O/0664/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF REGISTRATION NO. 3764082 IN THE NAME OF AL QASSWA LTD FOR THE FOLLOWING TRADE MARK:

Bade'e Al Oud

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO UNDER NO. 506817 BY LATTAFA PERFUMES INDUSTRIES LLC

AND

IN THE MATTER OF APPLICATION NO. 3959167 BY LATTAFA PERFUMES INDUSTRIES LLC FOR THE TRADE MARK

بديع العود

BADE'E AL OUD

IN CLASS 35

AND OPPOSITION THERETO UNDER NO. 600003162 BY AL QASSWA LTD

Background and Pleadings

Invalidation Proceedings

1. Al Qasswa Ltd ("Qasswa") is the proprietor of UK trade mark no. 3764082, as shown on the cover page of this decision ("the 082 mark"). It was filed in the UK on 10 March 2022 and achieved registration on 8 July 2022 for *perfume/s* in class 3.

2. On 19 December 2023, Lattafa Perfumes Industries LLC ("Lattafa") applied to have the 082 mark declared invalid, pursuant to section 47 and sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("the Act").

3. Under section 5(4)(a) Lattafa claims to have used the unregistered signs 'BADE'E AL OUD' and 'BADEE AL OUD' via its local distributors throughout the UK since September 2021 in relation to *perfumes, fragrances, deodorants* and *air fresheners.* It is claimed that use of the 082 mark by Qasswa would be contrary to the law of passing off, constituting a misrepresentation to the public that would damage the goodwill of Lattafa's business.

4. Under section 3(6) Lattafa contends that the application to register the 082 mark was made in bad faith. In particular it claims that:

- it has a substantial reputation worldwide for selling perfumery, fragrances and personal care products through its own website and various third party sellers;
- Qasswa has been selling Lattafa's BADE'E AL OUD products on Amazon;
- the filing of the 082 mark was not by coincidence and was done with knowledge of Lattafa's business and products in an attempt to prevent or interfere with the use of its marks in the UK and in the process damaging its business.

5. Qasswa filed a defence and counterstatement denying the grounds of invalidation, putting Lattafa to strict proof of each claim.

Opposition Proceedings

6. On 21 September 2023, Lattafa applied under application no. 3959167 ("the 167 mark") in the UK for the trade mark as shown on the cover page of this decision. The application is sought in respect of services in class 35, as set out in full in the Annex to this decision.

7. On 8 January 2024, Qasswa filed an opposition to the application under the Fast Track procedure relying on its aforementioned 082 mark which is the subject of the invalidation action brought by Lattafa. For the purposes of its opposition, it relies upon goods in class 3 namely '*perfume/s'.*

8. The opposition is brought under section 5(2)(b) of the Act and Qasswa claims that as a result of the similarity between the marks and the respective goods and services this will lead to a likelihood of confusion.

9. Lattafa filed a defence and counterstatement, denying the validity of Qasswa's earlier registered right and denying that the goods and services are similar. In terms of the trade marks, it accepts that the term 'Bade'e Al Oud' is contained within both marks.

Consolidation

10. The respective proceedings were consolidated on 10 April 2024, and the parties were notified accordingly. As a consequence, the Fast Track opposition proceedings were converted to a standard opposition.

Representation

11. Lattafa is represented by Beck Greener LLP. Qasswa is self represented. Both parties filed evidence during the evidence rounds. A hearing was requested, that hearing taking place before me on 13 August 2025 via video conference. Lattafa was represented at the hearing by Mr Kashif Syed, of Beck Greener LLP, whereas Mr Umair Patel appeared for Qasswa. Both parties filed skeleton arguments in advance of the hearing.

Relevance of EU Law

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, Section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence

13. Lattafa's evidence consists of the witness statement of Syed Mohammed Ziauddin Asdaq dated 5 July 2024, together with ten exhibits marked SA1-SA10. Mr Asdaq is the production and planning manager of Lattafa, having held this position since October 2018. Mr Asdaq states that his responsibilities include managing the company's manufacturing and production operations.

14. Qasswa's evidence consists of the witness statement of Mr Umair Patel, dated 6 September 2024, together with two exhibits marked Exhibit A and Exhibit B. Mr Patel is the director of Qasswa. His evidence consists of a combination of submissions and evidence of fact. I also note that, within his statement, Mr Patel referred to several authorities where the citations provided included either incorrect references or ones which did not exist. Further, the propositions he was trying to advance were not, in a number of instances, supported by the cases cited. Consequently, I have placed no weight on these aspects of his evidence/submissions.

15. I do not intend to summarise the evidence/submissions in full. However, I have taken all filed documents into account and will summarise them to the extent that I deem necessary later in my decision.

Preliminary Issue

16. After the hearing was appointed, Qasswa requested that it be given the opportunity to file additional evidence.[1] Following consideration of this application, the request was refused by way of preliminary view. The reasons for that decision were set out in official letters to the parties dated 24 July 2025 and I adopt those reasons here. Qasswa did not challenge that decision and therefore the additional evidence was not admitted into the proceedings.

My Approach

17. Given that Qasswa relies upon the 082 mark as an earlier right in its opposition, which is the subject of the invalidation brought by Lattafa, I shall deal with the invalidation action first. I shall only return to the opposition once I have determined whether or to what extent the earlier mark is validly registered.

[1] By way of letter dated 22 July 2025.

Section 5(4)(a)

18. Section 5(4)(a) states:

> "(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-
>
> > (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > (aa) […]
> >
> > (b) […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

19. Subsection (4A) of Section 5 states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

20. The relevant parts of Section 47 state:

> "(1) […]
>
> (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-
>
> > (a) […]
> >
> > (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.
>
> […]
>
> (5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

General principles of Section 5(4)(a)

21. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

22. Halsbury's Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

> "Establishing a likelihood of deception generally requires the presence of two factual elements:
>
> > (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
> >
> > (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently

similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

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

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

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

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

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

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

The relevant date for section 5(4)(a)

23. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410 11, Mr Daniel Alexander QC (now KC), as the Appointed Person, endorsed the Registrar's assessment of the relevant date for the purposes of Section 5(4)(a) of the Act, as follows:

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

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

24. In its counterstatement, Qasswa states that it has used the 082 mark before its registration. However, whilst Qasswa filed evidence, it was not sufficient to establish prior use so as to give rise to an earlier relevant date, particularly since the only use shown is claimed to be of Lattafa’s products. Consequently, the only relevant date I need consider is the filing date of the contested mark, namely 10 March 2022.

Goodwill

25. The meaning of goodwill was explained in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL) as follows:

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

26. As regards the proof of goodwill, in *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

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

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

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

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

28. Goodwill must be more than trivial in extent. In *Hart v Relentless Records* [2002] EWHC 1984 (Ch), Jacob J. (as he then was) stated that:

"62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in *BALI Trade Mark* [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference between the two is vanishingly small. That cannot be the case. It is also noteworthy that before the relevant date of registration of the *BALI* mark (1938) the *BALI* mark had been used “but had not acquired any significant reputation” (the trial judge's finding). Again that shows one is looking for more than a minimal reputation.”

29. In support of Lattafa’s claim to goodwill, Mr Asdaq gives evidence that:

- Lattafa is a UAE based producer of a wide range of perfume products having sold products for many years in the Middle East and internationally in over 60 countries.
- Lattafa's BADE'E AL OUD perfume, deodorant and air freshener products were first launched in the UAE in April 2020 and have been sold in the UK since at least July 2020. He states that the company owns trade mark registrations for BADE'E AL OUD and related marks in multiple jurisdictions.
- BADE'E AL OUD products were exported to UK importers from September 2021 onwards. Mr Asdaq provides extracts of customs documentation, invoices, packing lists and shipping records.[2] The evidence identifies sales to UK businesses including Barakat Food Store Bolton Ltd, Rihana Collection and Afak Trading, comprising perfume sprays, air fresheners and deodorants bearing the BADE'E AL OUD sign.
- In total 5,448 units of BADE'E AL OUD products were shipped to the UK between September 2021 and January 2022, increasing to 8,448 units by April 2022, including perfumes, air fresheners and deodorants.
- The total value of export sales to UK importers totalled AED 106,854 (approx. £21,700) between September 2021 and January 2022, increasing to AED 160,515.60 (approx. £32,600) between September 2021 and April 2022. It is shown that, before the relevant date, the majority of these sales, accounting for

[2] See Exhibit SA4

over £20,000, related to perfume products, with £1,300 in air fresheners and approx. £400 in deodorants.

- BADE'E AL OUD products were promoted and sold in the UK through importers' websites and a variety of online retailers. Screenshots showing the results of a Google search are produced,[3] together with archived webpages,[4] showing BADE'E AL OUD products, mainly perfume, being offered for sale on UK based websites prior to the relevant date including Amazon, Notino, Fragrance Hub, Beauty Base and other UK based retailers.

30. At the hearing, Mr Syed revised Lattafa's position regarding its goodwill, only relying on a claim in relation to perfumes and fragrances. Notwithstanding this concession, there is some difficulty with the evidence. There is no evidence of turnover generated by the sales of goods marketed under the sign and there are no marketing figures. There is no evidence of its customers other than intermediaries such as traders and distributors. I have no details of market share, promotional activity or marketing spend. Lattafa has also not shown that it has a social media presence which one would normally expect to have been produced to gauge its consumer recognition in the brand. Whilst I accept that there are a handful of screenshots taken from Amazon and various other UK retailers' webpages showing the goods being offered for sale and therefore showing that they were available in the UK in the years leading up to the relevant date, there is no indication of the volume of actual sales to end users. The screenshots taken from Amazon are also dated in 2024 and whilst these show that the product was available on this platform from July 2020, there were 1k+ sales and the product was ranked 4.3 out of 5, there is no indication what the position was at the relevant date and I cannot be certain that these sales took place before 2022. Further, there are no actual reviews on the Amazon platform from UK customers to show the extent or timing of any sales. The evidence from Amazon therefore is unhelpful.

31. At its height the evidence shows the repeat importation of goods in terms of five/six shipments of goods into the UK and sales to a small number of distributors. Even if I were to assume that all of the goods within these shipments were indeed sold to UK

[3] See Exhibit SA6
[4] See Exhibit SA7

consumers, this would not assist Lattafa because the sales figures that have been supplied in respect of sales to distributors are very small, amounting to no more than £30,000 in total, across all products. Its presence in the UK is therefore very limited within what is undoubtedly a substantial, multi million pound market.

32. I bear in mind that small businesses may still be protected by the law of passing off. However, as stated above, the law of passing off does not protect a goodwill of trivial extent.[5] In *Smart Planet Technologies, Inc. v Rajinda Sharma*, Mr Thomas Mitcheson QC (now KC), as the Appointed Person, reviewed the various authorities about the establishment of goodwill for the purposes of passing-off and concluded that:[6]

> "... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon."

33. The test is not whether the goods were marketed or used under the sign prior to the relevant date, but rather, whether as at that date Lattafa has achieved an actionable goodwill sufficient to sustain an action for passing off. In this regard I am not satisfied that Lattafa has discharged that burden. In the absence of any other cogent evidence, I consider that it has not shown itself to have a goodwill to more than a trivial degree.

34. Without being able to show goodwill, Lattafa's claim for passing off under section 5(4)(a) fails at the first hurdle.

Section 3(6)

35. Section 3(6) of the Act states:

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

[5] *Hart v Relentless Records* [2002] EWHC 1984 (Ch)
[6] BL O/304/20

36. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1),* [2024] UKSC 36, Lord Kitchin summarised the general principles applicable to bad faith at [240] as follows:

> "(i) […]
>
> (ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt,* para 35).
>
> (iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation […], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaevnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*")], para 29; *[Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*")], para 73).
>
> (iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the […] law of trade marks, namely the establishment and functioning of […] a system of undistorted competition 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 consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (Lindt, para 45; [*Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*")], para 45).
>
> (v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky* CJEU, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case ([*Hasbro Inc v EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 ("*Hasbro*")], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky* CJEU, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky* CJEU, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky* CJEU, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a bona fide intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky* CJEU, paras 86 and 87)."

37. The date for assessing whether an application to register a trade mark was made in bad faith is the date the application for registration was made. In this case, the relevant date is 10 March 2022.

38. According to *Alexander Trade Mark*,[7] the key questions for determination in a claim of bad faith are:

[7] BL O/036/18

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

39. It is necessary to ascertain what Qasswa knew at the relevant date.[8] In these proceedings the filing date of the 082 mark was 10 March 2022, and therefore the assessment must be made as at this date, albeit that evidence of subsequent events may be relevant if it casts light backwards on the position as at the relevant date.[9]

40. As per the case law cited above, it is for the party alleging bad faith to prove it. The initial evidential burden falls upon Lattafa therefore: it must provide evidence from which a rebuttable presumption of bad faith can be drawn. Provided it does that, then the burden shifts to Qasswa to rebut the allegation.

41. An allegation of bad faith is a serious allegation which must be distinctly proved but, in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as they are bad faith.[10] I shall now go through the factors identified in *Alexander* in turn.

<u>What, in concrete terms, was the objective that the applicant has been accused of pursuing?</u>

42. Lattafa's pleaded case is that Qasswa filed the application for the contested mark knowing of Lattafa's use in the UAE and UK. The extent of Lattafa's evidence is to produce screenshots taken from Amazon storefront and Qasswa's own website in which it is offering for sale Lattafa's BADE'E AL OUD products.[11] Mr Asdaq states that Qasswa is not selling its own products under the Bade'e Al Oud name. This it is said demonstrates that Qasswa applied to register the 082 mark with full knowledge of

[8] *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch)
[9] *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).
[10] Ibid *Red Bull*
[11] Exhibit SA8 and SA9

Lattafa, its business and its Bade'e Al Oud products and was done for dishonest purposes namely to attempt to prevent or interfere with Lattafa's use in the UK and/or to damage its business.

<u>Was that an objective for the purposes of which the contested application could not be properly filed?</u>

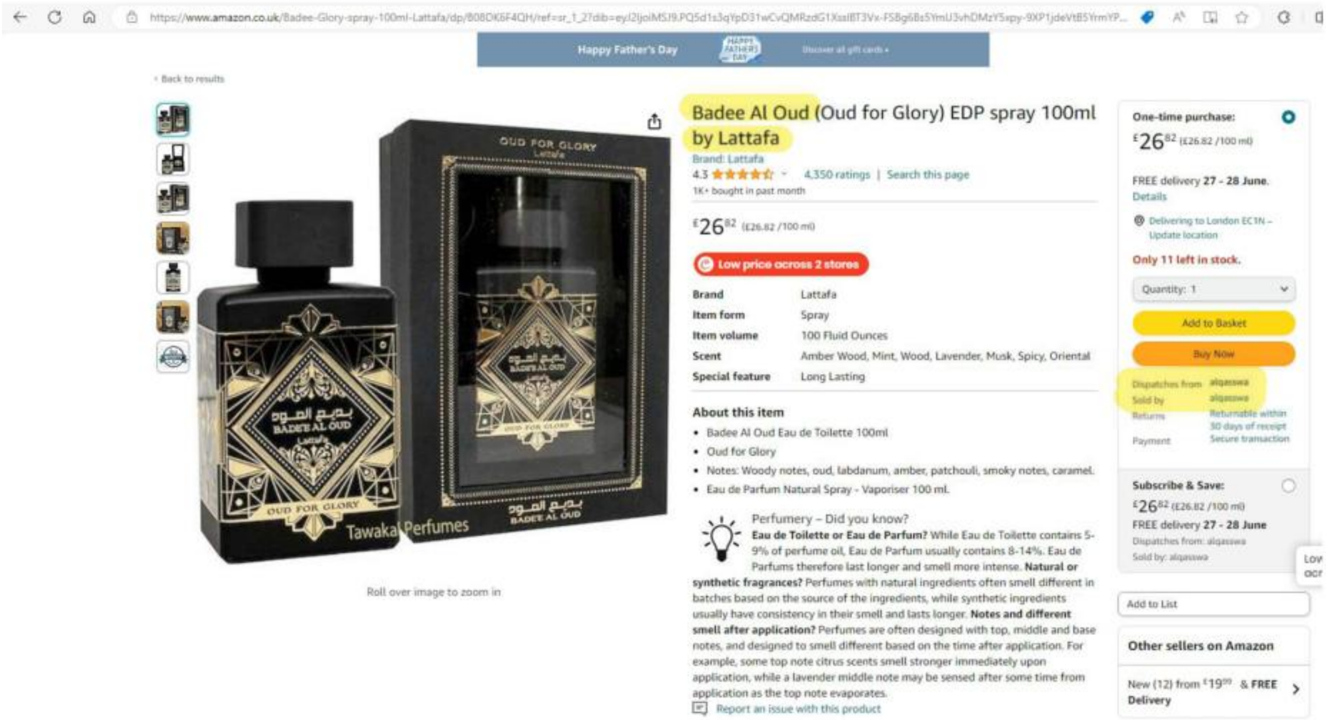
43. If proven, this is an objective for the purposes of which the 082 mark could not be properly filed.[12]

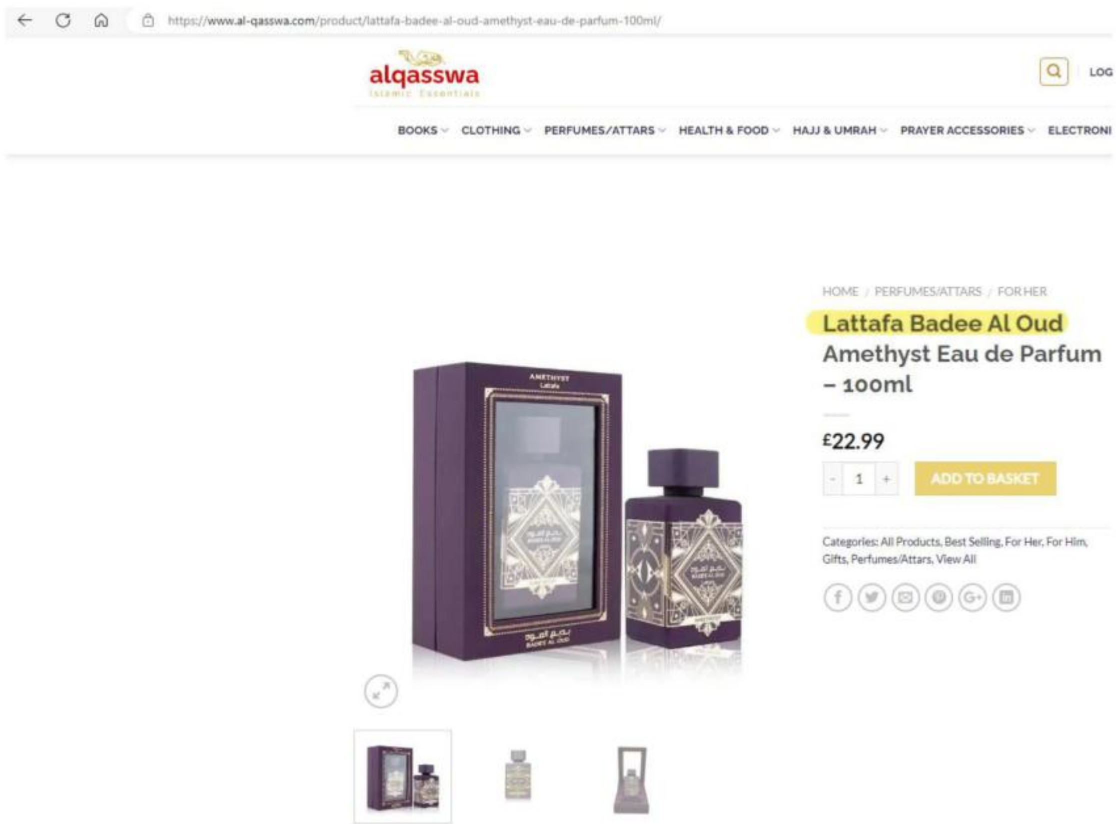
<u>Was it established that the contested application was filed in pursuit of that objective?</u>

44. Mr Patel, on Qasswa's behalf, does not dispute that he had knowledge of Lattafa's use in the UAE and UK at the time the application was filed.[13] His defence relies solely on the 'first to file' principle.[14] He believes that despite knowing of Lattafa's products he made the application for legitimate business reasons namely to protect and formalise his brand identity and to build a distinct and recognisable UK brand independent of Lattafa's products. This he says was to secure a competitive position in the market rather than harm Lattafa or mislead consumers. He asserts that his conduct was consistent with UK trade mark law and normal business practice and acceptable commercial standards. Mr Patel states that there has been no evidence that he actually acted dishonestly or that he intended to harm Lattafa's business.

45. I acknowledge that mere knowledge of a competitor's use in the UK or in other jurisdictions does not, of itself, point towards a finding that the application must have been made in bad faith, without something more.[15] However, in this case the explanation provided by Mr Patel fails to address how Lattafa's goods came to be offered for sale on Qasswa's own website and through Amazon listings in which Qasswa is presented as the source of the goods, as shown in the highlighted sections of the screenshots reproduced below.[16]

[12] *Copernicus Trade Marks v EUIPO (LUCEO)* T-82/14
[13] Paragraph 3.2 of his witness statement.
[14] Paragraph 2.3 of his witness statement.
[15] *Lindt, Koton* and *Malaysia Dairy.*
[16] Qasswa is identified as the seller in the highlighted section titled 'Dispatched from' and 'Sold by'.


https://www.amazon.co.uk/Badee-Glory-spray-100ml-Lattafa/dp/B08DK6F4QH/
Happy Father's Day
Back to results
Badee Al Oud (Oud for Glory) EDP spray 100ml by Lattafa
Brand: Lattafa
4.3 4,350 ratings | Search this page
1K+ bought in past month
£26.82 (£26.82 /100 ml)
Low price across 2 stores
Brand Lattafa
Item form Spray
Item volume 100 Fluid Ounces
Scent Amber Wood, Mint, Wood, Lavender, Musk, Spicy, Oriental
Special feature Long Lasting
About this item
Badee Al Oud Eau de Toilette 100ml
Oud for Glory
Notes: Woody notes, oud, labdanum, amber, patchouli, smoky notes, caramel.
Eau de Parfum Natural Spray - Vaporiser 100 ml.
Perfumery – Did you know?
Eau de Toilette or Eau de Parfum? While Eau de Toilette contains 5-9% of perfume oil, Eau de Parfum usually contains 8-14%. Eau de Parfums therefore last longer and smell more intense. Natural or synthetic fragrances? Perfumes with natural ingredients often smell different in batches based on the source of the ingredients, while synthetic ingredients usually have consistency in their smell and lasts longer. Notes and different smell after application? Perfumes are often designed with top, middle and base notes, and designed to smell different based on the time after application. For example, some top note citrus scents smell stronger immediately upon application, while a lavender middle note may be sensed after some time from application as the top note evaporates.
Report an issue with this product
OUD FOR GLORY
Lattafa
BADE'E AL OUD
Tawakal Perfumes
Roll over image to zoom in
One-time purchase:
£26.82 (£26.82 /100 ml)
FREE delivery 27 - 28 June.
Details
Delivering to London EC1N – Update location
Only 11 left in stock.
Quantity: 1
Add to Basket
Buy Now
Dispatches from alqasswa
Sold by alqasswa
Returns Returnable within 30 days of receipt
Payment Secure transaction
Subscribe & Save:
£26.82 (£26.82 /100 ml)
FREE delivery 27 - 28 June
Dispatches from: alqasswa
Sold by: alqasswa
Add to List
Other sellers on Amazon
New (12) from £19.99 & FREE Delivery


https://www.al-qasswa.com/product/lattafa-badee-al-oud-amethyst-eau-de-parfum-100ml/
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LOG
BOOKS CLOTHING PERFUMES/ATTARS HEALTH & FOOD HAJJ & UMRAH PRAYER ACCESSORIES ELECTRONI
HOME / PERFUMES/ATTARS / FOR HER
Lattafa Badee Al Oud Amethyst Eau de Parfum – 100ml
£22.99
ADD TO BASKET
Categories: All Products, Best Selling, For Her, For Him, Gifts, Perfumes/Attars, View All
AMETHYST
Lattafa

46. Lattafa has not suggested that Qasswa was an authorised distributor of its products. But even if Qasswa had been acting in this capacity, no adequate explanation has been provided as to how Mr Patel, on Qasswa's behalf, considered himself entitled to apply for a trade mark identical to Lattafa's, in respect of identical or highly similar goods. Qasswa admits that it was fully aware of Lattafa, its products and trading activities before filing the application.

47. In those circumstances it is difficult to regard the choice of name identical to that being used by Lattafa, which is highly distinctive, as coincidental. Having already sold or at least offered for sale Lattafa's goods through his own website and on Amazon, Mr Patel was plainly aware of Lattafa's prior commercial activities.

48. Having raised a prima facie case, I find that Mr Patel (and by extension Qasswa) has not adequately or sufficiently explained his actions to justify his application, in order to rebut the bad faith allegation.[17] The 'first to file' principle defence is flawed at the outset, given that it appears Qasswa was selling Lattafa's goods in the UK without consent and therefore could not lay claim to a legitimate commercial purpose for filing the trade mark in its own name. I find that the more likely explanation for his actions is that he did so in an attempt to take advantage of Lattafa's limited commercial presence in the UK, despite its established business in the UAE, by securing registration of the identical mark and thereby blocking Lattafa's expansion into the UK market or otherwise interfering with its legitimate business activities. Such conduct is inconsistent with honest commercial practices and supports a finding that the application was made in bad faith.

49. Lastly, it must be noted that in *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation*, BL O/013/05, Professor Ruth Annand as the Appointed Person held that:

> "22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application."

[17] *Rui Qu (Shanghai) Enterprise Management Consulting Company Limited v Accessible Labs Ltd* O/0534/25

50. Consequently, the knowledge, intentions and motives of Mr Patel can properly be attributed to Qasswa.[18]

51. Lattafa's claim under section 3(6) of the Act succeeds and the 082 mark shall be invalidated.

The Opposition

52. In light of this finding, given that Qasswa is not able to rely on its mark as an earlier right, the opposition under section 5(2)(b) inevitably fails.

53. For the avoidance of doubt, even if I had not found the earlier mark to be invalid, having assessed the comparison between the respective goods and services the opposition would have failed in any event.

54. This is because I do not find any similarity between the respective goods and services. Lattafa's services can be categorised in general terms as marketing, advertising and business services in class 35 whereas Qasswa relies upon goods in class 3, namely perfumes. The thrust of Mr Patel's arguments as to similarity is that a manufacturer of perfume advertises and markets its own products and brings them to market and therefore the services and the goods overlap. However, the services described by Mr Patel are ancillary services to the goods as opposed to the provision of an independent and separate commercial service to third parties.

55. Consequently, I find no obvious similarity between the goods and the services in accordance with the *Treat* factors.[19] They do not overlap in nature, purpose, method of use, channels of trade or user. The respective goods and services are neither complementary nor in competition. They are dissimilar.

56. I note that Lattafa has one term within its class 35 services relating to the retailing of goods which has a potential complementary relationship.[20] This is because the manufacture and retailing of the same particular goods would be regarded as being provided by the same undertaking. However, in this instance the goods to which the retail services relate differ: jewellery as opposed to perfume and there is no obvious

[18] *John Williams and Barbara Williams v Canaries Seaschool SLU,* BL O/074/10
[19] [1996] R.P.C. 281
[20] *Oakley, Inc v OHIM*, Case T-116/06

similarity between the respective goods for the retail services relating to these differing goods to bring these terms closer. Consequently, they are also dissimilar.

57. Without similarity in respect of the goods and services, there can be no likelihood of confusion, and the opposition would have failed at the first hurdle.[21]

Conclusion

58. The application for invalidation against UKTM no. 3764082 succeeds and pursuant to section 47(6) of the Act the registration is deemed never to have been made.

59. UKTM registration no. 3764082 shall be invalidated from 10 March 2022.

60. The opposition against UKTM no. 3959167 fails and the application shall proceed to registration in respect of all the class 35 services as set out in the Annex to this decision.

Costs

61. Lattafa has succeeded overall, in both the invalidation and the opposition and therefore, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Taking this into account, I award costs on the following basis:

Preparing a Notice of Invalidation and a counterstatement in the opposition:	£500
Preparing and filing evidence:	£600
Preparing for and attending a hearing:	£1000
Official fee for the Invalidation:	£200
Total	**£2,300**

[21] See *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA.

62. I order Al Qasswa Ltd to pay Lattafa Perfumes Industries LLC the sum of £2,300 as a contribution towards its costs. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 28th day of July 2026

Leisa Davies

For the Registrar

Annex

UKTM no. 3959167
Class 35: Advertising; Advertising and marketing; Advertising copywriting; Advertising and advertisement services; Publicity and advertising; Advertising and publicity; Advertising and marketing services; Advertising, marketing and promotional services; Marketing, advertising, and promotional services; Advertising, promotional and marketing services; Banner advertising; Television advertising; Advertising services of a radio and television advertising agency; Advertising and marketing consultancy; Marketing, advertising and promotion services; Advertising, marketing and promotion services; Promotional and advertising services; Promotional advertising services; Advertising and promotional services; Advertising and publicity services; Newspaper advertising; Online advertising; Leasing of advertising billboards; Advertising agencies; Hire of advertising billboards; Advertising services; Copywriting for advertising and promotional purposes; Electronic billboard advertising; Recruitment advertising; Promotion [advertising] of business; Radio advertising; Promotion, advertising and marketing of on-line websites; Leasing of advertising hoardings; Mail-order advertising; On-line advertising and marketing services; Magazine advertising; Advertising and promotion services; Outdoor advertising; Cinema advertising; On-line advertising; Radio advertising and commercials; Advertising research; Hire of advertising hoardings; Promotion [advertising] of travel; Advertising of cinemas; Graphic advertising services; Design of advertising flyers; Distribution of advertising, marketing and promotional material; Advertising services for the promotion of e-commerce; Advertising agency services; Advertising services provided by a radio and television advertising agency; Mediation of advertising; Digital advertising services; Dissemination of advertising, marketing and publicity materials; Design of advertising brochures; Classified advertising; Distribution of advertising brochures; Advertising planning; Modeling for advertising or sales promotion; Modelling for advertising or sales promotion; Preparation of advertising campaigns; Arrangement of advertising; Advertising consultation; Advertising analysis; Online advertising services; Consultancy services relating to advertising, publicity and marketing; Promotion [advertising] of concerts; Response advertising; Advertising flyer distribution; Political advertising services; Rental of billboards [advertising boards];

Press advertising services; Rental of advertisement space and advertising material; Advertising services for the promotion of beverages; Scriptwriting for advertising purposes; Modeling services for advertising or sales promotion; Advertising, promotional and public relations services; Production of advertising matter and commercials; Elevator advertising; Services of advertising agencies; Advertising research services; Press advertising consultancy; Research services relating to advertising and marketing; Dissemination of advertising and promotional materials; Design of advertising logos; Distribution of advertising announcements; Brand creation services (advertising and promotion); Classified advertising services; Hiring of advertising materials; Direct market advertising; Exhibitions for commercial or advertising purposes; Promotional marketing; Promotional advertising for exploration projects; Advertising for others; Radio and television advertising; Post-production editing of advertising or commercials; Advertisement billboards (Rental of -); Rental of advertisement billboards; Distribution of advertising leaflets; Market research for advertising; Distribution of advertising materials; Consultancy relating to advertising; Web indexing for commercial or advertising purposes; Rental of advertising material; Planning services for advertising; Advertising services relating to newspapers; Advertising services for the literary industry; Advertising of business web sites; Advertising, including on-line advertising on a computer network; Advertising services for architects; Advertising, marketing and promotional consultancy, advisory and assistance services; Publication of advertising literature; Production of advertising materials; Arranging of advertising in cinemas; Design of advertising materials; Marketing; Rental of signs for advertising purposes; Modelling agency services for advertising purposes; Advertising and marketing services provided by means of social media; Distribution of advertising mail and of advertising supplements attached to regular editions; Production of advertising matter; Advertising matter (Production of -); Publication of advertising texts; Dissemination of advertising materials; Organisation of customer loyalty programs for commercial, promotional or advertising purposes; Consultancy relating to advertising and promotion services; Advertising particularly services for the promotion of goods; Distribution of prospectuses for advertising purposes; Advertising services to promote the sale of beverages; Distribution of products for advertising purposes; Modelling and models for advertising or sales promotion; Organisation of exhibitions for commercial or advertising purposes; Retail services relating to jewelry; Office functions; Office functions services; Providing office functions; Keypunching [office functions]; Transcription of communications [office functions]; Appointment reminder services [office functions]; Reception services for visitors [office functions]; Data processing services [office functions]; Filing documents or magnetic-tapes [office functions]; Company office secretarial services; Mail sorting, handling and receiving [office functions]; Office administration services [for others]; Employment agency services for personnel in general office positions; Computerised office management; Office management services [for others]; Office machine rental services; Hire of office machinery; Leasing of office machines; Rental of office machines; Office machines (Rental of -); Office equipment rental services; Office support staff recruitment services; Office services for electronically manipulating data; Hire of office equipment; Hiring of office equipment; Rental of office equipment; Procurement services for others relating to office requisites; Rental of office machinery and equipment; Office machines and equipment rental; Rental of office machines and equipment; Management of business offices for others; Business administration; Business management and administration; Business administration and management; Business administration assistance; Administration of business affairs; Business organization and management consulting; Administration of businesses; Administration of business payroll for others; Business administration services; Business administration consultancy; Business organization consulting; Business management and organization consultancy; Administration of the business affairs of franchises; Business management and enterprise organization consultancy; Business administration for others; Administration of employee benefit plans; Business organization and management consultancy including personnel management; Business organization and operation consultancy; Sales administration; Administration relating to business planning; Administration of employee welfare benefit plans; Consulting services in business organization and management; Administration of foreign business affairs; Administration of membership schemes; Business organization consultancy; Advisory services and information in business organization and management; Management administration of commercial undertakings; Administration relating to marketing; Administration relating to business appraisal; Business administration services in the field of healthcare; Advisory services relating to business administration; Business management organisation; Business management and organization consultancy services; Business administration of employee share schemes; Business organization advice; Advisory services relating to business organization; Consultancy regarding the organization or managing of a trade company; Assistance and advice regarding business organization and management; Business administration services in the field of transportation; Administration of patient reimbursement programs; Business organisation and management consulting; Business management consultancy in the field of executive and leadership development; Administration of employee pension plans; Business organisation and management consultancy in the field of personnel management; Advice relating to business organization; Airport administration services; Administration (Business -) relating to statistical methods; Administration of consumer loyalty programs; Assistance, advisory services and consultancy with regard to business organization; Organization, operation and supervision of loyalty and incentive schemes; Administration of preferred provider plans; Advisory services relating to business organisation and management; Business organisation and management consulting services; Business consultancy relating to the administration of information technology; Business administration in the field of transport and delivery; Organisation and management of customer loyalty programs; Business organisation; Consultancy services relating to the administration and management of hotels; Assistance and consultancy relating to business management and organisation; Management assistance in business affairs; Administration of sales promotion incentive programs; Business organisation consulting; Assistance and advice regarding business organization; Providing academic course administration services for academic institutions; Business management organisation consultancy; Business organisation and management consultancy; Business management and organisation consultancy; Business assistance, management and administrative services; Consultancy relating to business management and organisation; Administration relating to sales methods; Management assistance for promoting business; Administration of contests for advertising purpose; Administration of the business affairs of retail stores; Assistance relating to business organisation; Organization, operation and supervision of sales and promotional incentive schemes; Administration of cultural and educational exchange programs; Data file administration; Recruitment of high-level management personnel; Corporate management assistance; Business administrative services for the relocation of personnel; Business organizational consultation; Assistance and advice regarding business organisation and management; Assistance in management of business activities; Business management assistance in the establishment and operation of restaurants; Business management; Business management consulting; Business management and consulting; Business management consultancy; Business management and consultancy; Business management planning; Business management services; Business process management; Business management analysis; Business management supervision; Business management consultation; Business management and consultation; Business accounts management; Business management advice; Risk management consultancy [business]; Business process management consultancy; Business process management and consulting; Assistance with business management; Business management assistance; Assistance (Business management -); Business management of models; Business records management; Business management consulting services; Business management and consulting services; Business project management services; Business risk management services; Business management of restaurants; Business management of hospitals; Interim business management; Business management for shops; Hotels (Business management of -); Business management of hotels; Business file management; Business management of entertainers; Business management consultancy services; Business management and consultancy services; Business management of actors; Business management of musicians; Business management advice relating to manufacturing business; Advisory services relating to business management and business operations; Business management of airports.