant's *Printed matter; books; printed matter; printed publications; handbooks; journals; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; entertainment guides [printed matter]* are highly similar to its own *Publication of texts, other than publicity texts; publication of books* as they both “broadly [relate] to a stage in the process of producing texts and books for the public”.¹⁰ The applicant denies any similarity on the grounds that goods are different from services. I have already explained that this does not automatically mean that the goods and services are dissimilar.

36. The opponent's services consist of preparing and issuing books, journals and other printed or online texts for sale to the public. While I accept that the nature of the goods and service are different, the same businesses may both provide the publishing service and sell the texts. I believe that the average consumer will make this assumption and so I consider that there is complementarity between the goods and the services. I find them to be similar to a medium degree.

37. The opponent submits that the applicant's *instructional and teaching material (except apparatus); school supplies [stationery]; teaching materials [except apparatus]* are highly similar to its own *Education; providing of training; teaching services; teaching and tuition in the field of higher education; teaching* as all the goods and

⁹ Paragraph 56.

¹⁰ Written submissions in lieu of a hearing, table in paragraph 21.

services are related to and likely to be used during the provision of education services. The applicant denies any similarity and submits that teaching is often done without supplementary materials.

38. I shall first deal with *Instructional and teaching material (except apparatus)* and *Teaching materials [except apparatus]*. These will be used both by consumers of the opponent's educational services and by the individuals and institutions delivering those services. There is therefore an overlap in user. Again, the nature of the goods and services differs, but they share the same purpose of imparting knowledge and skills to the user. I find that there is a degree of competition, as an individual may choose either to enrol in a course of education or training or to purchase teaching materials and study on their own. I have noted the applicant's submission that teaching may be done without supplementary materials and I can accept that some online training and education may not require the use of the printed matter in Class 16. However, I also understand that there are instances where the Class 16 materials are supplied along with education services, for example in distance learning. There will therefore be some shared distribution channels. I consider that there is some complementarity between the goods and services and that the average consumer would assume that they come from the same undertaking. Overall, I find that there is a medium degree of similarity between the goods and the services.

39. Now I come to *School supplies [stationery]*. I believe that the average consumer would understand this term to refer to goods such as exercise books and writing materials. The purpose of the goods is to enable the user to take notes and complete assignments and examinations where it is not possible or desirable to use information technology equipment. The goods may be distributed through a school but they will also be sold in a wide range of retailers, such as stationers and supermarkets, and I do not consider that the average consumer will assume that they are the responsibility of the provider of educational and training services. Their nature is different and there is no competition between them. I find that *School supplies [stationery]* are dissimilar to the opponent's services.

40. The opponent submits that the applicant's *advertisement boards of paper or cardboard; advertising display boards of paper or cardboard [non-luminous];*

advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications are highly similar to its own *Advertising; rental of advertising space; outdoor advertising; rental of billboards [advertising boards]; design of advertising materials* as the goods and services all relate to the provision of advertising. The applicant again stresses difference between goods and services.

41. Both the goods and the services will be used to promote another party's goods and/or services, so there is some shared purpose. The user of the services will be that other party, who may be an individual or an organisation, while the user of the goods will either be the party who wants to promote something (in the case of, for example, *printed advertising material*) or an advertising company who uses materials such as display boards to create advertisements for their clients. There is likely to be some overlap in trade channels. The nature and method of use will be different. In my view, there is some complementarity between the goods and services. I think it would be reasonable for the average consumer to expect that advertising materials would be supplied by the provider of the advertising services. I find that the goods and services are similar to a medium degree.

Class 36

42. The opponent submits that the applicant's *Providing financial information via a web site* is highly similar to its own *Business information; providing business information via a web site; compilation of information into databases; compilation of statistics* as there could be clear crossovers between financial and business information. The applicant submits that business and finance are separate disciplines.

43. The ordinary and natural meaning of *Business information* is "information about or for businesses". I agree with the opponent that this may include some financial information about a business, and I find that *Providing financial information via a web site* is therefore highly similar to *Providing business information via a web site*, if not identical per *Meric*.

44. The opponent submits that the applicant's *providing student loans; providing educational scholarships; letting and rental of permanent accommodation* are highly similar to its own *Education; providing of training; teaching services; teaching and tuition in the field of higher education; teaching* as all the services broadly relate to the provision of education services. The applicant denies similarity and submits that it is normal practice for loans and scholarships to be provided by another entity from the one that is providing the teaching, and that the same applies in the case of rental of accommodation.

45. A student loan is an advance of money that is intended to cover all or part of the cost of a course of study. The users will therefore be the same as the users of the opponent's *Education* services. However, the method of use and the nature of the service differ. While the provision of the education services is indispensable to the provision of student loans (and perhaps, in some instances, vice versa), I do not consider that the average consumer would expect the same undertaking to be responsible for both services. I find that the services are dissimilar.

46. In contrast, I do believe that the average consumer may expect the provider of education and the provider of educational scholarships to be one and the same. While it is possible that scholarships may be provided by independent bodies, I consider that the consumer would assume that scholarships provided under the mark **Bayes Business School** were provided by the organisation providing education under that name and would cover courses of study at that particular institution. I find that the services are complementary and similar to at least a low degree.

47. I turn now to *Letting and rental of permanent accommodation*. The opponent has not explained precisely why it considers that there is similarity between these services and the education services listed in paragraph 44 above. It appears to me that the service most likely to be similar is *teaching and tuition in the field of higher education* because universities and colleges frequently offer students accommodation in college or a hall of residence for at least part of their degree course. Sometimes, therefore, the services are supplied by the same undertaking. Their purpose, however, is different, with that of the applicant's service being to provide somewhere in which an individual may live. The nature of the service is different, as is their method of use. The

services are not in competition, and I do not consider that they are complementary in a trade mark sense. I find that they are dissimilar.

48. The opponent submits that the applicant's *Information and advisory services relating to the aforesaid services* are highly similar to its own *Information and advisory services relating to academic subjects or vocational skills; information and advisory services relating to the aforesaid services* in Class 41 or *Careers information and advisory services (other than educational and training advice)* in Class 35, as the services broadly relate to the provision of information and advisory services in relation to education. The applicant submits that the phrase in its specification cannot be taken out of context and must be considered alongside the services to which it refers, which in this case are relate to financial advice.

49. I agree with the applicant that *Information and advisory services relating to the aforesaid services* needs to be considered in the context of the specification of the contested mark. The Class 36 services preceding this term are all types of financial or real estate service. In its written submissions in lieu of a hearing, the opponent submits that both parties' services are *Information and advisory services "which are clearly similar and have scope for cross over for example where academic subjects or vocational skills in class 41 relate to financial subjects"*.¹¹ I remind myself that in *Skykick*, Arnold LJ said that terms for services should be confined to the core of the possible meanings attributable to the term. The core of the applicant's services is the provision of information and advice on financial services products and real estate services. The purpose of the services is to help the user choose the right product for their needs or facilitate transactions, such as asset sales and purchases. The opponent's services are intended to help the user decide what qualifications to pursue, improve their study skills or choose the career they want to follow. Even where those careers, academic subjects or skills involve the finance sector, the purpose of the services is different. Furthermore, the services will be provided by different undertakings. The fact that they are both information and advisory services is not, in my view, sufficient for me to find similarity. I consider that they are dissimilar.

¹¹ Paragraph 26.

Class 42

50. I have already noted that the applicant has accepted that these services are similar to ones in the opponent's specification and offered to remove them. In the light of this admission, I shall not proceed to compare them.

Class 43

51. The opponent submits that the applicant's *Boarding houses; providing campground facilities; day-nurseries; crèches* are highly similar, if not identical, to its own *Boarding schools; providing recreation facilities; nursery schools* as they relate to services for the provision of childcare, education and recreational facilities for children. The applicant submits that the services are not similar but has said that it would be prepared to amend the application to clarify that these services are not related to educational services. It accepted that *Providing campground facilities* is similar to the opponent's *Providing recreation facilities* and agreed to remove this service.

52. Boarding houses provide temporary accommodation, while boarding schools are schools in which some or all of the students live during the school term. I do not consider that the core of the term "boarding houses" would include boarding school accommodation, which is ancillary to the primary purpose of the service, which is providing education and is therefore different from that of boarding houses. The end-users will also be different, as the users of the boarding school will be minors while it is more likely to be adults or family units who live in boarding houses. The trade channels are different and in my view there is no competition or complementarity. I find the services to be dissimilar.

53. I shall now compare *Day-nurseries* and *crèches* to *nursery schools*. A nursery school is a school for very young children. The primary purpose of *Day-nurseries* and *crèches* is childcare, although educational activities may also be provided. The end-users of the services is likely to overlap, as they will all be attended by children younger than the standard school starting age. The services are in competition as parents and guardians will be able to choose the type of provider they want to use to take care of

their child before he or she is old enough to go to primary school. The services may be provided by the same undertaking. I find that they are highly similar.

54. I shall now consider the applicant's proposal to amend the application to exclude educational services. I note that I have not been provided with specific wording. The CJEU considered the issue of specifications that aim to exclude particular goods or services in *Koninklijke KPN Nederland NV v Benelux-Merkenbureau (POSTKANTOOR)*, Case C-363/99. This case concerned an application to register the Dutch words for "post office" for *the services of direct-mail campaigns and the issue of postage stamps, provided they are not connected with a post office*. A number of questions were referred to the CJEU, and it answered the one that is relevant for the present purposes in the following:

"114. ... where registration is applied for in respect of particular goods or services, it cannot be permitted that the competent authority registers the mark only in so far as the goods or services concerned do not possess a particular characteristic.

115. Such a practice would lead to legal uncertainty as to the extent of the protection afforded by the mark. Third parties – particularly competitors – would not, as a general rule, be aware that for given goods or services the protection conferred by the mark did not extend to those products or services having a particular characteristic, and they might thus be led to refrain from using the signs or indications of which the mark consists and which are descriptive of that characteristic for the purpose of describing their own goods."

55. The specific requirement for legal certainty was emphasised again by the CJEU in *Chartered Institute of Patent Attorneys v Registrar of Trade Marks*, Case C-307/10:

"... Directive 2008/95 requires the goods and services for which the protection of the trade mark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and

economic operators, on that basis alone, to determine the extent of the protection sought.”¹²

56. The CJEU did not find that any degree of uncertainty about the meaning of a word or phrase used in a specification should result in the refusal or invalidation of the trade mark. The issue only arises when there is a sufficient lack of clarity and precision in the specification as to create an unacceptable level of uncertainty about the scope of protection to which the trade mark is entitled, having regard to the context in which the mark is to operate: see *Total Limited v YouView TV Limited*, [2014] EWHC 1963 (Ch), paragraph 57.

57. It is, in my view, difficult to draw a clear distinction between day-nursery and crèche services that are related to educational services and those that are not. This is because games and other playtime activities may have educational aims. Third parties would therefore be unclear about the scope of the protection if the applicant were to amend the application in the way suggested. It would, therefore, not be acceptable.

58. The opponent submits that the applicant’s *Rental of lighting apparatus* is highly similar, if not identical, to its own *Rental of lighting apparatus for theatrical sets or television studios*. The applicant accepts this and offers to amend the specification to read *Rental of lighting apparatus except for theatrical sets or television studios*. In contrast to the suggested amendment discussed above, I consider that it is possible to identify lighting that is intended to be used in a theatre or a television studio and so I find that the term complies with the overriding requirements for clarity and precision and will proceed to make a comparison on this basis.

59. The purpose of the opponent’s and applicant’s services is highly similar: to enable a customer to illuminate a space without having to purchase the necessary equipment. It is the nature of the space that varies and so the users will be different, with the opponent’s services being supplied to organisations running theatres and television studios. It is also likely that equipment for these spaces will be specialist. Users of the applicant’s services may include organisations, such as local authorities or concert

¹² Paragraph 49.

promoters, putting on outdoor events. The method of use of the services will be the same and it is possible that some businesses may supply different types of lighting. I do not find that the services are in competition, given the specialist nature of the lighting, nor are they complementary. I find at least a low level of similarity between the services.

60. The opponent submits that the applicant's *Provision of facilities for conventions, conferences, lectures, exhibitions, day schools, workshops and seminars* are highly similar to its own *Provision of courses of instruction, lectures and seminars all relating to academic or vocational subjects* in Class 41 and *Organisation of exhibitions for commercial or advertising purposes* in Class 35 as the provision of facilities for events such as conventions, conferences, lectures and exhibitions is linked to the actual provision of such events. The applicant disagrees and submits that provision of lectures, for example, is a different service from the provision of facilities for lectures.

61. The purpose of the applicant's service is to provide a venue and associated services, such as catering, to parties who want to put on activities such as conferences or lectures. The purpose of the opponent's Class 35 service is to put on exhibitions to promote products or services. They are therefore different. There may be some shared users, as it is possible that an organisation might make separate arrangements with the venue and the company that will manage the different aspects of an exhibition, such as liaising with attendees, hiring equipment, and so on. However, it is equally possible that a single provider will deliver both services. I find that there is some complementarity between them, as the applicant's services are indispensable to the delivery of the opponent's services and in my view the average consumer is likely to assume that they have been provided by the same undertaking. I find that there is a low degree of similarity between them.

Class 45

62. The opponent submits that the applicant's *Baby sitting; chaperoning* are highly similar to its own *Nursery schools* as all the services relate to childcare. The applicant submits that the services are not similar but has said that it would be prepared to

amend the application to clarify that these services are not related to educational services.

63. *Baby sitting* is a form of childminding and it is my view that the average consumer would not expect it to involve any educational input. The purpose of the service is to enable the parents and guardians of a child to be absent in the knowledge that there is a responsible person on hand if there is a problem. The purpose therefore differs from that of the opponent's *Nursery schools*, which is to provide early-years education. The trade channels will also, to my mind, be different. I do not consider that there is any more than the slightest degree of competition, given the difference in intended purpose and the requirement upon me to construe services narrowly. They are not complementary. The users are the same but this is not sufficient for me to find any similarity. In my view, the services are dissimilar.

64. *Chaperoning* would be understood by the average consumer as a service involving the accompaniment of a more vulnerable, often younger, person or persons by a more experienced adult to functions, meetings and (in an educational context) school trips, to give some examples. The purpose is therefore different from that of the opponent's *Nursery schools*. There is likely to be some overlap in trade channels in the case of school trips and events, and here the average consumer would expect the services to be provided by the same undertaking. The services are not in competition, neither do I find them to be complementary. I find there is a low degree of similarity between them. The applicant has, as I have noted, offered to amend the application but has not suggested any specific wording. I will return to this point later in my decision if it is relevant.

Conclusions on the comparison of marks

65. Under section 5(2), it is necessary for the goods and/or services to be similar: see *eSure Insurance Limited v Direct Line Insurance Plc*, [2008] EWCA Civ 842 CA, paragraph 49. I found that some of the contested goods and services were dissimilar to the opponent's services and so the section 5(2)(a) claim fails for the following:

Class 16

School supplies [stationery].

Class 36

Information and advisory services relating to the aforesaid services; providing student loans; letting and rental of permanent accommodation.

Class 43

Boarding houses.

Class 45

Baby sitting.

66. The applicant has already conceded that its services in Class 42 and *Campground facilities* in Class 43 are similar to those of the opponent and offered to remove them.

67. The opposition under section 5(2)(a) continues with respect to:

Class 16

Printed matter; books; instructional and teaching materials (except apparatus); advertisement boards of paper or cardboard; printed matter; printed publications; handbooks; journals; teaching materials [except apparatus]; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; entertainment guides [printed matter]; advertising display boards of paper or cardboard [non-luminous]; advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications.

Class 36

Providing financial information via a web site; providing educational scholarships.

Class 43

Day-nurseries; crèches; rental of lighting apparatus [except for theatrical sets or television studios]; provision of facilities for conventions, conferences, lectures, exhibitions, day schools, workshops and seminars.

Class 45

Chaperoning.

Average consumer and the purchasing process

68. In *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors* [2014] EWHC 439 (Ch), Birss J (as he then was) described the average consumer in these terms:

“The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”¹³

69. In its counterstatement, the applicant made no specific comments on the identity of the average consumer. The opponent submits that all the goods and services opposed under section 5(2) are directed at the public at large with an interest in education. I agree that this will be the case for the Class 41 services and consider that the user is likely to pay a relatively high degree of attention when purchasing these services, with both visual and aural elements of the mark being important. The average consumer will see the mark in use on websites and printed brochures and other promotional material. They are also likely to receive word-of-mouth recommendations and advice from third parties, such as teachers.

¹³ Paragraph 60.

70. I also agree with the opponent that some of the Class 16 goods will be directed towards the public at large. These are:

Printed matter; books; instructional and teaching material (except apparatus); printed matter; printed publications; handbooks; journals; teaching materials [except apparatus]; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; entertainment guides [printed matter].

71. I accept, however, that many of these goods, particularly the ones relating to instructional and teaching materials, will also be purchased by professionals and organisations providing that education.

72. These goods will be purchased in specialist bookshops and more general retailers, and their online equivalents. They may also be ordered from catalogues or other printed material. The average consumer will see the mark in use on the products themselves, on websites, and they may also see it in advertisements and other material, such as reviews or reading lists. The visual aspect of the mark will therefore be significant, although aural elements must also be considered as consumers may ask sales staff for the goods or order them over the telephone. While some books are expensive, on average the goods are moderately priced. However, the consumer will want to make sure that the products meet their needs. Overall, I find that they will be paying a medium degree of attention.

73. The following goods are likely to be purchased by organisations wishing to advertise their products and services or producing advertising campaigns and materials for third parties:

Advertisement boards of paper and cardboard; advertising display boards of paper or cardboard [non-luminous]; advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications.

74. They are likely to be purchased from stationery shops and specialist suppliers, and their online equivalents, and as with the goods discussed above may also be ordered from catalogues and printed material. While the visual aspect of the mark will be most important, I do not discount that aural element, as goods may be ordered over the phone and assistance sought from sales staff. The average consumer will, in my view, pay a medium degree of attention during the purchasing process.

75. The opponent's advertising services will range from low-cost, perhaps local, options through to expensive national television campaigns. Given the importance to a business of marketing its products and services, the average consumer for these services is likely to pay a fairly high degree of attention. They will choose a supplier after searching the internet or viewing promotional material and so the visual element of the mark will be important. The consumer may also receive word-of-mouth recommendations, and so the aural aspects of the mark will play a role too.

76. The average consumer of the applicant's *Providing financial information via a web site* will be a member of the general public or a professional. The services will vary in price. Consumers may subscribe to databases or analytical services which can be expensive; at the other end of the scale, some information services may be available on the internet free of charge, perhaps as a way of promoting other services supplied by the provider. The level of attention will, in my view, vary according to the cost of the services, although, given the potential significance of the information for the financial health of the user, it is unlikely to be low. Considering these factors, I find that the level of attention paid will on average be between medium and high. The visual aspect is likely to be the most important as consumers will see the mark used online or in promotional material, but aural recommendations may also be relevant.

77. The same rationale applies, in my view, to the opponent's *Providing business information via a website*.

78. The average customer of the applicant's *Providing educational scholarships* will be a member of the public interested in education. They are likely to have conducted some research on the internet or in brochures and will have seen the mark used in that material. The visual element of the mark will be most important, although I do not

wholly discount the aural element as word-of-mouth recommendations may be made or advice given by professionals, such as school teachers. The average consumer is likely to be paying a high degree of attention as they will need to consider the levels of scholarship provided, any conditions attached to it, and the qualification requirements.

79. The average consumer of the applicant's *Day nurseries* and *Crèches* and the opponent's educational services is a member of the general public. I consider that they will be paying a fairly high degree of attention and will take account of both visual and aural elements of the mark.

80. The average consumer of the applicant's remaining Class 43 services will be an organisation wanting to hire facilities or equipment. They will be paying a medium to high degree of attention and will see the mark in use on websites and promotional material. The purchasing process will largely be visual, although I do not discount the possibility of word-of-mouth recommendations and so cannot ignore the aural element.

81. Chaperoning services will also be purchased with a high degree of attention, given the position of trust that such a role implies. The users may be members of the public or organisations and both visual and aural elements of the mark will be important, as the average consumer is likely to consult online and printed material and seek advice and recommendations from third parties.

Conclusions on likelihood of confusion

82. There is no scientific formula to apply in determining whether there is a likelihood of confusion. It is a global assessment where a number of factors need to be borne in mind. I must also take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa. I keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them they have in their mind.

83. The applicant denies that there is a likelihood of confusion. It directs my attention to the existence of a number of other schools or programmes using the name “Bayes”. However, there is no evidence that any of these are active within the UK. I have already noted that the applicant states that it has received post and emails intended for the opponent, although it submits that:

“The mistaken identity is not as a result of a similarity in trade mark or goods/services offered, but due to the strength of the brand that the Applicant had established such that when the Opponent announced that they would be using the name Bayes Business School, it had already been in use by the Applicant for some time.”¹⁴

84. The applicant also refers to its alleged earlier use of the mark, stating that it created Twitter and YouTube accounts under the name in January 2021. I have already mentioned the opposition filed by the applicant against the opponent’s mark. The applicant says that it was withdrawn as it did not have the funds to pursue a standard track opposition relying on an unregistered sign. As the trade mark system is based on a “first to file” system, the applicant is unable to rely on alleged earlier use of the mark, a point confirmed by Ms Anna Carboni, sitting as the Appointed Person, in *Ion Associates Ltd v Philip Stainton & Anor*, Case BL O/211/09. The withdrawn opposition is, however, something I may take into account when considering the section 3(6) ground.

85. Given the identity of the marks and the medium level of distinctiveness of the earlier mark, I consider that it is likely that the average consumer will be confused by the use of the contested mark for all the goods and services that are still in play under this ground.

86. The section 5(2)(a) ground succeeds in respect of the following goods and services:

¹⁴ Counterstatement, 8th page of Appendix 2 to the TM8.

Class 16

Printed matter; books; instructional and teaching materials (except apparatus); advertisement boards of paper or cardboard; printed matter; printed publications; handbooks; journals; teaching materials [except apparatus]; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; entertainment guides [printed matter]; advertising display boards of paper or cardboard [non-luminous]; advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications.

Class 36

Providing financial information via a web site; providing educational scholarships.

Class 43

Day-nurseries; crèches; rental of lighting apparatus [except for theatrical sets or television studios]; provision of facilities for conventions, conferences, lectures, exhibitions, day schools, workshops and seminars.

Class 45

Chaperoning.

Section 5(2)(b)

87. The opponent's claim under section 5(2)(b) relies on the 607 and 620 marks. The specifications for these marks are almost identical to that of the 411 mark. The only difference is in the following section of Class 41:

The 411 mark

...education academy services; library services; the provision of online texts, journals, magazines and periodicals

The 607 and 620 marks

...education academy services; library services; texts, journals, magazines and periodicals

88. This difference has no material effect on the opposition. Notably, there are no goods or services that I might find to be similar to the contested goods and services I found to be dissimilar under section 5(2)(a). The 607 and 620 marks are not identical to the contested mark and so the opponent's position is not improved under section 5(2)(b). I shall therefore move on to consider the section 3(6) claim.

Section 3(6)

89. Section 3(6) of the Act is as follows:

“A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

90. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, *Hasbro, Inc. v EUIPO*, Case T-663/19, *pelicantravel.com s.r.o. v OHIM*, Case T-136/11, and *Psytech International Ltd v OHIM*, Case T-507/08. Floyd LJ summarised the law as follows:

“The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54]".¹⁵

91. According to Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

“(1) what, in concrete terms, was the objective that CKL had been accused of pursuing? (2) was that an objective for the purposes of which the contested application could not properly be filed? (3) was it established that the contested application was filed in pursuit of that objective? The first question serves to ensure procedural fairness and clarity of analysis. The second question requires

¹⁵ Paragraph 67.

the decision taker to apply a moral standard which, in the absence of any direct ruling on the point from the CJEU, is taken to condemn not only dishonesty but also ‘*some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined*’: see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 (Lindsay J). The third question requires the decision taker to give effect to the principle that innocence must be presumed in the absence of evidence sufficient to show that the applicant has acted improperly as alleged.”¹⁶

92. The opponent claims that the applicant’s objective was to seek to prevent or dissuade the opponent from using the name “Bayes Business School” and/or to prevent the opponent from obtaining its own registered rights. In addition, it claims that the applicant had no genuine intention of using the mark. These are all, in my view, objectives for the purposes of which the application could not properly be filed.

93. The opponent must now establish a *prima facie* case of bad faith. In *Global Trademark Services Ltd’s Trade Mark Applications*, BL O/264/22, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, stated that:

“... It is incumbent on the accuser to overcome the ‘rebuttable presumption of good faith’. That is done by filing evidence which is sufficient to make it possible for the decision taker to conclude that the contested application for registration was filed in bad faith. The decision taker can then proceed to find: (i) that the ‘rebuttable presumption of good faith’ has been rebutted if the person accused of bad faith filing has provided no ‘plausible explanations’ for pursuing the contested application for registration; or (ii) that the ‘rebuttable presumption of good faith’ has not been rebutted if the accused person has provided such ‘explanations’.”¹⁷

94. The process for adopting the new name is summarised below:

¹⁶ Paragraph 8.

¹⁷ Paragraph 28.

July 2020: The university announced its intention to change the name of its business school.

2 December 2020 – 20 January 2021: Suggestions were sought from staff, students and alumni through an online platform which was not accessible to the public.¹⁸ More than 2000 people registered to use it and 511 proposals were received.

This list was then filtered to remove the names of living persons and those that were deemed to be too similar to the main university name. 155 suggestions remained, which were checked for trade mark risks and evaluated by a brand agency.

8 February 2021: A longlist of 57 names was presented to the Business School Naming Steering Committee.

Further checks were made, resulting in a shortlist of 4 names, including “Bayes Business School”.

10 March 2021: The university filed trade mark applications for each of those names.

11 March 2021: A shortlist consultation exercise with staff, students and alumni was launched. The aim was to prove feedback on the names via an online survey. The email from the business school stressed that these names should be confidential and not shared outside the staff, student and alumni community.¹⁹

12 March 2021: By midday, there had been 7,080 survey responses, including 4,483 from alumni.²⁰

21 March 2021: The shortlist survey closed and the responses were analysed.²¹

Beginning of April 2021: The Business School Naming Steering Committee submitted a final recommendation to the University Council.

19 April 2021: The University Council decided on the name “Bayes Business School”.

21 April 2021: An announcement was made that Bayes Business School was the new name and would be in use from the beginning of the 2021/2022 academic year.

¹⁸ Exhibit TL1, page 1.

¹⁹ Exhibit TL3.

²⁰ Exhibit TL4.

²¹ Exhibit TL5.

95. The opponent states that it became aware of the contested application shortly after it had been filed.²² Prior to this, though, they discovered that all four of the names on the shortlist had been registered as company names at Companies House on 15 March 2021, four days after the consultation exercise had been launched. The filings reveal that the applications were made on 12 and 13 March 2021, that for each company there was proposed a single officer, Mr Dinesh Advani, and that the share capital consisted of a single share to be held by M&Advisory Ltd. Companies House records show that Mr Advani is the sole director and shareholder of M&Advisory.²³ Mr Advani states in his own witness statement that he was made a director of the applicant in error and that *“when the mistake was noticed it was corrected to show that my directorship ended the day it began”*.²⁴ Mr Advani’s replacement by M&Advisory as of 15 March 2021 is confirmed by the Register of UK Companies.²⁵ However, this does not detract from the fact that Mr Advani is listed as a person with significant control over M&Advisory, being the sole shareholder and also the sole director.²⁶

96. As I have already noted, the applicant had opposed the opponent’s application for the 881 mark. The notice of opposition was dated 12 July 2021 and for the reasons already given it was withdrawn.

97. The opponent claims that Mr Advani, who appears to be the controlling mind behind the applicant, knew of the process to change the name and, further, that he wished to disrupt it. Mr Longden states that, as an alumnus of the business school, he had opted in to receive communications and had therefore received the invitation to suggest names for the business school. The opponent filed evidence that he opened the 11 March 2021 email about the name change survey and clicked on the link in the email.²⁷ A spreadsheet shows that he submitted two separate proposals on 19 and 20 January 2021, one of which was “Bayes School of Business”.²⁸ The applicant claims that the evidence does not show that he opened the email of 11 March 2021,

²² Witness statement of Mr Longden, paragraph 17.

²³ Exhibit TL6.

²⁴ Witness statement of Mr Advani, paragraph 6.

²⁵ Exhibit TL6, pages 1-2.

²⁶ Exhibit TL6, pages 26, 32-35.

²⁷ Exhibit TL8, page 2.

²⁸ Exhibit TL8, page 1.

still less clicked on the link. However, I find it hard to draw any other conclusion from the evidence of Exhibit TL8.

98. The opponent submits that light is shed on the intentions of Mr Advani by comments made on a Facebook group called “Bring the Cass Business School Name Back”. This group was created on 6 July 2020 and its description was as follows: *Let’s stop the non-sense and force for a no name change or compromise and change to CASS abbreviation*”.²⁹ Mr Advani posted the following on 28 November 2020:³⁰

The Business School are encouraging us to propose new names for a renaming. I think we all agree that The Business School is a bad name and this name change is necessary.
I encourage you to propose Cass Business School as the new name.
No one knows this, but there was a notable philanthropist called Sir John Cass who donated much of his fortune to educating people of all ages, races, genders, and sexualities. In fact, The Business School itself has previously received multimillion pound donations from his foundation. For this reason, we should recognise this man and rename The Business School to Cass Business School.

99. On 11 March (presumably 2021), he created a poll for group members asking them to vote on the four shortlisted names. A few days later, on 16 March, he posted:³¹

Did someone in this group buy the domain name www.BayesBusiness.School ?
If not, that is the most likely new name as the domain has been registered by someone.

100. A group member responded, *“Could be just a legend who bought every single one of the proposed names ages ago to prevent the people at city to have them lol.”* Mr Advani commented that he had bought the others.³²

101. Mr Advani had initially claimed in his counterstatement that there was no evidence that he had written posts on this Facebook group. In response to the opponent’s evidence outlined above, he claims that he does not use Facebook but that he is aware that no verification is performed on the accounts and an account could have been

²⁹ Exhibit TL9, page 1.

³⁰ Exhibit TL9, page 2.

³¹ Page 3.

³² Page 5.

created in his name. He does not explain how his claim not to use Facebook is consistent with his claim in the counterstatement that the applicant had a Facebook account that was removed, given that he appears from the evidence to be the controlling mind of the applicant. He also submits that the digital images in the opponent's evidence could have been fabricated using software such as Photoshop, but gives no evidence to support this submission. I therefore consider it more probable that the evidence adduced by the opponent is genuine. Even if the Facebook account were fake or the images were doctored in some way, there is still the evidence of Mr Advani's knowledge of the opponent's intentions and the registration of the company names that go against him.

102. The opponent has, therefore, in my view succeeded in establishing a *prima facie* case that the applicant knew of the interest that the opponent had in the name "Bayes Business School" and was motivated to disrupt their use of it in the market with the ultimate aim of persuading them to stop using the mark. I do not consider that a case has been made that the application was intended to prevent the opponent from obtaining its own registered rights as it already owned three registered marks. I accept that the applicant's filing of an opposition was intended to do just that, but parties who believe that they have prior rights are entitled to bring such proceedings. Finally, I note that the opponent's written submissions in lieu of a hearing do not specifically comment on the claim that the applicant had no genuine intention to use the mark. I see no evidence or arguments that go specifically to this point and so find that no *prima facie* case has been made for that claim.

103. The burden of proof now shifts to the applicant who is required to provide plausible explanations for making the application.

104. The applicant claims in his counterstatement that he first used the name on social media with a Twitter account created in January 2021 and a Facebook page, which the opponent's actions led Facebook to remove

"... despite it having many followers and multiple reviews, even from Cass Business School alumni, attesting to studying with the Applicant in 2019 or

2020. Similarly, the Applicant's website contained videos of individuals attesting to studying with our organisation in 2019 or 2020."³³

105. However, there is no corroborating documentary evidence of trading under the contested mark. Even if Facebook pages had been removed, I find it hard to believe that, if the mark had been used to provide educational or other services, there would be no evidence that the applicant might have been able to adduce showing that individuals had purchased those services. The applicant has not even provided information on income or numbers of students even in a narrative form. It has not said that the website or Twitter account were taken down or removed, and so screenshots or tweets could, I presume, easily have been provided. Given the seriousness of an allegation of bad faith, it is surprising that they were not.

106. The applicant also argues that "Bayes Business School" is its name. However, that does not give it the right to apply for an identical trade mark as the opponent's in the absence of any evidence of trading under that sign.

107. The applicant has not provided a plausible explanation that the application for the contested mark was not made in bad faith. The section 3(6) ground succeeds.

OUTCOME

108. The opposition is successful and Application No. 3660388 is refused.

COSTS

109. The opponent has been successful and is entitled to a contribution towards the costs it has incurred during these proceedings. The award of costs is usually calculated in line with the scale set out in Tribunal Practice Notice No. 2/2016. The opponent has, however, requested that off-scale costs be awarded in the light of what it describes as the applicant's unreasonable conduct. It submits:

³³ First page of counterstatement.

“79. The Applicant did not satisfy the Tribunal’s formality requirements on a number of occasions, and has generally proved difficult during the course of these proceedings. In particular, the Applicant:

- Filed requests that the Opponent prove ‘use’ of the Earlier Marks despite all of the Earlier Marks being less than five years old and so not at a point where proof of use could be requested;
- Referenced communications between the Opponent’s lawyers and himself, which were without prejudice and therefore not admissible;
- Filed out of time a Witness Statement in the name of Dinesh Advani on 19 September 2022 and failed to file a TM9 R form or pay the required fee; and
- Made false representations to the UKIPO to suggest that the Opponent had refused to engage with settlement negotiations and requests to enter into a cooling off period, none of which [sic] were received or communicated to the Opponent.”

110. The opponent claimed that it had incurred costs above what would have been expected in a “normal” opposition action and puts the additional cost at £1500.

111. The Tribunal has the power to award off-scale costs to deal proportionately with unreasonable behaviour. The Tribunal Manual states that:

“... It is not possible to set out all the circumstances in which a Hearing Officer might depart from the scale. It is worth clarifying though that just because a party has lost, this in itself is not indicative of unreasonable behaviour. Some examples of what might constitute unreasonable behaviour include a party seeking an (avoidable) amendment to its statement of case which, if granted, would cause the other party to have to amend its statement or would lead to the filing of further evidence. Other examples include behaviour designed to delay, frustrate or unreasonably increase the costs/burden on the other party and/or repeated breaches of procedural rules. Off-scale costs may also be awarded if a losing party

unreasonably rejected efforts to settle a dispute before an action was launched or a hearing held, or unreasonably declined the opportunity of an appropriate form of Alternative Dispute Resolution.

The level of off-scale costs will, generally speaking, be commensurate with the extra expenditure a party has incurred as a result of the unreasonable behaviour. Any claim for costs approaching full compensation or for 'extra costs' will need to be supported by a bill itemising the actual costs incurred..."³⁴

112. I shall assess the opponent's submissions in the light of this guidance. I note that the applicant was unrepresented through these proceedings and that it is not unknown for unrepresented parties to fail to satisfy the requirements of what is an unfamiliar process.

113. I now consider the specific instances of behaviour that the opponent submits was unreasonable. First, the applicant's request that the opponent prove use of the earlier marks should not have incurred any additional costs. The applicant was notified that this was not necessary when the defence was served. Secondly, it is not clear to me what additional costs might have arisen from the applicant's references to communications between itself and the opponent's lawyers. I do not see that the witness statement of Mr Longden or the opponent's substantive written submissions in lieu mention them. I take the same view in relation to the opponent's fourth point. I have dealt with the opponent's third point, about the applicant's evidence, in paragraph 18 above.

114. Consequently, I consider that an award based on the standard scale would be proportionate and have calculated it as follows. As the opponent claims that it has not considered the applicant's evidence, the total award does not include that activity:

Preparing a statement and considering the other side's statement: £500

Preparing evidence: £1500

³⁴ Section 5.6.

Preparing written submissions in lieu of a hearing: £500

Official fees: £200

TOTAL: £2700

115. I therefore order Bayes Business School Ltd to pay City, University of London the sum of £2700, which should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 1st day of March 2023

Clare Boucher

For the Registrar,

Comptroller-General

ANNEX A

Specification of the Contested Mark

Class 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paintbrushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging; printers' type; printing blocks; address stamps; address plates for addressing machines; adhesive tape dispensers [office requisites]; adhesive tapes for stationery or household purposes; adhesive bands for stationery or household purposes; adhesives [glues] for stationery or household purposes; advertisement boards of paper or cardboard; albums; scrapbooks; almanacs; announcement cards [stationery]; aquarelles; watercolours [paintings]; architects' models; arithmetical tables; calculating tables; artists' watercolour saucers; watercolour saucers for artists; atlases; bags, envelopes and pouches of paper or plastics, for packaging; balls for ball-point pens; bibs of paper; binding strips [bookbinding]; biological samples for use in microscopy [teaching materials]; blackboards; blotters; blueprints; bookbinding material; bookbinding apparatus and machines [office equipment]; book-bindings; bookends; booklets; bookmarkers; books; bottle envelopes of cardboard or paper; boxes of cardboard or paper; cabinets for stationery [office requisites]; calendars; canvas for painting; carbon paper; cardboard tubes; cases for stamps [seals]; catalogues; chalk holders; charcoal pencils; chart pointers, clipboards; clips for offices; staples for offices; cloth for bookbinding; bookbinding cloth; coasters of paper; comic books; compasses for drawing; composing frames [printing]; composing sticks; conical paper bags; copying paper [stationery]; cords for bookbinding; bookbinding cords; correcting fluids [office requisites]; correcting ink [heliography]; correcting tapes [office requisites]; covers [stationery]; wrappers [stationery]; credit card imprinters, non-electric; desk mats; diagrams; document files [stationery]; document laminators for office use; document holders [stationery]; drawer liners of paper, perfumed or not; drawing pads; drawing pins; thumbtacks; drawing boards; drawing materials; drawing instruments; drawing sets; drawing pens; drawing rulers; drawing squares; drawing T-squares; duplicators; elastic bands for offices; electrotypes; embroidery designs [patterns]; engraving plates;

engravings; envelope sealing machines, for offices; envelopes [stationery]; erasing products; erasing shields; etching needles; etchings; fabrics for bookbinding; face towels of paper; figurines [statuettes] of papier mâché; files [office requisites]; filter paper; filtering materials [paper]; finger-stalls [office requisites]; flags of paper; flyers; folders for papers; jackets for papers; folders [stationery]; forms, printed; fountain pens; franking machines for office use; postage meters for office use; galley racks [printing]; garbage bags of paper or of plastics; geographical maps; glue for stationery or household purposes; pastes for stationery or household purposes; graphic prints; graphic reproductions; graphic representations; greeting cards; gummed tape [stationery]; gummed cloth for stationery purposes; gums [adhesives] for stationery or household purposes; hand labelling appliances; hand-rests for painters; handkerchiefs of paper; handwriting specimens for copying; histological sections for teaching purposes; holders for stamps [seals]; holders for cheque books; house painters' rollers; index cards [stationery]; indexes; ink; ink sticks; ink stones [ink reservoirs]; inking pads; inking ribbons; inking sheets for duplicators; inking sheets for document reproducing machines; inking ribbons for computer printers; inkstands; inkwells; isinglass for stationery or household purposes; labels, not of textile; loose-leaf binders; ledgers [books]; letter trays; lithographic works of art; lithographic stones; lithographs; magazines [periodicals]; manifolds [stationery]; manuals; handbooks; marking chalk; marking pens [stationery]; mats for beer glasses; mimeograph apparatus and machines; modelling clay; modelling wax, not for dental purposes; modelling materials; modelling paste; moisteners [office requisites]; moisteners for gummed surfaces [office requisites]; money clips; moulds for modelling clays [artists' materials]; apparatus for mounting photographs; musical greeting cards; newsletters; newspapers; nibs; nibs of gold; note books; numbering apparatus; numbers [type]; obliterating stamps; office perforators; office requisites, except furniture; oleographs; packaging material made of starches; packing [cushioning, stuffing] materials of paper or cardboard; pads [stationery]; page holders; paint boxes [articles for use in school]; paint trays; paintbrushes; painters' brushes; painters' easels; paintings [pictures], framed or unframed; palettes for painters; pamphlets; pantographs [drawing instruments]; paper for recording machines; paper sheets [stationery]; paper clasps; luminous paper; paper tapes and cards for the recordal of computer programmes; paper ribbons; paper shredders for office use; paper knives [office requisites]; paper cutters [office requisites]; paper coffee filters; paper bows; paper-clips; paperweights; papier mâché;

parchment paper; passport holders; pastels [crayons]; pen clips; pen cases; boxes for pens; pen wipers; pencil sharpening machines, electric or non-electric; pencil leads; pencil holders; pencil lead holders; pencil sharpeners, electric or non-electric; pencils; penholders; pens [office requisites]; periodicals; photo-engravings; photograph stands; photographs [printed]; pictures; placards of paper or cardboard; place mats of paper; plastic film for wrapping; plastic bubble packs for wrapping or packaging; plastic cling film, extensible, for palletization; plastics for modelling; polymer modelling clay; portraits; postage stamps; postcards; posters; printed timetables; printed matter; printed publications; printers' blankets, not of textile; printers' galleys; printing blocks; printing type; printing sets, portable [office requisites]; prints [engravings]; prospectuses; punches [office requisites]; rollers for typewriters; erasers; school supplies [stationery]; scrapers [erasers] for offices; sealing stamps; sealing wax; sealing machines for offices; sealing compounds for stationery purposes; sealing wafers; seals [stamps]; self-adhesive tapes for stationery or household purposes; sewing patterns; sheets of reclaimed cellulose for wrapping; shields [paper seals]; signboards of paper or cardboard; slate pencils; song books; square rulers; stamp pads; stamp stands; stamps [seals]; stands for pens and pencils; stapling presses [office requisites]; stationery; steel letters; steel pens; stencil cases; stencil plates; stencils [stationery]; stencils; stickers [stationery]; stuffing of paper or cardboard; table linen of paper; table napkins of paper; tablecloths of paper; tablemats of paper; tags for index cards; tailors' chalk; teaching materials [except apparatus]; terrestrial globes; tickets; tissues of paper for removing make-up; toilet paper; hygienic paper; towels of paper; tracing patterns; tracing paper; tracing cloth; tracing needles for drawing purposes; trading cards other than for games; transfers [decalcomanias]; decalcomanias; transparencies [stationery]; trays for sorting and counting money; typewriter ribbons; typewriter keys; typewriters, electric or non-electric; vignetting apparatus; viscose sheets for wrapping; waxed paper; wood pulp board [stationery]; wood pulp paper; wrapping paper; packing paper; wristbands for the retention of writing instruments; writing slates; writing or drawing books; writing chalk; writing materials; writing paper; writing cases [stationery]; writing cases [sets]; writing brushes; writing instruments; writing board erasers; Xuan paper for Chinese painting and calligraphy; journals; printed books relating to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; entertainment guides [printed

matter]; advertising display boards of paper or cardboard [non-luminous]; advertising material of paper or cardboard; advertising material being printed matter; printed advertising material; advertising leaflets; advertising posters; advertising publications; diaries; greetings cards; paper weights; place mats including paper place mats; bags for packaging; parts and fittings for the aforesaid goods.

Class 25

Clothing; footwear; headgear; aprons [clothing]; ascots; babies' pants [clothing]; bandanas [neckerchiefs]; bath sandals; bath slippers; bath robes; bathing caps; bathing trunks; bathing drawers; bathing suits; swimsuits; beach clothes; beach shoes; belts [clothing]; berets; bibs, not of paper; boas [necklets]; bodices [lingerie]; boot uppers; boots; boots for sports; boxer shorts; brassieres; breeches for wear; camisoles; cap peaks; caps [headwear]; clothing for gymnastics; clothing of imitations of leather; clothing of leather; coats; collars [clothing]; combinations [clothing]; corselets; corsets [underclothing]; cuffs; wristbands [clothing]; cyclists' clothing; detachable collars; dress shields; dresses; dressing gowns; ear muffs [clothing]; esparto shoes or sandals; fishing vests; fittings of metal for footwear; football shoes; football boots; footmuffs, not electrically heated; footwear uppers; fur stoles; furs [clothing]; galoshes; goloshes; garters; girdles; gloves [clothing]; gymnastic shoes; half-boots; hat frames [skeletons]; hats; headbands [clothing]; headgear for wear; heelpieces for stockings; heelpieces for footwear; heels; hoods [clothing]; hosiery; jackets; jerseys; jumper dresses; pinafore dresses; knickers; panties; knitwear [clothing]; lace boots; layettes [clothing]; leggings; leg warmers; masquerade costumes; mittens; money belts [clothing]; motorists' clothing; muffs [clothing]; neck scarves; mufflers; neckties; non-slipping devices for footwear; outer-clothing; overalls; smocks; overcoats; topcoats; paper clothing; paper hats [clothing]; parkas; pelerines; pelisses; petticoats; pocket squares; pockets for clothing; ponchos; pyjamas; ready-made clothing; ready-made linings [parts of clothing]; sandals; saris; sarongs; sashes for wear; scarves; shawls; shirt fronts; shirt yokes; shirts; shoes; short-sleeve shirts; shower caps; ski boots; ski gloves; skirts; skull caps; sleep masks; slippers; slips [undergarments]; sock suspenders; socks; inner soles; soles for footwear; spats; gaiters; sports jerseys; sports shoes; sports singlets; stocking suspenders; stockings; studs for football boots; stuff jackets [clothing]; suits; suspenders; braces for clothing; sweat-absorbent stockings; sweat-absorbent underclothing; sweat-absorbent

underwear; sweaters; jumpers; pullovers; teddies [undergarments]; tee-shirts; tights; tips for footwear; togas; top hats; trouser straps; gaiter straps; trousers; pants; turbans; underpants; underwear; underclothing; uniforms; veils [clothing]; visors [headwear]; waistcoats; vests; waterproof clothing; welts for footwear; wet suits for water-skiing; wimples; wooden shoes; sweatshirts sportswear; leisurewear; parts and fittings for the aforesaid goods.

Class 36

Insurance; financial affairs; monetary affairs; real estate affairs; accident insurance underwriting; accommodation bureaux (apartments); actuarial services; apartment house management; rental of apartments; banking; brokerage; business liquidation services, financial; capital investment; charitable fund raising; check [cheque] verification; clearing, financial; clearing-houses, financial; credit bureaux; credit card services; issuance of credit cards; customs brokerage; debit card services; debt collection agencies; debt advisory services; deposits of valuables; electronic funds transfer; exchanging money; factoring; financial evaluation [insurance, banking, real estate]; financial management; financial analysis; financial consultancy; financial information; financial sponsorship; providing financial information via a web site; financial management of reimbursement payments for others; financing services; fire insurance underwriting; fiscal assessments; fiscal valuations; health insurance underwriting; hire-purchase financing; lease-purchase financing; instalment loans; insurance brokerage; insurance underwriting; insurance consultancy; insurance information; investment of funds; leasing of real estate; lending against security; life insurance underwriting; loans [financing]; marine insurance underwriting; mortgage banking; mutual funds; rental of offices; online banking; organisation of collections; provident fund services; real estate agencies; real estate brokerage; real estate appraisal; real estate management; rent collection; repair costs evaluation [financial appraisal]; safe deposit services; savings bank services; securities brokerage; stock exchange quotations; stock brokerage services; stocks and bonds brokerage; surety services; bail-bonding; guarantees; issuance of tokens of value; issuance of travellers' cheques; issuance of travelers' checks; trusteeship; fiduciary; redemption of travellers' cheques; cheque account, credit card, debit card and charge card services; leasing of accommodation; accommodation letting agency; accommodation management; provision of housing accommodation; domestic property finding services; financial

services relating to property; insurance brokerage for property; management of property; information and advisory services relating to the aforesaid services; providing student loans; providing educational scholarships; letting and rental of permanent accommodation; information, advisory and consultancy services in relation to the aforesaid services.

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; analysis for oil-field exploitation; architectural services; architectural consultation; authenticating works of art; bacteriological research; biological research; calibration; measuring; cartography services; chemical analysis; chemical research; chemistry services; clinical trials; cloud seeding; cloud computing; computer rental; computer programming; computer software design; rental of computer software; computer system analysis; computer system design; computer software consultancy; computer virus protection services; computer technology consultancy; construction drafting; consultancy in the design and development of computer hardware; consultancy in the field of energy-saving; conversion of data or documents from physical to electronic media; cosmetic research; creating and maintaining web sites for others; data conversion of computer programs and data; design of interior decor; digitization of documents; scanning of documents; dress designing; duplication of computer programs; electronic data storage; energy auditing; engineering; geological surveys; geological prospecting; geological research; graphic arts design; handwriting analysis [graphology]; hosting computer sites; hosting web sites; industrial design; information technology [IT] consultancy; providing information on computer technology and programming via a web site; installation of computer software; land surveying; land surveys; maintenance of computer software; mechanical research; meteorological information; monitoring of computer systems by remote access; off-site data backup; oil prospecting; oil-field surveys; oil-well testing; outsource service providers in the field of information technology; packaging design; physics [research]; quality control; quality evaluation of standing timber; quality evaluation of wool; recovery of computer data; research and development of new products for others; research in the field of environmental protection; provision of scientific information, advice and consultancy in relation to carbon offsetting; scientific

laboratory services; scientific research; providing search engines for the internet; server hosting; software as a service (SaaS); styling [industrial design]; surveying; technical research; technical project studies; technological consultancy; telecommunications technology consultancy; material testing; textile testing; underwater exploration; updating of computer software; urban planning; vehicle roadworthiness testing; water analysis; weather forecasting; rental of web servers; web site design consultancy; information, advisory and consultancy services in relation to the aforesaid services.

Class 43

Services for providing food and drink; temporary accommodation; accommodation bureaux; hotel services; boarding houses; bar services; boarding houses; boarding house bookings; boarding for animals; cafés; cafeterias; providing campground facilities; canteens; rental of chairs, tables, table linen, glassware; rental of cooking apparatus; day-nurseries; crèches; rental of drinking water dispensers; food and drink catering; food sculpting; hotel reservations; hotels; rental of lighting apparatus; rental of meeting rooms; motels; restaurants; retirement homes; self-service restaurants; snack-bars; rental of temporary accommodation; temporary accommodation reservations; rental of tents; tourist homes; rental of transportable buildings; cafe bar services; providing and procuring temporary accommodation; provision of facilities for conventions, conferences, lectures, exhibitions, day schools, workshops and seminars; accommodation services; accommodation reservations; letting of accommodation including holiday accommodation; letting and rental of temporary holiday accommodation; providing accommodation for functions; arranging of accommodation for tourists; arranging of accommodation for students; information, advisory and consultancy services in relation to the aforesaid services.

Class 45

Legal services; security services for the protection of property and individuals; alternative dispute resolution services; arbitration services; baby sitting; chaperoning; clothing rental; copyright management; dating services; detective agencies; evening dress rental; rental of fire alarms; rental of fire extinguishers; fire-fighting; genealogical research; guard services; house sitting; inspection of factories for safety purposes; intellectual property consultancy; legal research; legal document preparation services;

legal administration of licences; licensing of intellectual property; licensing of computer software [legal services]; on-line social networking services; litigation services; lost property return; mediation; missing person investigations; monitoring of burglar and security alarms; monitoring intellectual property rights for legal advisory purposes; night guard services; opening of security locks; organization of religious meetings; personal background investigations; registration of domain names; rental of safes; security consultancy; tracking of stolen property; patent exploitation; matrimonial agencies; guards services; detective agency; information, advisory and consultancy services in relation to the aforesaid services.

ANNEX B

SPECIFICATION OF UKTM NO. 3607881

Class 35

Advertising; business management; business administration; office functions; administrative processing of purchase orders; publicity services; advertising agencies; publicity agencies; rental of advertising space; advertising by mail order; rental of advertising time on communication media; production of advertising films; bill-posting; outdoor advertising; rental of billboards [advertising boards]; book-keeping; accounting; business management assistance; business inquiries; business auditing; business management and organisation consultancy; business management consultancy; business efficiency expert services; business investigations; business organisation consultancy; business research; advisory services for business management; professional business consultancy; business information; providing business information via a web site; business management of reimbursement programmes for others; business management of reimbursement programs for others; commercial information agencies; commercial or industrial management assistance; commercial information and advice for consumers [consumer advice shop]; provision of commercial and business contact information; commercial intermediation services; compilation of information into computer databases; compilation of statistics; computerised file management; data search in computer files for others; demonstration of goods; design of advertising materials; direct mail advertising; dissemination of advertising matter; distribution of samples; document reproduction; drawing up of statements of accounts; economic forecasting; employment agencies; invoicing; layout services for advertising purposes; on-line advertising on a computer network; provision of an on-line marketplace for buyers and sellers of goods and services; marketing studies; marketing research; marketing; modelling for advertising or sales promotion; negotiation and conclusion of commercial transactions for third parties; news clipping services; arranging newspaper subscriptions for others; office machines and equipment rental; opinion polling; organisation of exhibitions for commercial or advertising purposes; organisation of trade fairs for commercial or advertising purposes; organisation of fashion shows for promotional purposes; outsourced administrative management for companies; outsourcing services

[business assistance]; pay per click advertising; payroll preparation; personnel management consultancy; personnel recruitment; photocopying services; rental of photocopying machines; presentation of goods on communication media, for retail purposes; price comparison services; procurement services for others; purchasing goods and services for other businesses; psychological testing for the selection of personnel; public relations; publication of publicity texts; publicity material rental; radio advertising; sales promotion for others; rental of sales stands; search engine optimization; search engine optimisation; secretarial services; shop window dressing; sponsorship search; arranging subscriptions to telecommunication services for others; systemisation of information into computer databases; telemarketing services; television advertising; transcription of communications [office functions]; typing; updating of advertising material; updating and maintenance of data in computer databases; rental of vending machines; web site traffic optimization; web site traffic optimisation; word processing; writing of publicity texts; writing of curriculum vitae for others; writing of résumés for others' administrative university management; business management of universities for others; computerised university database management services; data management services, provided on behalf of universities; evaluations relating to business management of universities; information and data compiling and analyzing relating to business management of universities; career information and advisory services (other than educational and training advice); the establishment and administration of clubs, societies and groups for academic, social, political, charitable or sporting purposes; information and advisory services relating to the aforesaid services; information, advisory and consultancy services in relation to the aforesaid services; all such services not to be associated with the field of data science and artificial intelligence.

Class 41

Education; providing of training; entertainment; sporting and cultural activities; academies [education]; amusement parks; providing amusement arcade services; animal training; rental of audio equipment; arranging of beauty contests; boarding schools; booking of seats for shows; calligraphy services; rental of cine-films; rental of motion pictures; cinema presentations; movie theatre presentations; circuses; club services [entertainment or education]; coaching; arranging and conducting of colloquiums; arranging and conducting of concerts; arranging and conducting of

conferences; arranging and conducting of congresses; correspondence courses; disc jockey services; discotheque services; dubbing; education information; educational examination; electronic desktop publishing; entertainer services; amusements; entertainment information; film production, other than advertising films; conducting fitness classes; game services provided on-line from a computer network; games equipment rental; gymnastic instruction; health club services; health and fitness training; holiday camp services [entertainment]; providing karaoke services; language interpreter services; layout services, other than for advertising purposes; lending libraries; rental of lighting apparatus for theatrical sets or television studios; providing on-line electronic publications, not downloadable; providing on-line music, not downloadable; providing on-line videos, not downloadable; microfilming; mobile library services; bookmobile services; modelling for artists; rental of movie projectors and accessories; movie studios; providing museum facilities; music composition services; production of music; music-halls; news reporters services; night clubs; nursery schools; operating lotteries; orchestra services; organisation of competitions [education or entertainment]; organisation of exhibitions for cultural or educational purposes; organisation of sports competitions; organisation of balls; organisation of shows; organisation of fashion shows for entertainment purposes; party planning [entertainment]; personal trainer services; fitness training; photographic reporting; photography; physical education; practical training [demonstration]; presentation of live performances; publication of texts, other than publicity texts; publication of books; publication of electronic books and journals on-line; radio entertainment; rental of radio and television sets; production of radio and television programmes; recording studio services; providing recreation facilities; recreation information; religious education; services of schools [education]; scriptwriting services; arranging and conducting of seminars; rental of show scenery; production of shows; sign language interpretation; rental of sound recordings; sport camp services; providing sports facilities; rental of sports equipment, except vehicles; rental of sports grounds; rental of stadium facilities; rental of stage scenery; subtitling; arranging and conducting of symposiums; teaching services; instruction services; television entertainment; rental of tennis courts; theatre productions; ticket agency services [entertainment]; timing of sports events; toy rental; translation; tutoring; rental of video cassette recorders; rental of video cameras; rental of camcorders; videotape editing; rental of videotapes; videotaping; vocational guidance; education or training advice; vocational retraining; arranging and conducting

of workshops [training]; writing of texts, other than publicity texts; university education services; academic and vocational education services; provision of courses of instruction, lectures and seminars all relating to academic or vocational subjects; instruction, teaching and tuition in the field of higher education; education services related to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; education academy services; library services; the provision of online texts, journals, magazines and periodicals; provision of recreation and sporting facilities; hire of sports facilities; sports training; educational services rendered in the establishment and administration of clubs, societies and groups for academic, social, political, charitable or sporting purposes; consultancy and research services relating to academic subjects or vocational skills; information and advisory services relating to academic subjects or vocational skills; information and advisory services relating to the aforesaid services; university services; educating at university or colleges; conducting distance learning instruction at the university level; education services in the nature of courses at the university level; language teaching; teaching; teaching of music; information, advisory and consultancy services in relation to the aforesaid services; all such services not to be associated with the field of data science and artificial intelligence.

ANNEX C

SPECIFICATION OF UKTM NO. 3632607 AND UKTM NO. 3632620

Class 35

Advertising; business management; business administration; office functions; administrative processing of purchase orders; publicity services; advertising agencies; publicity agencies; rental of advertising space; advertising by mail order; rental of advertising time on communication media; production of advertising films; bill-posting; outdoor advertising; rental of billboards [advertising boards]; book-keeping; accounting; business management assistance; business inquiries; business auditing; business management and organisation consultancy; business management consultancy; business efficiency expert services; business investigations; business organisation consultancy; business research; advisory services for business management; professional business consultancy; business information; providing business information via a web site; business management of reimbursement programmes for others; business management of reimbursement programs for others; commercial information agencies; commercial or industrial management assistance; commercial information and advice for consumers [consumer advice shop]; provision of commercial and business contact information; commercial intermediation services; compilation of information into computer databases; compilation of statistics; computerised file management; data search in computer files for others; demonstration of goods; design of advertising materials; direct mail advertising; dissemination of advertising matter; distribution of samples; document reproduction; drawing up of statements of accounts; economic forecasting; employment agencies; invoicing; layout services for advertising purposes; on-line advertising on a computer network; provision of an on-line marketplace for buyers and sellers of goods and services; marketing studies; marketing research; marketing; modelling for advertising or sales promotion; negotiation and conclusion of commercial transactions for third parties; news clipping services; arranging newspaper subscriptions for others; office machines and equipment rental; opinion polling; organisation of exhibitions for commercial or advertising purposes; organisation of trade fairs for commercial or advertising purposes; organisation of fashion shows for promotional purposes; outsourced administrative management for companies; outsourcing services

[business assistance]; pay per click advertising; payroll preparation; personnel management consultancy; personnel recruitment; photocopying services; rental of photocopying machines; presentation of goods on communication media, for retail purposes; price comparison services; procurement services for others; purchasing goods and services for other businesses; psychological testing for the selection of personnel; public relations; publication of publicity texts; publicity material rental; radio advertising; sales promotion for others; rental of sales stands; search engine optimization; search engine optimisation; secretarial services; shop window dressing; sponsorship search; arranging subscriptions to telecommunication services for others; systemisation of information into computer databases; telemarketing services; television advertising; transcription of communications [office functions]; typing; updating of advertising material; updating and maintenance of data in computer databases; rental of vending machines; web site traffic optimization; web site traffic optimisation; word processing; writing of publicity texts; writing of curriculum vitae for others; writing of résumés for others' administrative university management; business management of universities for others; computerised university database management services; data management services, provided on behalf of universities; evaluations relating to business management of universities; information and data compiling and analyzing relating to business management of universities; career information and advisory services (other than educational and training advice); the establishment and administration of clubs, societies and groups for academic, social, political, charitable or sporting purposes; information and advisory services relating to the aforesaid services; information, advisory and consultancy services in relation to the aforesaid services; all such services not to be associated with the field of data science and artificial intelligence.

Class 41

Education; providing of training; entertainment; sporting and cultural activities; academies [education]; amusement parks; providing amusement arcade services; animal training; rental of audio equipment; arranging of beauty contests; boarding schools; booking of seats for shows; calligraphy services; rental of cine-films; rental of motion pictures; cinema presentations; movie theatre presentations; circuses; club services [entertainment or education]; coaching; arranging and conducting of colloquiums; arranging and conducting of concerts; arranging and conducting of

conferences; arranging and conducting of congresses; correspondence courses; disc jockey services; discotheque services; dubbing; education information; educational examination; electronic desktop publishing; entertainer services; amusements; entertainment information; film production, other than advertising films; conducting fitness classes; game services provided on-line from a computer network; games equipment rental; gymnastic instruction; health club services; health and fitness training; holiday camp services [entertainment]; providing karaoke services; language interpreter services; layout services, other than for advertising purposes; lending libraries; rental of lighting apparatus for theatrical sets or television studios; providing on-line electronic publications, not downloadable; providing on-line music, not downloadable; providing on-line videos, not downloadable; microfilming; mobile library services; bookmobile services; modelling for artists; rental of movie projectors and accessories; movie studios; providing museum facilities; music composition services; production of music; music-halls; news reporters services; night clubs; nursery schools; operating lotteries; orchestra services; organisation of competitions [education or entertainment]; organisation of exhibitions for cultural or educational purposes; organisation of sports competitions; organisation of balls; organisation of shows; organisation of fashion shows for entertainment purposes; party planning [entertainment]; personal trainer services; fitness training; photographic reporting; photography; physical education; practical training [demonstration]; presentation of live performances; publication of texts, other than publicity texts; publication of books; publication of electronic books and journals on-line; radio entertainment; rental of radio and television sets; production of radio and television programmes; recording studio services; providing recreation facilities; recreation information; religious education; services of schools [education]; scriptwriting services; arranging and conducting of seminars; rental of show scenery; production of shows; sign language interpretation; rental of sound recordings; sport camp services; providing sports facilities; rental of sports equipment, except vehicles; rental of sports grounds; rental of stadium facilities; rental of stage scenery; subtitling; arranging and conducting of symposiums; teaching services; instruction services; television entertainment; rental of tennis courts; theatre productions; ticket agency services [entertainment]; timing of sports events; toy rental; translation; tutoring; rental of video cassette recorders; rental of video cameras; rental of camcorders; videotape editing; rental of videotapes; videotaping; vocational guidance; education or training advice; vocational retraining; arranging and conducting

of workshops [training]; writing of texts, other than publicity texts; university education services; academic and vocational education services; provision of courses of instruction, lectures and seminars all relating to academic or vocational subjects; instruction, teaching and tuition in the field of higher education; education services related to the arts, social sciences, law, engineering, mathematics, information technology, business, health management, healthcare, civil defence, policing or food science; education academy services; library services; texts, journals, magazines and periodicals; provision of recreation and sporting facilities; hire of sports facilities; sports training; services rendered in the establishment and administration of clubs, societies and groups for academic, social, political, charitable or sporting purposes; consultancy and research services relating to academic subjects or vocational skills; information and advisory services relating to academic subjects or vocational skills; information and advisory services relating to the aforesaid services; university services; educating at university or colleges; conducting distance learning instruction at the university level; education services in the nature of courses at the university level; language teaching; teaching; teaching of music; information, advisory and consultancy services in relation to the aforesaid services; all such services not to be associated with the field of data science and artificial intelligence.