

O/0844/23

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION

IN THE MATTER OF TRADE MARK APPLICATION
NO. 3588923 BY
BORDERLINK BROADBAND LIMITED
TO REGISTER AS A TRADE MARK (SERIES OF THREE):



IN CLASSES 9, 38 & 42

AND

OPPOSITION THERETO
UNDER NO. 428650 BY
GO INTERNET LTD

1. On 25 August 2023, I issued a decision (O/0814/23) in the above referenced proceedings, partially upholding the opposition in respect of certain goods and services. It has been drawn to my attention that the decision issued in this matter contained a typographical error at the end of paragraph 95 concerning the degree of inherent distinctiveness possessed by the earlier mark. I stated that I found the distinctiveness of “[...] the mark as a whole to be of a low degree”, which should have read as “[...] the mark as a whole to be of a below medium degree”. My finding on the degree of inherent distinctiveness has correctly been stated in paragraph 102 of my decision.
2. I regard the above as an irregularity in procedure and capable of being corrected under Rule 74(1) of the Trade Marks Rules 2008. Consequently, this supplementary decision merely corrects that typographical error to the extent that paragraph 95 in relation to the degree of inherent distinctiveness of the earlier mark is hereby corrected to read:

“The opponent has not shown use of its mark with its evidence and, thus, it cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. The earlier mark consists of the conjoined word “gointernet”, which is an invented word consisting of the conjunction of the ordinary and dictionary words “go-” and “-internet”, conveying the meaning described earlier in this decision. Although the mark in its entirety may be considered “invented”, the conjoining of those words is not significantly fanciful. In this regard, while I recognise the level of inventiveness of the mark, I bear in mind that only the common element between the respective marks should be considered to evaluate the relevant (to the question of confusion) distinctiveness,[fn omitted] a point that I shall return to later in this decision. With this in mind, the first word component, “go-”,

is an ordinary and dictionary word, affording a normal degree of distinctiveness, whilst the second word component, “-internet”, alludes to the nature of the registered goods and services, and I consider it to be a weaker element. Consequently, I consider the inherent distinctiveness of the mark as a whole to be of a below medium degree.”

3. The appeal period will be reset and will now start from the date of this supplementary decision.

Dated this 6th day of September 2023

**Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General**