

BLO/169/22

In the matter of the TRADE MARKS ACT 1994

-and-

**IN THE MATTER OF APPLICATION NO. 3304546 BY RELIANCE HOMES
LIMITED
TO REGISTER AS A TRADE MARK:**

RELIANCE HOMES

IN CLASSES 36 AND 37

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 413399
BY RELIANCE TRUST LIMITED**

1. This is an appeal from the decision of Heather Harrison, the Hearing Officer on behalf of the Registrar of Trade Marks, dated 29th August 2019, in opposition number 413399, brought by Reliance Trust Limited against application number 3304546 by Reliance Homes Limited, to register their trade mark RELIANCE HOMES in classes 36 and 37.
2. The RELIANCE HOMES application, which is opposed, is a straightforward word mark which, as I have said, was applied for in class 36 for a wide range of financial services and more relevantly in class 37 for

property development; property maintenance; renovation and repair; construction of property; construction project management services; information, advice and consultancy in relation to all the aforesaid services.

3. This application was opposed by the Opponent, Reliance Trust Limited, under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994. The decision was founded on section 5(2)(b) and section 5(3). Section 5(4)(a) ultimately added nothing and indeed

the reasoning under section 5(3) was no different from the reasoning under section 5(2)(b). In particular the relevant detriment or unfair advantage was said to follow from a finding of likelihood of confusion. In other words, the objections all stood or fell together on the basis of the likelihood of confusion.

4. The marks relied on by the Opponent comprised, in two cases, the word RELIANCE itself and in a third case a device mark, the primary feature of which was the word RELIANCE.
5. For today's purposes I can simply take the EU trade mark relied on, number 1111202, for the word RELIANCE, which was registered in classes 9, 35, 37, 39 and 42. It was registered as of 18th March 1999 and was entered in the register on 17th May 2000. Use had to be shown of that mark under the provisions of section 6 and section 6(a) of the Trade Marks Act, but it was accepted at the hearing before the Hearing Officer that it had been used in relation to the key services that were relied on to support the grounds of objection.
6. The goods and services for which the Opponent's mark reliance was registered are as follows.
 - (i) In class 9 (various security apparatus, the details of which do not matter for the purpose of this Appeal)
 - (ii) in class 35 *the management of facilities* and
 - (iii) in class 37 *the installation, maintenance and repair of security apparatus and installations.*

Ultimately, we are only concerned in this appeal with the class 35 registration (management of facilities) because that was the basis upon which the Hearing Officer ultimately upheld the opposition in respect of the services which are under appeal before me today.

7. The Hearing Officer, following an oral hearing, upheld the opposition in relation to various of the services for which the mark RELIANCE HOMES was applied for, including all the services under class 37, which I have set out in paragraph 2 above.
8. In relation to those class 37 services, the Opposition succeeded on the basis of a finding of likelihood of confusion with the mark RELIANCE used in relation to the services for which it was registered in class 35, namely '*management of facilities*'.
9. The Applicant has appealed before me in relation to the finding of the Hearing Officer refusing registration of the class 37 services. The applicant was represented before me today by Mr. Gallafent, who had represented them below.
10. The Opponent was not represented before me. Submissions were invited from the Opponent as Respondent to this appeal, but what was filed was simply the submissions which had been advanced before the Hearing Officer. That was not particularly helpful from my point of view. I have therefore proceeded on the basis that the Respondent is simply supporting the decision of the Hearing Officer for the reasons that she gave, which is of course a perfectly legitimate stance for a respondent to take on an appeal.
11. Turning to the basis of the decision in respect of the refusal of the class 37 services, I should say that the decision of the Hearing Officer is, as Mr. Gallafent accepted and averred, a lengthy and clear exposition of the various marks, their services and the legal principles to be applied.
12. For the purpose of the Appeal, I think I can summarise the relevant findings as follows, adding some comments of my own:
 - (a) The earlier trade mark RELIANCE does not have any more than a low to medium level of inherent distinctive character. I agree. As she says in paragraph 51, the word RELIANCE alludes to the reliability of a particular product, service or service provider.
 - (b) There was some evidence of 'enhanced distinctiveness' of the earlier mark in relation to a company called Reliance High-Tech but at least since 2005 there was no evidence that

it had obtained any reputation other than in the security industry (as she finds in paragraph 53). She is therefore not persuaded that the mark benefits from any reasonable level of enhancement in terms of *management of facilities*. On this point she says as follows:

"Much can happen over 14 years, including complete abandonment of a business area. Any enhancement in relation to facilities management services is small and therefore the ultimate conclusion in relation to the distinctiveness of the Opponent's mark was that in relation to facilities management it was no more than of medium distinctiveness".

- (c) Turning to the comparison between the marks, she draws attention to the fact that RELIANCE HOMES and RELIANCE are different but notes that the word HOMES is pretty descriptive in relation to the goods and services at issue and therefore is unlikely to be given a great deal of trade mark significance. She therefore concludes that the marks are similar to a high degree. I agree.
- (d) As for the average consumer and the degree of attention which would be likely to be paid by the average consumer, she finds that the average consumer could be a business or an individual. However, they are likely to pay a reasonably high level of care and attention when choosing the services in issue given that the services involve their property, with the potential for significant inconvenience or lasting consequences if a poor choice was made. It seems to me that that is plainly correct given the nature of the services at issue in the present case.
13. The Hearing Officer considered the construction of the phrase *management of facilities* in paragraph 33 of her decision and I think I can summarise it as follows. Facilities management was a recognised field of business, primarily concerned with the maintenance of buildings and equipment, although its exact borders are somewhat unclear. The Hearing Officer distinguished the management of facilities in terms of maintaining buildings and equipment, from the actual provision of maintenance services but essentially recognised that facilities management involves an organisation taking control of the provision of services for buildings and equipment. That seems to me to

be a reasonable understanding of the term and I did not understand Mr. Gallafent seriously to take issue with it.

14. I now turn to the key issue on this appeal, which is the Hearing Officer's consideration of the similarities and differences between the services for which the mark was applied for in class 37 and the facilities management services for which the Opponent's mark was registered in class 35.

15. She deals with this between paragraphs 41 and 43 of her decision. First of all, she divides up the class 37 services for which the mark was applied into two segments:

- (i) property maintenance; renovation and repair; information, advice and consultancy in relation to all those services.
- (ii) property development; construction of property; construction project management; information, advice and consultancy in relation to those services.

It seems to me that this is a sensible division because there is plainly a difference of significance between property maintenance services and property development services.

16. So far as the first segment – *'property maintenance, renovation and repair'* services - is concerned, the Hearing Officer found that these were similar 'to a medium degree' to facilities management services. Her reasoning was that management of facilities will include the organisation of property maintenance and repair. There is therefore an overlap in purpose and an intersection amongst users. Indeed, there is a complementarity in the services. This seems to me to be a perfectly correct analysis. It is also perfectly reasonable to conclude, as she did in paragraph 41, given the similarity of those services, that there might be a likelihood of confusion (including indirect confusion on the basis that one mark may be considered to be an extension of the services provided by the proprietor of the other).

17. Mr. Gallafent challenged this finding on the basis that there was a considerable difference between a service which involved the physical maintenance or repair of a

property, which would involve for example carpentry, electrical services and the like, and what is essentially a management operation comprised by the definition "management of facilities". Whilst that is true, the close relationship between one and the other, pointed by the Hearing Officer, seems to me to be also true and I see nothing in her decision in paragraph 41 to give rise to a ground of appeal.

18. I turn now to the second segment of the class 37 services, namely '*property development, construction of property and construction project management*' services. In this respect it seems to me Mr. Gallafent has a stronger case. The similarity between property development and construction and facilities management seems to me to be pretty remote. The Hearing Officer herself struggled (I think) to explain why the two might be considered to be related. The best point she made was that a provider of property development or someone concerned with the construction of property may also be concerned with property renovation. However, it seems to me that this is a diversion from the real substance of the services which are encompassed by the definition in class 37, which is essentially about building property, not maintaining it.
19. Ultimately, the Hearing Officer concluded that the services were similar '*to a fairly low degree*'. Mr. Gallafent submits that that decision was wrong and that she should have found that they were in fact dissimilar, which would have led, as a result of the reasoning later on in her decision, to a finding that there was no likelihood of confusion.
20. I consider that Mr. Gallafent is right on this point. Property developers and builders are not in the same business, even remotely, as those who provide facilities management. The link between the services identified by the Hearing Officer was far too weak to comprise a true similarity in their nature.
21. Even if I was wrong about that and the Hearing Officer was correct here to find that there was some low degree of similarity in the services, I do not believe it would be right to find that there was a risk of confusion between the mark RELIANCE when used in respect of the management of facilities and the mark RELIANCE HOMES when used in relation to the second segment of services in class 37.

22. As the Hearing Officer found, we are concerned here with consumers, whether businesses or members of the public, who are paying a reasonably high level of attention to choosing the services, and when one is talking about property development and construction services I would suggest they are paying a very high level of attention given the likely high amounts of money and consequences which are tied up with the provision of these services. The marks are different and the mark RELIANCE is neither inherently, nor through use, particularly distinctive. It seems to me to be most unlikely in those circumstances, that there could be any real risk of confusion. To my mind, there would be no difficulty in the two marks existing in the market used in respect of these differing services without conflict.

23. In all the circumstances therefore, I will set aside the Hearing Officer's decision in respect of the following services in class 37 for which the mark has been applied for, namely

property development; construction of property; construction project management services; information, advice and consultancy in relation to all the aforesaid services.

24. The mark will continue to be refused for all the other services for which the Hearing Officer refused it, including the remaining services in class 37, namely

property maintenance; renovation and repair and; information, advice and consultancy in relation to those services.

25. In the circumstances, the appeal has partially succeeded and partially failed. I will make no order as to costs.

IAIN PURVIS QC

The Appointed Person

28 February 2022