

O/0887/26

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. UK00003990118
BY MARK BOWKER
TO REGISTER THE TRADE MARK:**



IN CLASS 36

AND

**OPPOSITION THERETO
UNDER NO. OP000446658
BY CLEAR SCORE TECHNOLOGY LIMITED**

BACKGROUND & PLEADINGS

1. Mark Bowker (“the applicant”) applied to register the trade mark shown on the front page of this decision in the United Kingdom. The application was filed on 11 December 2023 and was published on 29 December 2023 in respect of the following services:

Class 36: Finance services; Provision of finance; Personal finance services; Financing of personal loans; Credit financing.

2. On 28 March 2024, Clear Score Technology Limited (“the opponent”) initially opposed the application on the basis of sections 5(2)(b), 5(3), 3(1)(b) and 3(1)(c) of the Trade Marks Act 1994 (“the Act”)¹. However, by letter dated 7 October 2024, the opponent withdrew its grounds of opposition under sections 5(2)(b) and 5(3), while confirming that it would proceed under sections 3(1)(b) and 3(1)(c) only.
3. The opponent claims that the contested mark is descriptive and/or devoid of distinctive character and is, therefore, incapable of indicating trade origin:

“6. This is in particular because the Application covers financial services per se including credit score services and this figurative mark simply consists of a combination of common and descriptive elements with insufficient stylisation to add distinctiveness.

7. All the elements of the Contested Mark are either descriptive or non-distinctive in respect of the services applied for and the combination of them is not sufficiently distinctive.

¹ 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.

8. This is because, inter alia, of the facts (as will be shown later in evidence) that: the word "credit score" is entirely non-distinctive or descriptive; the addition of the .co.uk does not add sufficient distinctive character; the stylisation of the creditscore word is non-distinctive; the figurative "score dial" element above the o of credit score is generic or very common in the credit score and financial services space and non-distinctive; the phrase "Take control of your score" is (and phrases very like it are) both common and descriptive/non-distinctive and the stylisation of this phrase is non-distinctive.

9. The Contested Sign clearly cannot fulfil the essential function of a trade mark namely enabling the relevant consumer without any possibility of confusion, to distinguish the product or services from others which have another origin."

4. The applicant filed a counterstatement, denying all of the grounds of opposition. The applicant does not claim that the contested mark has acquired distinctive character through use.

Papers Filed and Representation

Opponent's evidence in chief

5. The opponent filed evidence in these proceedings. This comes in the form of a witness statement from Mr Geoffrey Charles Weller, who is a Chartered Trade Mark Attorney at Stobbs (IP) Limited, the opponent's representative. His evidence comprises Exhibits GW1 to GW6, containing a dictionary extract, internet material and state of the register extracts concerning the meaning of 'credit score', the use of credit score dial imagery and the use of 'take control' expressions in a credit context. His statement is dated 1 October 2024.

Applicant's written submissions and evidence

6. The applicant filed written submissions on 13 January 2025. The applicant also filed a witness statement from Mr Samuel Jonathan Linn, who is a UK Registered Trade Mark Attorney practising under the name "Jonathan Linn Intellectual Property". The witness statement is dated 12 January 2025. His evidence comprises Exhibit SJL1, which records an attempt to reproduce one of the opponent's Google searches, which returned different results.

Opponent's evidence in reply

7. Mr Weller filed a second witness statement dated 13 March 2025, introducing Exhibits GW7 and GW8. These exhibits contain archived internet material obtained using the Wayback Machine.
8. The matter came to be heard by me via video conference on 28 April 2026. Both parties filed skeleton arguments. The opponent was represented by Mr Weller. The applicant was represented by Mr Linn.
9. I have considered all the evidence, written submissions, skeleton arguments, and authorities filed by both parties and taken them into account, along with the oral submissions made at the hearing, in coming to this decision. While I do not intend to reproduce the parties' submissions and evidence in full, I shall refer to them below to the extent I consider necessary.

DECISION

10. Section 3(1) of the Act is as follows:

"3. (1) The following shall not be registered –

(a) [...]

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

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

(d) [...]

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

11. The separate grounds of section 3(1) are independent and have different general interests. Therefore, it is possible for a mark not to fall foul of section 3(1)(c) but still be objectionable under section 3(1)(b).² The relevant date for assessing the grounds under sections 3(1)(b) and 3(1)(c) is 11 December 2023, being the filing date of the application.

Preliminary issues

12. At the hearing, Mr Linn submitted that the opponent's Exhibits GW1, GW2 and GW3 are all dated after the relevant date. In particular, he submitted that, based on their print date, these exhibits consist of later internet material and search results which could not reliably establish what was available, discoverable or known to the average consumer at the relevant date. Mr Linn explained that his attempt to reproduce the Google search results produced different results as shown in Exhibit SJL1. This, he argued, highlighted the limited value of the later search result pages as evidence of the position at the relevant date. Therefore, the evidence was said to require considerable caution and to represent the opponent's reverse-engineered argument rather than the relevant consumer's knowledge. Mr Weller accepted that the material had been collected and

² See *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, paragraph 25.

printed after the filing date but distinguished the print date from the publication date of the materials. After considering both parties' submissions, it is my view that while the opponent's materials were retrieved or printed after the relevant date of 11 December 2023, they are not automatically deemed inadmissible or irrelevant. Materials dated with a publication date before the relevant date can provide direct evidence of the position at the relevant date. That said, evidence dated after the relevant date may also be taken into account where it may shed light on the position at that time.³ However, I will weigh their evidential value accordingly in my analysis below.

13. Further, with Exhibit GW5, the opponent filed state of the register evidence. I bear in mind the comments of Professor Phillip Johnson, sitting as the Appointed Person, in *Thinking of You TM (Figurative)*, O/0431/24, who stated at [28]:

“[...] bare “state of the register” evidence is so rarely helpful to a tribunal that it is often said to be “irrelevant” (*BREXIT* (O/262/18), [10]; *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 at 305) or even “worthless”: *Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd* [2022] EWHC 1244 (Ch). In short, the assessment under section 3(1)(b) is not about assessing the sign against other marks on the register, but against the statutory standard.”

Whilst these comments refer to section 3(1)(b), I note that Professor Philip Johnson reiterated the same point in *THE NEWS HUB*, BL O/0432/24, where section 3(1)(c) was also at issue. Therefore, the state of the register evidence adds little value to the contention that the contested mark is descriptive or devoid of distinctive character. In addition, the register entries do not establish why every application was refused or withdrawn

³ See *Alcon Inc v OHIM*, Case C-192/03 P. I also note that, for the purposes of section 3(1)(c), descriptive use which commenced only after the relevant date cannot retrospectively establish that the sign was descriptive at the relevant date: see *BIOREPAIR*, BL O/0301/25.

and, in any event, the registrability of the present mark must be determined on the merits of this case.

14. Before I proceed to my assessment, I note that I have considered the decisions of other Hearing Officers and of the EUIPO referenced by the opponent. However, I am not bound by those decisions, which are, of course, determined on their own facts. Instead, my decision will be based on the assessment of the relevant factors and the merits of this present case.

Section 3(1)(c)

15. I will begin with the ground under section 3(1)(c) because the primary argument under section 3(1)(b) is that the mark is descriptive. If this turns out to be the case, then the outcome of the section 3(1)(b) ground will follow this one. Nevertheless, I note that the two grounds remain independent, and I will address the opponent's alternative case under section 3(1)(b), if this is deemed necessary.

Relevant Authorities

16. The case law under section 3(1)(c) (corresponding to Article 7(1)(c) of the EUTM Regulation, formerly Article 7(1)(c) of the CTM Regulation) was set out by Arnold J (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

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

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive

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

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

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

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

paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

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

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

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

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

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

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

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

17. More recently, Zacaroli J summarised the key question in *Puma SE v Nike Innovate C.V.*, [2021] EWHC 1438 (Ch) at paragraph 21:

“Ultimately, as Ms Himsworth QC submitted, the question is whether the mark applied for, when notionally and fairly used, is descriptive of the goods and services in question within the meaning of section 3(1)(c). A sign can be refused registration ‘only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of [the characteristics in section 3(1)(c)]’: *Technopol* (above), at [50]. Moreover, a sign will be descriptive ‘if there is a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of one of the characteristics of the goods and services in question’: Case T-234/06 *Giampetro Torresan* (above) at [25].”

18. In *Campina Melkunie BV and Benelux-Merkenbureau*, Case C-265/00, the Court of Justice of the European Union (“CJEU”) stated that:

“39. As a general rule, the mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics within the meaning of Article 3(1)(c) of the Directive even if the combination creates a neologism. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or

indications which may serve, in trade, to designate characteristics of the goods or services concerned.

40 However, such a combination may not be descriptive within the meaning of Art.3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition will have to be satisfied as regards both the aural and the visual impression produced by the mark.”

19. Further, in ‘*The Cannabis Clinic*’ (BL O/777/21) at paragraph 57, Emma Himsworth QC commented as follows in so far as the use of devices and additional matters:

“In the context of an assessment of an application that is comprised of several elements where one or more of such elements are such as to designate a characteristic of the goods or services it is necessary for the decision taker to consider whether the other elements are such as to divert the average consumer’s attention away from or to modify the descriptive element or elements of the mark. That this is appropriate is confirmed both in the judgment of Arnold J. as he then was in *Starbucks (HK) Ltd v. British Sky Broadcasting Group Plc* [2013] FSR 29; and Case T-223/17 *Adapta Color, SL v. EUIPO* which were cited by the Hearing Officer. Any suggestion that the Hearing Officer should not have referred to the judgment of Arnold J. in this context is in my view unfounded.”

20. The position under the above grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect.⁴ I have no submissions or evidence from either party as to who the relevant public is. I consider that the relevant

⁴ *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04.

public will primarily consist of members of the general public, although business users are not entirely excluded. The services may involve significant financial commitments, particularly in relation to loans and credit, and prior consultation or research may be conducted before purchase. Consequently, the average consumer is likely to pay at least a medium degree of attention.

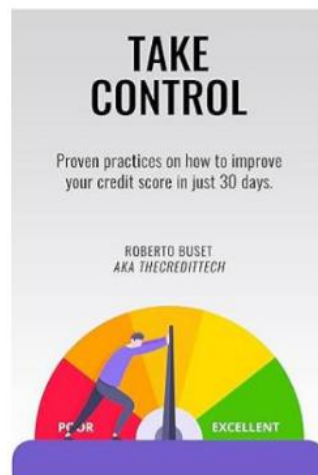
The evidence

21. I have addressed above the applicant's criticisms concerning the date and reliability of the opponent's internet evidence. The applicant also provided evidence with Exhibit SJL1 to challenge the Google results based on the words "credit score take control of your score" as filed in the opponent's Exhibit GW3 at pages 68-69. Also, during the hearing, Mr Linn reiterated and elaborated the above points, which I have considered in full. For completeness, I have not relied on the Google result pages themselves. This is because they were generated after the relevant date and most of the displayed results do not establish when the searched wording was first published. I reiterate here that Exhibit SJL1 also shows that a later repetition of the search returned different results. Thus, it is my understanding that Google results may vary depending on various factors, including when and by whom a search is conducted. For the avoidance of doubt, I have considered separately any dated webpage that is independently exhibited in the opponent's evidence.
22. Further, I note that the evidence contains various *.com* and other generic domain articles. I bear in mind that the relevant public is the UK public. The mere fact that a webpage is accessible through a *.com* (or other generic domain) does not automatically establish that it was directed at or targeted consumers in the UK. The materials in Exhibit GW3 from: *clearpoint.org*, *moneym miniblog.com*, *bloom.co*, and *practicalmoneyskills.com* contain express US indicators, including references to US dollars, FICO scoring,⁵

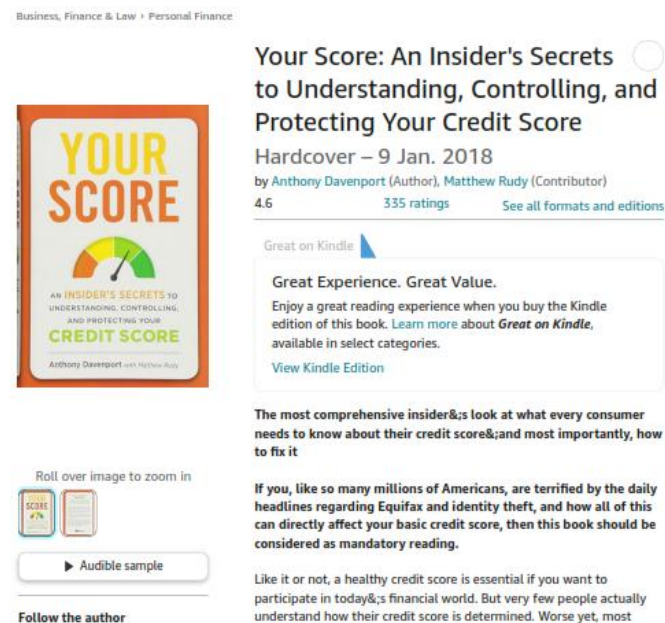
⁵ I note that Exhibit GW8, which is a Wikipedia article explains that FICO is a type of credit score used in the US.

and references to the 'United States' regional settings. Thus, I do not rely on those materials as evidence of the perception of the UK public, and I will only refer and consider in my summary below the materials which concern the UK public, notwithstanding their generic domain names.

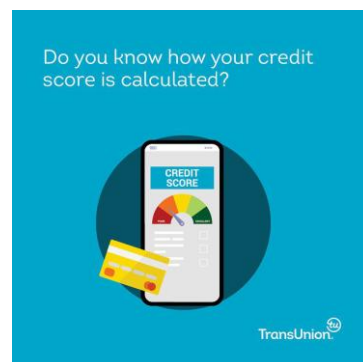
23. The following summary of the evidence focuses on material that predates the relevant date. Any material to which I attach reduced or no weight will be identified.
24. Exhibit GW1 includes an extract from Cambridge dictionary with a printout date of 4 March 2024. Although the print date postdates the relevant date, the ordinary meaning of 'credit score' is not materially disputed, and I will return to this point later in my decision.
25. Exhibit GW2 contains the following:
 - a. A printout from *amazon.co.uk* listing a book titled "*Take Control: Proven Practices on How to Improve Your Credit Score in Just 30 Days*". Although the Amazon printout does not clearly display a publication date, the reproduced listing at page 54 of Exhibit GW6 shows "22 Jan. 2023". I therefore accept that the publication predates the relevant date. The cover page of the book contains a coloured red-to-green score dial with a pointer and refers to improving a "credit score in just 30 days".



- b. A printout from *amazon.co.uk* listing a book titled “*Your Score: An Insider’s Secrets to Understanding, Controlling, and Protecting Your Credit Score*” with a publication date of 9 January 2018. However, the synopsis refers expressly to American consumers, and the evidence does not establish the extent of UK exposure. I will therefore attach limited weight to it as evidence of UK consumer perception, while accepting that it demonstrates use of red-to-green score dial imagery in a credit score context.



- c. A printout of an online article from ‘The Independent’ titled “*5 ways to keep your credit score in check*” dated 31 March 2023. The article refers to “taking control of your credit report and score” and contains credit score imagery and embedded material as shown below.



- d. A printout of an article from *MoneySavingExpert.com* titled “Credit scores – Top tips to boost your creditworthiness”, which is expressly marked “Updated 20 February 2024”. The article provides a detailed account of what credit ratings and credit scores are and advice to UK users on boosting these, including imagery of a coloured score dial from red to green. However, the evidence does not identify which parts of the article existed before the relevant date or what changes were made in February 2024. I therefore do not rely on it as direct evidence of the position on the relevant date. At most, it provides limited corroborative evidential value.

29 tips to boost your credit rating

Each lender scores you differently, so this is more art than science, especially because lenders are tight-lipped about what they're looking for.

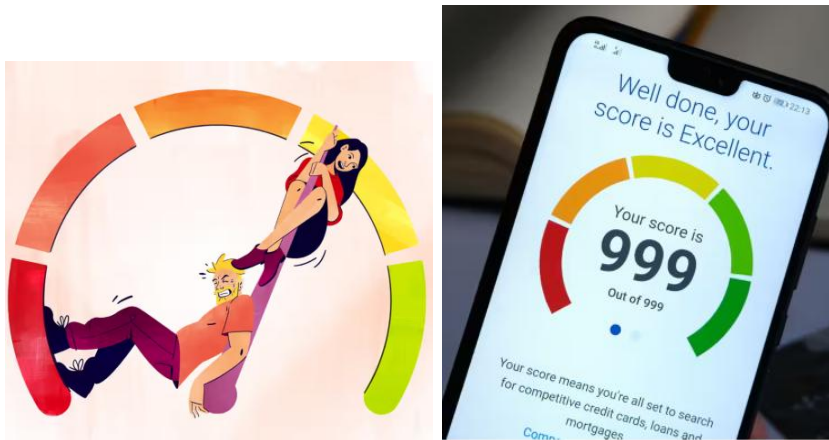
Yet there are practical things you can do that should help reduce credit-scoring and fraud-scoring rejection.



- e. Printouts from *istockphoto.com* and *freevector.com* featuring credit score stock illustrations dated with a print date 5 March 2024. I note that these are .com domains, but only the former website contains a reference to the UK at the bottom of the page. That said, they do not establish when the particular images first became available. Thus, I attach no material weight to them.
- f. Printouts from *shutterstock.com* with publication dates 19 April 2023 and 2 November 2022 containing credit score stock images. Even though these are dated within the relevant period, they are from a .com domain without any further information on whether they were directed at the UK consumers. Thus, they have no evidential weight to my assessment.
- g. Printouts from *bing.com* and *google.co.uk* dated with a print date of 30 September 2024 demonstrating image search results of ‘credit score dial’. Whilst these results include examples of images from other UK websites, such as *experian.co.uk* and *gettyimages.co.uk*,

it is unclear when these were first published. Thus, I consider that they have no evidential weight to my assessment.

- h. A printout of an article from 'The Guardian' titled "How to improve your credit score" and dated 30 May 2022. The article explains credit scores, reports, and the role of the principal credit-reference agencies. It also contains red-to-green score dial images associated with checking and improving a credit score as shown below.



26. Exhibit GW3 contains the following:

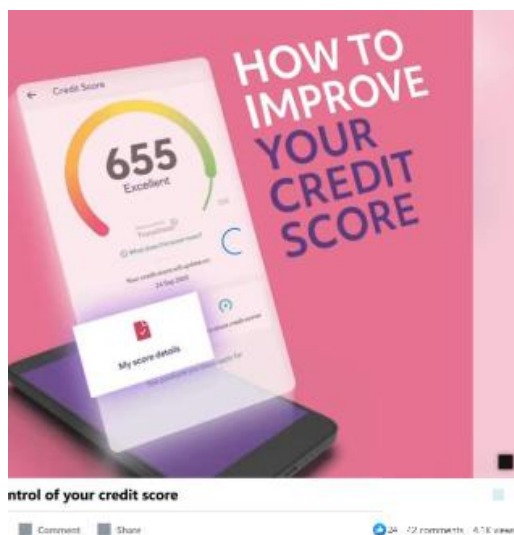
- a. A printout of an article from *creditengine.co.uk* titled "Take control of your Credit Score today!" and dated with a print date 5 March 2024. Noting that the print postdates the relevant date, it has no evidential value without establishing that the wording was present on the relevant date.
- b. A printout of an article from *Equifax.co.uk* titled "Get the credit you deserve" and dated with a copyright year 2023. This article mentions "Take control of your credit score" with accompanying illustrations shown below. In the absence of a publication date, the general copyright notice does not establish when the particular wording 'Take control of your credit score' first appeared. I will therefore attach limited weight to it.



- c. A printout of an article from *openbanking.org.uk* titled “ClearScore: Take control of your credit score” and dated 8 March 2018. The article explains how open banking gives users power over their financial data.
- d. A printout of an article from *novunapersonalfinance.co.uk* titled “Top tips for improving your credit score”. The date 31 May 2023 is displayed alongside the article’s author details, in a position which indicates that it is the article’s publication date. I therefore treat the article as predating the relevant date.
- e. A printout of an article from *debtguardians.co.uk* titled “10 Steps To Take Control Of Your Debts” and dated with a print date 5 March 2024. Again, in this case, the print postdates the relevant date, thereby no evidential value can be attached to it.
- f. A printout of an article from *aquacard.co.uk* titled “How long does it take to improve your credit score?” which was first published on 29 June 2022 and last reviewed on 26 September 2023. The article discusses actions consumers can take to improve their scores and refers to showing lenders that they are “in control” of their money.
- g. A printout of an article from *bank.marksandspencer.com* titled “Steps to take to improve your credit score” and published August 2023. The website appears to be directed to UK consumers, judging from the spelling of the word “utilisation” and the reference to

Experian, Equifax, and TransUnion, which based on GW2⁶ are the three main credit reference agencies in this jurisdiction. The article contains guidance on improving a credit score and advises consumers to “take control of your credit rating sooner rather than later” in the context of managing or improving a credit score.

- h. A printout of an article from *choosewisely.co.uk* titled “How to improve your credit score” which was published on 16 November 2023. The article provides tips for improving credit scores.
- i. A screenshot from a NatWest Facebook video, which is headed “Take control of your credit score” and explains that knowing how to improve a score may assist a person seeking credit. The post is dated 23 September 2020 and has over 4K views, 24 likes, and 42 comments. The engagement figures displayed do not establish how widely the post was encountered by the UK consumers at the relevant date, and I do not rely on them for that purpose.



27. Exhibit GW7 contains a printout from *experian.co.uk* which was obtained via the Wayback Machine recording a capture dated 1 January 2015. I also note that the page contains a 2014 copyright notice. The page promotes a

⁶ Page 53.

free Experian credit report and score with a promotional message “Get your FREE Experian Credit Report and Score”, describing monitoring and improving a credit rating. This page also includes an image of an Experian credit score dial.



28. Exhibit GW8 contains a printout from Wikipedia obtained via the Wayback Machine recording a capture dated 6 January 2015. I note that the Wikipedia entry defines ‘credit score’ and explains its use in assessing creditworthiness and lending risk for various countries, including the UK.

Assessment

29. Both parties drew my attention to the *EUROHYPO* decision.⁷ In particular, Mr Linn referred me to paragraph 41 of the decision, which states that:

“As regards a compound trade mark, such as that at issue in the present case, the assessment of its distinctive character cannot be limited to an evaluation of each of its words or components, considered in isolation, but must, on any view, be based on the overall perception of that mark by the relevant public and not on the presumption that elements individually devoid of distinctive character cannot, on being combined, have a distinctive character (see, to that effect, Case C-329/02 P *SAT.1 v OHIM* [2004] ECR I-8317, paragraph 35). The mere fact that each of those elements, considered separately, is devoid of any distinctive character does not mean that

⁷ C-304/06P.

their combination cannot present such character (Case C-37/03 P *BioID v OHIM* [2005] ECR I-7975, paragraph 29).”

30. I have taken the above into account, and, in order to assess the descriptive character of a composite mark consisting of a word and figurative element, not only must the various elements be examined individually but also the mark as a whole, based on the perception of the trade mark by the relevant consumer in relation to the services applied for.⁸
31. Mr Linn’s broader submission was that the opponent had retrospectively gathered examples of individual wording and devices which did not establish how the average consumer would perceive the particular combination applied for. I accept that the evidence does not show prior use of the contested mark as a whole. However, section 3(1)(c) does not require proof that the sign was actually in descriptive use at the filing date. It is sufficient that the sign could serve in trade to designate a characteristic of the services. Evidence concerning the meaning and use of the individual elements may therefore assist in determining how their combination would be perceived, provided that the ultimate assessment remains one of the mark as a whole. I accept that not all the examples in the evidence are from before the relevant date, but the majority are. Where an example postdates the relevant date, it is by less than a year and, in most cases, only a matter of months, as seen in Exhibits GW1-GW3.
32. At the hearing, Mr Linn posited that Exhibit GW1 should be ignored as it postdates the relevant date. On the other hand, Mr Weller, while accepting that the Cambridge Dictionary printout has a print date of 4 March 2024, argued that “credit score” plainly had the same established meaning at the relevant date, as also supported by the earlier *CLEAR SCORE* (BL O/022/17) decision of another Hearing Officer. Nonetheless, I have no doubt that the relevant public will be familiar with the words the contested mark comprises. According to Exhibit GW1, the dictionary definition of

⁸ See *The Cannabis Clinic; and Adapta Color, SL v EUIPO*, Case T-223/17.

'credit score' is "*a number that is based on information in a credit report (= a record of someone's debt and payment of debt), which financial organizations consider in making decisions about lending money*". This accords with my own understanding of the definition of 'credit score' and it is my view that this definition will be understood by the relevant public in the UK. In addition, the evidence predating the relevant date uses the expression consistently in that sense, and there is nothing in this case to suggest that the meaning of these terms had changed over time or in the intervening period between December 2023 and March 2024.

33. For "credit score" to be descriptive, it has to directly designate a characteristic of the contested services. At the hearing, Mr Weller submitted that the provision of a loan or other finance may involve the creation, consideration or assessment of a credit score. He relied particularly on Exhibit GW1. Additionally, I note that the opponent's evidence also connects creditworthiness information with the availability and terms of finance. Importantly, the Experian material in Exhibit GW7 states that the higher a person's credit score is, the greater the chance of obtaining better credit deals, and refers to authorised lenders carrying out credit checks. In addition, the article from *aquacard.co.uk* in Exhibit GW3 provides further support for that relationship. It explains that consumers may be declined credit because of matters recorded in their credit files and may take steps to correct or improve factors, such as high credit utilisation, before making another application e.g. for "loans, car finance, mortgages, or any other credit products". This supports the conclusion that the consumer's credit position may affect whether an application for finance succeeds and that personal finance guidance may be directed at improving the consumer's position before a further application. Further, the MoneySavingExpert material in Exhibit GW2 states that a customer's credit information may affect the product and rate available and explains that lenders make their own risk assessments using their lending criteria and scorecards. However, as mentioned above, this exhibited version postdates the relevant date; hence, I consider this only on a corroborative basis.

34. Further, the applicant does not materially dispute the relationship between the plain expression “credit score” and the contested services. In its written submissions, it accepts, at least conditionally, that the expression is descriptively associated with financial services which rely on creditworthiness criteria, giving loans and mortgages as examples. Its primary submission is that the contested mark is not composed of the plain words alone and that its additional verbal and figurative elements create a distinctive whole.
35. Against that background, I find that the relationship between “credit score” and the terms “*credit financing*” and “*financing of personal loans*” is direct and specific. A credit score may be relevant to the provider’s decision whether to lend, its assessment of the applicant’s lending risk, the amount of finance made available and the rate or other terms offered. As a result, the words “credit score” describe a characteristic of those services, namely that their provision or terms may be determined by an assessment of the customer’s creditworthiness.
36. Turning to “*finance services*” and “*provision of finance*”, these are broader terms which could also encompass services consisting of making funds or credit available to consumers. For such services, credit score represents an assessment of the consumer’s creditworthiness which may affect whether the consumer qualifies for the finance and, if so, the amount, interest rate or other conditions offered. Thus, the words “credit score” describe the basis upon which those services may be assessed, priced and supplied. For “*personal finance services*”, the expression has the same descriptive significance provided in the preceding paragraph, where the service includes consumer lending.
37. Taking into account the relevance of the evidence above, I consider that the relationship is sufficiently direct and specific to enable the relevant public immediately, and without further thought, to perceive the expression as descriptive of those characteristics of the contested services. I note that some of the services are perhaps a bit broader, but, in any event, the

above rationale applies as they still are, or include, consumer finance/provision of credit on the basis of the customer's creditworthiness.

38. On that basis, the plain expression "credit score" has a descriptive relationship with all the contested services. However, the mark does not consist solely of that expression. It also contains the hyphen, differences in font weight and colour, the *.co.uk* suffix, a score dial incorporated into the letter "o", and the strapline "Take control of your score". I must therefore determine whether those verbal and figurative elements, individually or in combination, divert the relevant public from, or materially modify, the descriptive message conveyed by "credit score". I bear in mind Mr Linn's submissions that the actual mark is more than the plain words "credit score" and that the rest of the elements in that mark give the mark visual originality and cause the whole to function as an indication of trade origin.
39. I will first address the various elements of "Credit-Score.co.uk" and the figurative elements, before moving on to discuss the strapline "Take control of your score".
40. The verbal elements "Credit-Score.co.uk" appear in a dark grey font with the word "Credit" highlighted in bold compared to the "-Score.co.uk" elements. I disagree with Mr Linn that the hyphen will remove the descriptiveness from the hyphenated words by separating them. He argued that the average consumer would not expect to see the words hyphenated. In more detail, I do not consider that the hyphen would create an unusual syntax or meaning, especially since 'Credit-Score' is followed immediately by '.co.uk'. In this context, the hyphen is likely to be perceived merely as punctuation within a domain name format, without materially altering the descriptive meaning of 'credit score', which is comprised of two individual words. Thus, I consider that the average consumer will not attribute any "catchiness" or brand identity to the hyphen as Mr Linn suggested. Instead, it is my view that it will just be seen as a part of the domain name, without affecting the meaning of the descriptive words.

41. In terms of the suffix (or top level domain) “.co.uk”, which, by comparison, is the smallest element in the mark, Mr Linn asserted that this component by itself indicates a unique trade source, namely that the services are provided online via a website. However, I agree with Mr Weller that the suffix cannot function as an indicator of origin. On this point, I note that the Manual of Trade Marks Practice (“the Manual”) states that:

“General guidance

Generic individual elements of top level domains (gTLDs) such as ‘.com’ or ‘.co.uk’ (whether a prefix or a suffix) are considered to be totally non-distinctive. However, domain names presented in their entirety (e.g. ‘www.ipo.gov.uk’ or ‘ipo.gov.uk’) can be registered as trade marks provided they are distinctive in totality. As a general rule, one should consider whether the remainder of the mark (i.e. the elements other than ‘www’, ‘.com’ or ‘.co.uk’ etc.) is descriptive or non-distinctive. If so, there is likely to be an objection under sections 3(1)(b) and (c). For example, the signs ‘cars.com’ and ‘www.soap.com’ would be unacceptable as they merely describe the provision of cars and soaps via the Internet.”

42. The Manual also refers to the findings of the CJEU in case C-70/13, *PHOTOS.COM*, the general points from which can be summarised as:

- (i) It is appropriate to examine the word sign PHOTOS.COM as a whole.
- (ii) Marks of this type may, in part, be assessed by reference to its separate elements that can then be factored into the appraisal of the composite whole.
- (iii) The mere fact that the individual elements are devoid of any distinctive character does not mean that, in combination, they cannot present a distinctive character.

The CJEU went on to find that the combining of the non-distinctive word “PHOTOS” and “.COM” does not create a distinctive whole.⁹ Therefore, when applying the guidance to the current case, the correct assessment is not what “.co.uk” adds but what it creates when added to the words “Credit-Score”. In light of this, I consider that the suffix “.co.uk” would immediately inform the average consumer that the mark is indicative of a UK internet address and, as a result, does not add distinctive character to the descriptive expression. Consequently, when combined with ‘Credit-Score’, it does not create an unusual meaning or an overall impression sufficiently removed from the descriptive message.

43. Turning to the score dial device, I note Mr Weller’s submission that the device is descriptive and will not divert the consumer’s attention from the descriptive words. He also referred to the opponent’s evidence, specifically to the Amazon listing, the Independent and Guardian articles, the TransUnion advertisement, the NatWest Facebook post and the archived Experian webpage.¹⁰ He also argued that the device is small and will be lost within the mark as a whole. Mr Linn submitted that the examples in the opponent’s evidence were generic internet images, not evidence that the devices were used as brands to provide services. Further, Mr Linn argued that the average consumer would not have conducted the opponent’s targeted searches or have the collected results in mind. Moreover, no cited example was said to reproduce the particular arrangement in the application, where the red, amber, and green circular score dial was embellishing the letter “O” with a pointer incorporated into the same letter.
44. First, I consider that the score dial is visually noticeable, and I do not accept that it will be lost within the mark. Whilst accepting that the verbal elements “Credit-Score.co.uk” are descriptive, the question here is whether the score dial device alone or in combination with the words “Credit-

⁹ I also note that in *salesforce.com v EUIPO*, Case T-134/15, the GC found that SOCIAL.COM was descriptive of goods/services provided via the internet relating to social media.

¹⁰ See Exhibits GW2, GW3, and GW7.

score.co.uk” is sufficient to divert attention away from the message conveyed by the descriptive elements. In this regard, I keep in mind Arnold J’s comments in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2013] F.S.R. 29, where he stated that:

“116. Taking all of the evidence into account, I conclude that the CTM is precluded from registration by art.7(1)(c) in relation to the services in issue because NOW would be understood by the average consumer as a description of a characteristic of the service, namely the instant, immediate nature of the service. The figurative elements of the CTM do not affect this conclusion. In the alternative, if the inclusion of the figurative elements means that the CTM does not consist exclusively of the unregistrable word NOW, I consider that the CTM is devoid of distinctive character and thus unregistrable by virtue of art.7(1)(b).

117. I would comment that it appears to me that PCCW only succeeded in obtaining registration of the CTM because it included figurative elements. Yet PCCW is seeking to enforce the CTM against signs which do not include the figurative elements or anything like them. That was an entirely foreseeable consequence of permitting registration of the CTM. Trade mark registries should be astute to this consequence of registering descriptive marks under the cover of a figurative figleaf of distinctiveness, and refuse registration of such marks in the first place.”

45. Based on my evidence summary above, I note that the opponent’s evidence shows comparable score dial imagery was used in UK articles, advertisements, and listings to communicate credit scores. Notably, Exhibit GW7 shows that Experian used a comparable score dial as early as 2015. Although I agree with Mr Linn that the score dials in the opponent’s evidence differ in form from the applicant’s, I consider they are

still identifiable as score dials, as is the device element of the mark.¹¹ At this point, I note Geoffrey Hobbs' comments in *QUICKWASH ACTION*, BL O/205/04, where he held that figurative elements can also be non-distinctive and simply reinforce meanings conveyed by words:

"I do not think that the hearing officer was guilty of excision or dismemberment in his assessment of the present mark. Devices can be distinctive or nondistinctive, just like any other kind of sign. What matters are the perceptions and recollections that the sign in question is likely to trigger in the mind of the average consumer of the goods concerned and whether they would be origin specific or origin neutral.

I think that the verbal elements of the mark I am considering speak loud and clear. It seems to me that the message they convey is origin neutral. The artistic presentation neatly and skilfully builds upon and reinforces the origin neutral message in a way that makes it even more effective than the words alone might have been for that purpose. I think that net result is a well-executed, artistically pleasing, origin neutral device."

In light of the above rationale, it is my view that the particular integration of the score dial and the pointer into the letter 'O' does not introduce an independent concept or ambiguity. Instead, in the context of the accompanying words, the score dial device will be understood as illustrating the subject of the service and reinforcing the descriptive meaning, rather than diverting the relevant public from or modifying that meaning.

46. I will now consider the strapline "Take control of your score". This element is presented in green and is positioned under the verbal "Credit-Score.co.uk" elements, appearing noticeably smaller in size. I note that the

¹¹ More specifically, the red-to-green dial and pointer in the contested mark will be understood as a graphic representation of a credit score dial moving from an adverse to a favourable range.

parties disagree on the meaning of the strapline. Although Mr Linn highlighted that the strapline is not “Take control of your credit score”, Mr Weller submitted that it will simply tell consumers that the services offered can help them understand, monitor, or improve their credit position.

47. Whilst I appreciate that the strapline itself does not expressly identify what the word score refers to, when it is read with the prominent expression “Credit-Score.co.uk”, the word ‘score’ will immediately be understood as referring to the consumer’s credit score. Consequently, the promotional strapline “Take control of your score” communicates the intended purpose or benefit of the services, namely enabling the consumer to understand, monitor, manage or improve that score. That is a description, expressed in promotional language, of the intended purpose or benefit of the services. The omission of the word ‘credit’ from the strapline does not produce a different or ambiguous meaning when the mark is viewed as a whole. I agree with Mr Linn that the evidence does not establish prior use of the precise strapline as presented in the application. Nevertheless, this is not necessary, as section 3(1)(c) does not require proof that the exact wording was already in descriptive use. I note that the evidence does support the opponent’s point that closely corresponding expressions were used before the relevant date in relation to credit scores and the contested services.¹² In addition, I consider that the natural meaning of the words in this present case is sufficient. Thus, the strapline describes, in promotional language, the intended purpose or benefit of the services.

48. For the reasons outlined above, the contested mark, when viewed as a whole, will be understood as indicating services supplied through a UK website and connected with consumers’ credit scores. The score dial device graphically represents the credit score concept, while the strapline “Take control of your score” communicates the intended purpose of the contested services. The hyphen, font, case, and colour, and overall presentation of the elements in the mark do not create an impression

¹² See, for example, Exhibit GW3 at pages 12 and 62.

sufficiently far removed from that descriptive message. Consequently, I find that the contested mark as a whole is descriptive of characteristics and the purpose the average consumer would expect to find in the contested services. As the applicant has not claimed that it has acquired distinctiveness through use, the opposition succeeds under section 3(1)(c).

Section 3(1)(b)

49. I now turn to the ground under section 3(1)(b). This section prevents the registration of a mark which is devoid of distinctive character. Mr Weller primarily submitted that the contested mark is devoid of distinctive character on the basis that it is descriptive in accordance with section 3(1)(c). As I have found that the mark is descriptive under section 3(1)(c), it lacks distinctive character under section 3(1)(b). Consequently, the opposition under section 3(1)(b) succeeds on that basis.
50. For completeness, I will also consider below the opponent's independent claim under section 3(1)(b), including whether the mark would lack distinctive character even if one or more of its elements were not considered sufficiently descriptive to fall within section 3(1)(c).
51. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

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

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

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

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

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

paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37).”

52. The opponent with its statement of grounds claimed that: “[a]ll the elements of the Contested Mark are either descriptive or non-distinctive in respect of the services applied for and the combination of them is not sufficiently distinctive.” (My emphasis)

53. Mr Weller, within his skeleton argument, further provided under this ground that:

“17. Even if not all the elements of the Sign are descriptive or there is enough in some of the non-descriptive elements to divert from the descriptive elements of the Sign to push this outside s.3(1)(c), we say the elements do not create an overall distinctive impression required by s.3(1)(b). The combination of elements merely creates an origin neutral message and would not be seen as indicating trade origin or (to use the phrasing in *QUICK WASH ACTION* (O/205/04) simply the elements in totality fail to bestow upon the mark the minimum degree of distinctive character required.

18. [...] We say the device element in the Sign is less prominent than that in *SUN RIPENED TOBACCO* [(O/200/08)] and less complex than that in *QUICK WASH ACTION*. We say the device element merely builds upon and reinforces the descriptive message behind the Sign.

19. The combination of the descriptive word *credit-score.co.uk*, the non-distinctive stylisation, the non-distinctive device and the clearly non-distinctive strapline, in totality will fail to strike the consumer as a badge of origin.

20. The Sign as a whole lacks the requisite distinctive character and it must therefore be refused under s.3(1)(b).”

54. At the hearing, Mr Linn, also in this case, referred me to the *EUROHYPO* judgment (quoted above) for the purposes of this ground, asserting that

the contested mark has a degree of distinctiveness in its own right to function as a badge of origin. I note that I have kept in mind that the evaluation of each element of the mark cannot be undertaken in isolation but the evaluation (under this ground as well) must also be based on the overall perception of the mark by the relevant public.

55. I have already concluded above that the relevant public will readily understand the meaning of the words “credit score” in the way explained earlier in this decision. When applying the principles set out in the authorities referred to, the verbal elements “Credit-Score.co.uk” will be perceived as an internet address conveying that the services are available online and concern consumers’ credit scores. In relation to the contested services, that message informs consumers about the subject matter of the services and the creditworthiness assessment relevant to obtaining finance. It does not, without more, identify a particular commercial undertaking.
56. Considering the score dial device, although it adds to the visual presentation of the mark, in the context of the word elements in the mark, it depicts the credit score concept rather than introducing an origin-specific concept or other feature.
57. I have found above that the average consumer will perceive the words in the strapline “Take control of your score” as being promotional of the services’ intended purpose. Whilst there is no requirement for promotional statements (slogans),¹³ to be creative to be distinctive and that they can identify trade origin in addition to a promotional function, the fact that a promotional statement may be omitting a word does not automatically mean that it is distinctive. Marks which consist of, or contain promotional statements (slogans), are often formulated elliptically¹⁴, but the message

¹³ *Audi AG v OHIM*, Case C-398/08 P at paragraphs 44-47.

¹⁴ See *Dorel Juvenile Group, Inc v OHIM*, T-88/06: “40 Advertising slogans are often written in a simplified form, in such a way as to make them more concise and snappier.”

conveyed is not necessarily disguised by the ellipsis. In this present case, the combination contains no ambiguity, wordplay, conceptual tension, unusual juxtaposition¹⁵ or other feature which would cause the relevant public to perceive the mark as anything more than an informational and promotional strapline concerning online services connected with credit scores. In the context of the mark as a whole, it appears immediately below the prominent verbal elements “Credit-Score.co.uk”, and the relevant public will immediately understand “your score” as referring to “your credit score”. Therefore, even though the word ‘credit’ is omitted from the strapline, this does not mean that the message contained is not immediately understandable by the relevant public. Consequently, I consider that the strapline operates as an origin-neutral message rather than as a badge of trade origin.

58. I also consider that the typeface, font weight and colours, and the overall presentation of the mark do not provide the relevant public with a feature that will be perceived as identifying one undertaking.
59. In light of the above, I consider that the message not only of each individual element but also the mark as a whole is direct and immediate. It does not identify the services as originating from a particular undertaking. Consequently, the mark is devoid of any distinctive character in respect of the services of the contested mark and fails to serve to identify the services as originating from a particular undertaking. It therefore does not act as an indication of origin.
60. I find that the contested mark, because of its inherent qualities, is devoid of any distinctive character. For completeness, I reiterate that the applicant has neither claimed nor filed evidence that the mark had acquired distinctive character through use before the relevant date. Therefore, the opposition also succeeds under section 3(1)(b).

¹⁵ See *Audi AG* at paragraph 47.

Outcome

61. The opposition is successful under sections 3(1)(b) and 3(1)(c). Subject to any successful appeal, the application is refused registration.

COSTS

62. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice 1/2023. I award costs as follows:

Official fee	£200
Preparing a statement and considering the other side's statement	£250
Preparing evidence and considering and commenting on the other side's evidence	£600
Preparing for and attending the hearing	£900
Total	£1,950

63. I therefore order Mark Bowker to pay to Clear Score Technology Limited the sum of £1,950. The above sum 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 29th day of September 2026

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General