O/1125/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003712725
BY TRAVELINK GROUP LIMITED
TO REGISTER

Travelink

IN CLASSES 16, 36, 38, 39, 41 & 43

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 432505 BY
INSPIRETEC LIMITED

BACKGROUND AND PLEADINGS

1. On 21 October 2021, Travelink Group Limited ("the applicant") applied to register the trade mark shown on the cover of this decision ("the applicant's mark") in the UK for the following goods and services:

Class 16: Printed travel guides; printed itineraries; printed travel information; none of the aforementioned goods in relation to online currency such as the request, booking or provision of traveller cheques or cash.

Class 36: Provision of travel insurance; advice relating to travel insurance; none of the aforementioned services in relation to online currency such as the request, booking or provision of traveller cheques or cash.

Class 38: Communication by online blogs; providing access to weblogs; all of the aforesaid in relation to travel and tourism; none of the aforementioned services in relation to online currency such as the request, booking or provision of traveller cheques or cash.

Class 39: Travel services; travel agency services; providing travel information; tour operating services; tour arranging; tour organising; business travel services; travel booking; travel reservation services; organisation and provision of travel arrangements; travel guide services; transport of travellers; escorting of travellers; organisation and arranging of travel for spectators of sports and cultural events; organisation and arranging of air travel; organisation and arranging of rail travel; organisation and arranging of coach travel; organisation and arranging of ferry travel; organisation and arranging of car transport; organisation and arranging of cruises; arranging excursions; arranging day trips; providing and arranging escorted tours; arranging sightseeing; city transportation; chauffer

services; vehicle rental services; itinerary planning services; itinerary travel advice services; providing travel route advice; consultancy services in relation to travel; services relating to obtaining passports and travel and entry visas; none of the aforementioned services in relation to online currency such as the request, provision or booking of traveller cheques or cash.

Class 41: Organisation and provision of sporting activities; organisation and provision of recreational activities; providing, organising and provision of outdoor and indoor recreational activity holidays; organisation and provision of leisure activities; organisation and provision of entertainment; organisation and provision of cultural events; booking of tickets for entertainment, cultural and sporting events; arranging of seminars and presentations for entertainment purposes; none of the aforementioned services in relation to online currency such as the request, provision or booking of traveller cheques or cash.

Class 43: Organising, arranging and booking accommodation; organising, arranging and booking self catering accommodation; organising and arranging hotel reservations; booking of hotel accommodation; organising and arranging hospitality accommodation; organising and arranging corporate hospitality; organising and arranging restaurant reservations; organisation and arranging the provision of food and beverages by third parties; none of the aforementioned services in relation to online currency such as the request, provision or booking of traveller cheques or cash.

2. The applicant's mark was published for opposition purposes on 21 January 2022 and, on 11 April 2022, it was opposed by Inspiretec Limited ("the opponent"). The opposition is based on section 5(3) of the Trade Marks Act 1994 ("the Act") and is reliant upon the following mark:

Travelink
UK registration no. 2552101
Filing date 5 July 2010; registration date 8 April 2011
Relying on all goods and services, namely:

Class 9: Computer software; downloadable software; all for the travel industry.

Class 42: Design and development of computer software; installation, maintenance and repair of computer software; all for the travel industry.

3. In its notice of opposition, the opponent was very vague as to the nature of its claim. The opponent did not specify reasons as to why it considered there to be any damage under the relevant questions of the notice of opposition. I note, however, that under the question regarding additional information as to why the application was being opposed under this ground, the opponent stated that:

> "We believe that this opposing trade mark is damaging to the reputation of the Inspiretec brand in addition to the subsequential confusion and possible unfair advantage on the applicants part."

4. In light of the above, I will proceed on the basis that the pleaded case of the opponent is that there is a reputation in the opponent's mark, a subsequent link between the marks and that use of the applicant's mark gives rise to an unfair advantage.

5. The proprietor filed a counterstatement wherein it made some concessions in respect of the identity of the marks at issue. I will deal with these points where necessary below. Those concessions aside, the applicant maintained its denial of the claim against it and requested that the opponent provide proof of use in respect of its mark.

6. The opponent is unrepresented and the applicant is represented by Travlaw Legal Services Limited. Both parties filed evidence. No hearing was requested and only the applicant elected to file written submissions in lieu. This decision is taken following a careful perusal of the papers.

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

EVIDENCE

8. The opponent filed evidence in the form of the witness statement of Jenna Wheeler dated 2 September 2022. Ms Wheeler is the Customer Relationship Manager for the opponent and her statement is accompanied by 22 exhibits, being those labelled JW1 to JW22.

9. The applicant's evidence came in the form of the witness statement of Anthony Gothold dated 16 February 2023. Mr Gothold is the Director of the applicant and his statement is accompanied by one exhibit, being that labelled AG1.

10. I do not propose to summarise the parties' evidence or the applicant's submissions here. However, I have taken them all into consideration in reaching my decision and will refer to them below, where necessary.

DECISION

My approach

11. As set out above, the applicant has requested that the opponent provide proof of use for the mark relied upon. While noted, I do not consider it necessary to conduct a proof of use assessment in the present case. Instead, I will proceed directly to

consider the issue of reputation under the 5(3) ground. I do so on the basis that under this ground (being the sole ground relied upon), the opponent is required to prove that its mark enjoys a reputation amongst a significant part of the relevant public for the goods and services relied upon. The requirements to prove a reputation (which I will set out in full below) are more onerous on the opponent than those for genuine use.[1] As such, it follows that if there is a reputation in the mark for some or all of the opponent's goods and services as a result of the use of the mark, there will be genuine use for those same goods and services (so long as said use occurred during the relevant period for genuine use, of course). Alternatively, if there is no reputation in the mark for any of the goods or services relied upon, the issue as to whether there is genuine use or not is of no relevance because the claim cannot proceed without the existence of a reputation.

Section 5(3)

12. Section 5(3) of the Act states:

> "5(3) A trade mark which –
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> (a) is identical with or similar to an earlier trade mar, and
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> (b) shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

13. The relevant case law can be found in the following judgments of the Court of Justice of the European Union ('CJEU'): Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

[1] A finding of genuine use only requires a sufficient level of use (as per the case of *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch), this need not be quantitively significant) whereas a finding of a reputation requires that the mark relied upon must be known by a significant part of the relevant public.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24.*

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; G*eneral Motors, paragraph 26.*

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon, paragraph 29* and *Intel, paragraph 63.*

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68;* whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79.*

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34.*

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74.*

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure).*

14. The conditions of section 5(3) are cumulative. There must be similarity between the marks, the opponent must also show that its mark has achieved a level of knowledge, or reputation, amongst a significant part of the public. The opponent must also establish that the public will make a link between the marks, in the sense of the earlier mark being brought to mind by the later mark. Assuming that these conditions have been met, section 5(3) (ordinarily) requires that one or more of three types of damage will occur. However in the present case, the opponent has only made reference to one of these types of damage, being an unfair advantage. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which

must be assessed in deciding whether the public will make a link between the marks.

15. The evidence of the opponent sets out that while the mark relied upon has been in use since 5 July 2010, the name 'Travelink' has been used since 1994 when the company Travelink Systems Ltd was incorporated. The history of this company is discussed in the evidence and, in short, I note that it was acquired by Comtec Europe Communications Ltd in 2005 and then, in 2017, that company merged with a number of other companies to become Inspiretec Ltd, being the opponent itself.[2] Taking this history into account, I am satisfied that any use of the 'Travelink' mark by these predecessors is capable of pointing towards a reputation in the mark relied upon by the opponent.

16. A number of screenshots from the opponent's website since the aforementioned merger in 2017 are provided.[3] These are taken from the internet archive facility, The Wayback Machine and are dated 9 October 2018, 10 December 2017 and 10 August 2018. The first screenshot discusses 'Travelink' in that it is an end-to-end booking and reservation system built for tour operators. The second and third screenshots make no reference to the 'Travelink' product/service.

17. Additional screenshots are provided from the Comtec website that are, again, taken from the Wayback Machine.[4] These are dated 1 December 2005 and 4 July 2007. As above, Comtec is the predecessor company of the opponent prior to the 2017 merger. The first screenshot only refers to 'Travelink' insofar as it includes a hyperlink for 'New Travelink Products' on the right hand side of the website. The second screenshot has a similar issue in that it only refers to 'Travelink' via a hyperlink which the website describes as being one of its market-proven travel selling and management systems. The other brands referred to in this section of the screenshot are 'EasySell', 'WebSell' and 'TravelCat'.

[2] There is evidence of Companies House screenshots, certificates of incorporation and press coverage regarding the merger in 2017 at JW1 to JW5.
[3] JW6 to JW8
[4] JW9 and JW10

18. The evidence goes on to discuss the opponent's coverage in press articles. While no articles are provided, I note that a screenshot showing a list of search results for 'Travelink' is provided.[5] This screenshot is cropped to the point that I am unable to determine what website it is taken from but I note that it does show six results from 'Travel Weekly', each of which show the 'Travelink' branding in the title of the articles. The articles shown on the search results are dated between 31 March 2000 and 25 February 2019. The narrative evidence of Ms Wheeler sets out that these are articles from the UK's number one travel trade publisher. While this evidence is noted, it covers just six articles over 19 years, being a limited level of coverage. Further, I have no evidence before me regarding the actual readership or circulation figures for these articles and nothing to indicate whether the articles actually appeared in physical prints of the publication or whether they are simply online only articles.

19. In discussing the evidence of the opponent's publicity, I note that Ms Wheeler sets out that the opponent has appeared in many advertisements. While no evidence of such advertising is provided, it is confirmed that the opponent has an average annual marketing/advertising spend of £46,000. In support of this, Ms Wheeler claims that the marketing/advertising efforts include attendance at trade events. A photograph of the opponents' stand from the 'Travel Tech Show' in June 2022 is provided.[6] Aside from being after the relevant date for the present ground (which is 21 October 2021, being the filing date of the applicant's mark), the stand shown is branded as 'Inspiretec' and I see no reference to 'Travelink' in or around the stand itself.

20. In both 2021 and 2022, the opponent was shortlisted for the 'Technology Supplier of the Year' award' at the Travel Industry Awards. Further, the opponent also sponsors the 'Tour Operator of the Year – Large' award. Images of these shortlists are provided in evidence,[7] so too is an invoice dated 29 September 2022 for the sponsorship package.[8] While these are noted, both the shortlist and the invoice bear the name 'Inspiretec' and make no reference to the 'Travelink' branding.

[5] JW11
[6] JW12
[7] JW13
[8] JW14

Further, even ignoring the fact that the 'Travelink' branding is not included, the 2022 evidence is after the relevant date so is of no assistance in any event.

21. Evidence of what Ms Wheeler refers to as a brochure advertising 'Travelink' is provided.[9] Ms Wheeler sets out that this was produced as part of a marketing activity in 2020. These pages do include reference to the 'Travelink' branding and are confirmed as being shared with suppliers and travel agents in 2020. However, while noted, there is no information as to how widespread the distribution of these documents was and no confirmation as to whether any of these brochures led to actual sales to customers.

22. In respect of the size of the opponent's customer base, I note that the evidence sets out that there are 21 travel brands using the 'Travelink' software.[10] While that may be the case, the narrative evidence on this point confirms that this was the position "as of today".[11] Given that the statement is dated 2 September 2022, this is not necessarily reflective of the position as at the relevant date. On this point, there is nothing to suggest what the position was as at the relevant date. As such, it is entirely plausible that some of these customers may have only sought the opponent's goods or services after the relevant date. I am of the view that it is likely that the actual customer numbers as at the relevant date would have been known to the opponent and it is reasonable to expect information of such to have been provided in evidence.

23. The evidence goes on to discuss a partnership between the opponent and what Ms Wheeler claims to be a well-known travel association, being ABTA. There are screenshots provided that speak to this partnership but I note that they all make reference to 'Inspiretec' rather than the 'Travelink' branding.[12] Further, one item of evidence relates to an 'upcoming' event which means that it falls after the relevant date.[13] In addition to the association with ABTA, there is reference to the opponent being a member of the 'Travel Technology Initiative'. The supporting evidence in

[9] JW15 and JW16
[10] I note that, at JW17, a case study has been provided that discusses the partnership between the opponent and 'The Caravan and Motorhome Club', seemingly being one of the opponent's customers.
[11] See paragraph 4 of the witness statement of Ms Wheeler
[12] JW18 and JW19
[13] JW20

respect of this point refers to an upcoming event and, again, refers only to the 'Inspiretec' branding rather than 'Travelink'.[14]

24. Lastly, excerpts of the opponent's annual accounts are provided.[15] I note that these set out that the company's overall turnover attributable to UK activities was £6,561,000 in 2018, £7,457,000 in 2019 and £5,178,000 in 2020. I also note that the global turnover was £6,044,00 in 2021 but no breakdown as to UK figures for this year is provided. While this relates to the opponent's overall turnover, Ms Wheeler confirms that roughly £3 million of the opponent's annual turnover is attributable to profit from the use of its 'Travelink' system.[16] In its written submissions, the applicant takes issue with this claim and states that (1) it is unclear and (2) it is not substantiated in evidence. This is noted but I do not consider the opponent's evidence on this point to be unclear. As above, Ms Wheeler has confirmed that of the total turnover achieved by the opponent, roughly £3 million a year is attributable to the 'Travelink' product/service. This implies that the turnover between 2018 and 2021 stood at roughly £12 million in total. This evidence is accompanied by a statement of truth and I have no reason to disbelieve Ms Wheeler on this point.

25. In response to the opponent's evidence, the applicant filed evidence in respect of the sufficiency of the same. I do not intend to summarise this in full but briefly note that the applicant filed evidence of a Statista print-out in order to demonstrate that the use of Travelink software compared to the actual number of travel brands in the UK is very small.[17] Having reviewed this evidence, I note that it shows the following:

    a. the number of tour operator enterprises in the UK rose from 1,600 in 2008 to 2,112 in 2020;
    b. the number of enterprises in the air transport industry in the UK varied from 981 in 2008 to 1,123 in 2018. I note that in the intervening years between 2008

[14] JW21
[15] JW22
[16] It appears to me as per paragraph 6 of the witness statement of Ms Wheeler, this relates to the turnover 'over the past 3 years'.
[17] Pages 49 to 53 of AG1

and 2018, these figures frequently dipped with the lowest being 701 operators in 2016; and

c. as of March 2022, there were 3,710 retail travel agent stores operating in the UK.

26. I note that the Statista reports provided were compiled and published in 2022. However, as above, two of the reports cover a number of years beginning in 2008 so are, therefore, relevant to the issue at hand. As for the latter referenced report, I note that this is a figure *as of March 2022*, being some five months after the relevant period. While it may not be reflective of the exact position as at the relevant date, it is likely to be reflective of figures somewhere in that region as I suspect that the position is not likely to have changed that much in the five month period between October 2021 (being when the relevant date fell) and March 2022.

27. While the narrative evidence of Mr Gothold did not expressly state the purpose of this evidence being filed, it is clear from the applicant's written submissions in lieu of a hearing that its intention was to demonstrate that the opponent's base of 21 customers is not representative of a significant part of the relevant public.

28. It is clear from my summary of the evidence above that there a number of issues with the opponent's evidence such as the repeated reference to 'Inspiretec' (as opposed to 'Travelink') and the fact that a range of evidence has been provided from after the relevant date. In considering the point of evidence in relation to 'Inspiretec', I wish to discuss the opponent's claim to have incurred an average advertising expenditure of £46,000 per annum. Given the nature of the advertising and marketing evidence before me (in that it relates mainly to the 'Inspiretec' branding), I have some difficulty in accepting that such expenditure can be said to wholly relate to 'Travelink' as opposed to 'Inspiretec'. On this point, I am of the view that if there was sufficient advertising evidence in respect of the 'Travelink' branding, then it would be reasonable to expect evidence of such to have been provided during these proceedings. Without such, I am not willing to infer that any and all advertising spanning from this expenditure (beyond that which is shown in evidence before me) would have been branded as 'Travelink'. I am of the view that the effect of this advertising expenditure is, therefore, limited as a result.

29. Having said the above, I cannot ignore the turnover of £3 million per annum that the evidence confirms as specifically relating to the 'Travelink' branding. On the point of the turnover, the figures provided only go as far back as 2018. I, therefore, have no indication as to how longstanding such a level of turnover was prior to this date. While that may be the case, I am of the view that a level of turnover in multiples of millions of pounds does not accrue overnight. As such, it is reasonable to infer that the turnover between 2010 (being when the 'Travelink' mark was first used) and 2017 would have been at a respectable level that steadily increased to the point where it reached £3 million in 2018.

30. An annual turnover of £3 million as at the relevant date is clearly not an insignificant level of use. However, the issue before me is the size of the relevant public. The evidence of the opponent repeatedly refers to the fact that its 'Travelink' system is aimed at travel agents and the travel industry (on this point, I note that the specification of the opponent is even limited as such). While the opponent did not file evidence as to the size of this relevant public, the applicant did. Having considered said evidence, I accept, there is likely to have been thousands of operators in the UK travel industry as at the relevant date. Further, as rightly pointed out by the applicant, the evidence only goes so far as to state that the opponent only has 21 customers. Even ignoring the issue with this evidence (being the one I have discussed at paragraph 22 above), this is clearly a very limited consumer base and represents only a very small proportion of the relevant public. On this point, I remind myself of the case law cited above which states that in order for a reputation to exist, the mark must be known by a *significant part* of the relevant public. Put simply, the evidence does not demonstrate this. Even if it could be said that the marketing efforts of the opponent could point to a wider level of knowledge I have concluded at paragraph 28 above that this evidence is of little assistance due to its focus on 'Inspiretec'. As such, it does nothing to elevate the opponent's case beyond the fact that it has, at best, 21 customers.

20. Taking all of the above into account, I am not satisfied that the opponent has demonstrated that its mark enjoys a level of reputation across a significant part of the relevant public. I make this finding whilst bearing in mind that the level of

turnover associated with the 'Travelink' brand is not insignificant, however, the finding is made particularly on the basis that the opponent only has, at best, 21 customers and its marketing evidence is not indicative of any wider level of knowledge amongst the relevant public. The opponent's claim, therefore, fails at this point.

31. For the sake of completeness, I have given consideration as to whether a link would exist even if it could be said that the opponent enjoys a low level of reputation in its mark for the goods and services relied upon. Having done so, it is my view that there would not. In order to illustrate this point, I will proceed to discuss the relevant consideration in relation the existence of a link in the ordinary way below.

Link

32. As noted above, an assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

33. Plainly, the marks are identical and, as set out above, the applicant has conceded as such.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

34. The applicant's goods are printed materials in class 16 such as travel guides, itineraries, travel information. Its services vary but mostly relate to travel. For example, the applicant's specification includes travel insurance, blog services, a range of travel agency services, organisational services (relating to sport, culture and entertainment) and accommodation services. Both the goods and services of the applicant include a limitation that none of which relate to online currency. Clearly, the applicant's goods and services all relate to those types of goods and

services that are commonly offered by travel agents. On the other hand, the opponent's goods are computer software for the travel industry. Its services are design, development, installation, maintenance and repair services for computer software, again, all relating to the travel industry. In considering the parties' goods and services, I note that they can all be said to relate to travel. Outside of this, I consider that they are entirely distinct goods and services. In making this finding I remind myself of the case of *Commercy AG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-316/07, wherein the General Court found computer software goods and the development and design of the same (all for booking of accommodation) were dissimilar to travel reservation and travel booking services. To confirm, I have also given consideration to the factors set out by Jacob J (as he then was) in the *Treat* case,[18] which I will discuss briefly below.

35. The goods and services differ in nature and method of use. I say that because opponent's specification covers goods and services relating to software whereas the applicant's covers a range of travel agency related goods and services. These are clearly not similar in nature or method of use. As for purpose, I appreciate that a travel agent may use the opponent's goods for the end purpose of booking a holiday on behalf of a customer. However, the core purpose of such software is to facilitate the booking of a holiday and not the actual travel agency services themselves (being the purpose of the applicant's goods or services). As for the opponent's services, these are clearly not the same purpose as they relate to design, development, installation, maintenance and repair of software. I see no reason as to why the parties' goods would share any overlap in purpose. Turning to user, I am of the view that the limitation in the opponent's goods, being that they are all for the travel industry, indicates that the user for those goods will be members of said industry (such as travel agents and operators). The user for the applicant's goods and services are, on the contrary, members of the general public at large or business users (for those services relating to business travel,[19] for example) looking to book a holiday. I am of the view that trade channels will also differ on the basis that the provider of the applicant's goods and services will be

[18] [1996] R.P.C. 281
[19] Being a term in the applicant's specification

travel agents but the provider of the opponent's goods and services will be software developers. The goods and services at issue will also be available via entirely distinct outlets. Lastly, I do not consider that the goods and services at issue are competitive in nature and neither are the complementary. Taking all of this into account, the goods and services of the parties are dissimilar.

36. As for the relevant section of the public, following what I have said in the preceding paragraph regarding the different users, the user bases for the goods and services at issue are distinct. I say this whilst acknowledging that the applicant's users include business users and the travel agents/operators that use the opponent's goods of services may also be technically classified as business users. However, it is my view that those business users looking to book holidays are likely to be corporate clients looking to arrange business travel for employees rather than travel agents or tour operators.

The strength of the earlier mark's reputation

37. I have found the opponent's mark enjoys only a low level of reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

38. The opponent's mark is the word 'Travelink' and covers goods and services that relate to the travel industry. As such, the mark is allusive to the nature of the goods at issue. Therefore, I find that the opponent's mark is only inherently distinctive to a low degree.

39. As for enhanced distinctiveness, I have summarised the entirety of the opponent's evidence at paragraphs 15 to 24 above. I rely on that same summary here. Put simply, I do not consider that the evidence is sufficient to warrant a finding that the opponent's use of its mark has resulted in its distinctive character being enhanced beyond its inherent level. As such, the inherent position remains.

Whether there is a likelihood of confusion

40. A likelihood of confusion requires that there is a degree of similarity between the goods and services at issue.[20] In the present case, the goods and services are dissimilar so, therefore, there can be no likelihood of confusion.

Conclusion on link

41. As noted in the case law summary above, my assessment of whether the public will make the required mental 'link' between the opponent's mark and the applicant's mark must take account of all relevant factors. One of those factors is the relevant public, which I have found to be distinct. In respect of this point, the CJEU, in *Intel*, stated the following:

> "The relevant public
>
> 33. The public to be taken into account in order to determine whether registration of the later mark may be declared invalid pursuant to Article 4(4)(a) of the Directive varies depending on the type of injury alleged by the proprietor of the earlier trade mark.
>
> 34. First, both a trade mark's distinctiveness and its reputation must be assessed, first, by reference to the perception of the relevant public, which consists of average consumers of the goods or services for which that mark is registered, who are reasonably well informed and reasonably observant and circumspect (as regards distinctive character, see Case C-363/99 Koninklijke KPN Nederland [2004] ECR I-1619, paragraph 34; as regards reputation, see, to that effect, General Motors, paragraph 24).
>
> 35. Accordingly, the existence of injury consisting of detriment to the distinctive character or the repute of the earlier mark must be assessed by reference to

[20] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

average consumers of the goods and services for which that mark is registered, who are reasonably well informed and reasonably observant and circumspect.

36. Secondly, as regards injury consisting of unfair advantage taken of the distinctive character or the repute of the earlier mark, in so far as what is prohibited is the drawing of benefit from that mark by the proprietor of the later mark, the existence of such injury must be assessed by reference to average consumers of the goods or services for which the later mark is registered, who are reasonably well informed and reasonably observant and circumspect.

[…]

46. It is possible that the conflicting marks are registered for goods or services in respect of which the relevant sections of the public do not overlap.

[…]

48. It is therefore conceivable that the relevant section of the public as regards the goods or services for which the earlier mark was registered is completely distinct from the relevant section of the public as regards the goods or services for which the later mark was registered and that the earlier mark, although it has a reputation, is not known to the public targeted by the later mark. In such a case, the public targeted by each of the two marks may never be confronted with the other mark, so that it will not establish any link between those marks."

42. Given my finding that the respective relevant publics for the parties' goods and services are not the same and do not overlap, it is difficult to see how a link would be made. The relevant public for the goods for which the opponent has a reputation comprises members of the travel industry such as travel agents or tour operators whereas the relevant public for the applicant's goods and services comprises members of the general public or business users seeking to book a holiday. In the present case, I do not consider that the relevant publics at issue for each respective mark would encounter the mark targeted at the other relevant public. For example, a user looking to select the applicant's travel agency services is not likely to ever

encounter the opponent's use of the mark. While this may not necessarily be fatal in cases where an earlier mark enjoys a very large reputation, that it clearly not the case here. Put simply, I do not consider that the reputation of the opponent's mark is such that it goes beyond the opponent's targeted relevant public. As a result, I find that the low level of reputation in the opponent's mark (and its low level of inherent distinctive character, for that matter) is not sufficient to create a link between the marks at issue. For the avoidance of doubt, I consider that this is the case even upon taking into account the identity of the marks at issue.

43. For the sake of completeness, my primary finding is that the opponent's mark does not enjoy a reputation so the reliance upon the present ground fails at that stage. However, in the event that I am wrong to find as such, I am of the view that the level of reputation enjoyed would only be low. Given the distance between the goods and services at issue and their distinct relevant publics, this reputation is not sufficient to create a link in the minds of the relevant public. Regardless, I find that the opponent's claim fails in its entirety.

Final remarks on 5(3)

44. I note that during the course of these proceedings, the applicant raised arguments in respect of it having due cause to register its mark. While noted, such an argument would only come into play in the event that I was to find damage under the 5(3) ground. Given my findings above, I do not consider it necessary to consider this issue.

CONCLUSION

45. The opposition has failed in its entirety meaning that, subject to any appeal, the applicant's mark may proceed to registration for all goods and services applied for.

COSTS

46. As the applicant has succeeded in full, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the

circumstances, I award the applicant the sum of **£1,000** as a contribution towards its costs. The sum is calculated as follows:

Considering the notice of opposition and filing a counterstatement:	£200
Considering the opponents' evidence and preparing its own:	£500
Preparation of written submissions:	£300
Total:	**£1,000**

47. I hereby order Inspiretec Limited to pay Travelink Group Limited the sum of £1,000. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 27th day of November 2023

A COOPER
For the Registrar