

TRADE MARKS ACT 1994

**IN THE MATTER OF Application NO 2389521
IN THE NAME OF NOW WIRELESS LTD**

**AND in the matter of OPPOSITION THERETO UNDER NO 96012
BY STARBUCKS (HK) LTD**

APPEAL from the decision of Mrs Ann Corbett dated 24 February 2010

DECISION

1. This is an appeal against a decision of Mrs Ann Corbett, the Hearing Officer for the Registrar, dated 24 February 2010, relating to an application to register the mark NOW WIRELESS (“the Mark”) for a wide range of goods in Class 9 and services in Classes 38 and 42.
2. The matters which I have to decide include a preliminary issue as to whether the appeal should be stayed pending the resolution of revocation proceedings relating to the opponent’s Community trade marks. Subsumed within that issue is a point as to the appropriate procedure for dealing with that request for a stay, and whether I ought to decide the issue at all, as no decision had been taken on it by the Registrar below. For reasons which I explain further below, the preliminary issue and the substantive appeal were heard together, and this decision deals with both of them.

Background

3. The application to register the Mark was filed on 15 April 2005 and stands in the name of Now Wireless Ltd (“Wireless”). The application is for a series of five marks:

NOWWIRELESS

NOWSMS

NOWMMS

NOWWAP

NOWGPRS

4. The application was published on 2 November 2007. On 30 January 2008, notice of Opposition was filed on behalf of Starbucks (HK) Ltd (“HK”), on two bases:
 - (a) an objection under section 3(1)(a) of the Act based on a claim that the application does not satisfy the requirements of section 1(1) because it does not comply with section 41(2) of the Act; and
 - (b) an objection under section 5(2)(b) of the Act based on four earlier Community Trade Marks belonging to HK, details of which are set out in Annex B below.

5. Wireless amended its specification of goods and services but HK continued with the opposition. Wireless filed a counterstatement denying each of the claims made and then filed evidence in these proceedings. HK filed no evidence but did file written submissions in response to the counterstatement and to Wireless’s evidence. The final amended form of specification is set out in Annex A below. No hearing was requested and Mrs Corbett decided the opposition on the papers before her.

The decision below

6. Wireless submitted to the Hearing Officer that the opposition should be dismissed because HK had failed to put a representation of the earlier marks relied on in its Notice of Opposition as required by rule 17(5):

“Where the opposition is based on a trade mark which has been registered, there shall be included in the statement of the grounds of opposition a representation of that mark ...”

7. HK had completed the relevant part of Form TM7 to indicate that the marks relied upon were “Now (stylised)” or “Now Network of the World (stylised)”. No depiction of the “stylised” marks was included in the form, hence Wireless’s objection. However, Wireless itself set out the stylised marks in its counterstatement.

8. Mrs Corbett dealt with the issue in this way:

“9. The rule requires an opponent to file a “representation” of the mark(s) relied on. It does not require a duplicate or exact copy of the mark(s) to be filed. In my view each of the written descriptions of the relevant marks which [HK] has entered on the Form TM7 constitutes a representation of that mark. I therefore reject Wireless’s request to dismiss the opposition based on its claim that [HK] has failed to provide a representation of the marks relied upon. In passing, I note that it is clear from its counterstatement and written submissions that Wireless is well aware of what stylisation is involved. In any event I do not consider it to be in the public interest to determine the dispute between the parties on the basis of such a technicality.”
9. The Hearing Officer’s finding as to Rule 17(5) was challenged as the first substantive point in Wireless’s Grounds of Appeal.
10. Next, Mrs Corbett dealt with the objection under section 3. She rejected it and as neither party has appealed this element of the decision, I say no more about it.
11. The Hearing Officer went on to deal with the objection under section 5(2)(b). HK relied upon four earlier Community Trade Marks, each of which includes the word “Now” with some stylisation. I have set out the details of the lengthy specifications of those CTMs at Annex B below. None of the CTMs has a registration date which is more than five years before the date of publication of the application, the latest of them having been registered on 24 May 2004. That being so, Mrs Corbett commented that HK was not required to prove use of its marks. At the time that the Hearing Officer made her decision, however, each of HK’s marks had become vulnerable to an application for revocation for non-use: the earliest of them had been vulnerable to such attack since 16 December 2008 and the latest since 24 May 2009. However, no such application for revocation had been made before Mrs Corbett delivered her written decision.

12. The Hearing Officer took into account the guidance of the Court of Justice in relation to assessing the issue under section 5(2)(b), which she set out in the UKIPO’s standard form. She went on to say under a sub-heading “The relevant consumer and the purchasing act”:

“33. The vast majority of the goods and services are technical and specialised and, whilst some may be bought by private individuals, many are more likely to be bought by businesses. I note again that some of the goods and services are, in fact, limited to business users. Given the specialist nature of these goods and services and the wide range involved, some may be bought “off the shelf” but others will be somewhat bespoke and bought after a good deal of discussion to ensure they are fit for purpose. The relative cost of the goods and services are likely to be equally wide, ranging from a low cost item such as a mobile phone case to a high cost service such as the design, installation maintenance and repair of a computer network. The level of attention paid to the purchase is likely to be similarly varied.”

Her assessment of the relevant consumer is challenged on the appeal.

13. Mrs Corbett next compared the marks. She said:

“34. [HK] relies on four earlier marks as detailed at Annex A. I intend to make the comparison in relation to earlier mark nos. 1421700 and 1417831 as, if [HK] fails in respect of these registrations it is unlikely to be any stronger a position in relation to the remaining two earlier marks. As the two earlier marks are identical, I shall treat them for the purposes of comparison, as a single mark. For ease of reference, I set out the respective marks below:

| Wireless’s marks | [HK’s] earlier mark |
|--|--|
| NOWWIRELESS NOWSMS NOWMMS NOWWAP NOWGPRS |  |

35. In its submissions, [HK] says:

“[T]he “NOW” element of the Application Mark will also be the distinctive and dominant element of the Application Mark as the terms “WIRELESS”, “SMS”, “MMS”, “WAP” and “GPRS” (the “Suffixes”) are merely descriptive and non distinctive terms which are associated with the goods and services covered by the Application Mark. The Oxford English dictionary describes these terms as follows:

[the Hearing Officer set out the definitions]

As such, these terms will be disregarded by the relevant consumer for identifying the source of the goods and services provided under the Application Mark. The relevant consumer will consider it a mere informative explanation of the nature of the Applicant’s business. The fact that the two words are joined together makes no difference since the two words “NOW” and each of the Suffixes, which are all common words/abbreviations in the English language, will be identified by the relevant consumer as two separate words with two separate meanings”.

36. For its part Wireless does not dispute the above dictionary definitions.

37. In its submissions, Wireless says, at paragraph 19, that “the word NOW *simpliciter* is devoid of distinctive character for the goods and services cited by the Opponent.” At paragraph 22 of the same submissions, however, it refers to the word having “low distinctive character” and at paragraph 23 it says it is “likely to be devoid of distinctive character”. It also refers me to the registrar’s decision (BL O/211/00) in the case of 3DNOW! highlighting the reference within it to the comments of the Hearing Officer wherein she writes of a mark having “another (albeit non-distinctive) element i.e. NOW!”

38. In *José Alejandro SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Anheuser-Busch Inc* intervening, (Case T-129/01) [2004] ETMR 15, it was stated:

“The court notes that the public will not generally consider a descriptive element forming part of a complex mark as the distinctive

and dominant element of the overall impression conveyed by that mark.”

39. The application is for a series of 5 marks as detailed in paragraph 1 above. Each is presented in plain block capitals and each begins with the word NOW. The word NOW is an ordinary, everyday, dictionary word with a well known meaning. The first mark in the series ends in the word WIRELESS whilst the remaining four end in dictionary abbreviations. The word WIRELESS and each of the abbreviations are in common use to describe e.g. the nature, purpose and area of technology of the particular goods and services and the goods and services being of a technical nature means each suffix is likely to be noticeable within the mark. Whilst each of the marks is presented without any break between the word NOW and the remainder of the mark, each naturally breaks down into its component parts as Mr Jackson himself acknowledges in his evidence. Given the descriptive meaning of the word WIRELESS and the abbreviations appearing in each of the marks applied for, the suffix element is negligible in terms of the distinctive make-up of the marks. In my view, the dominant and distinctive element of each mark within the series is the word NOW.
40. The earlier marks consist of the word NOW written in lower case letters with six lines emanating from the outside edge of the letter O in something of a starburst pattern. The dominant and distinctive element of each of these marks is also the word NOW.
41. To the extent that the word NOW appears in each mark there is a significant degree of visual similarity between them. But the marks applied for also include the words and abbreviations as shown above, whilst the earlier marks have the starburst pattern and thus there are some visual differences between the respective marks. Aurally, there are also significant similarities in that each of the respective marks would be spoken as or begin with the word NOW. The word NOW alludes to something immediate or “up to the minute” in the sense that it is the latest product or service. The marks applied for also bring to mind the

latest (equipment or service) albeit that relating to wireless (or SMS, MMS, WAP or GPRS) technology. There is a very high level of conceptual similarity.

Distinctiveness of the earlier mark(s)

42. I have to take into account the distinctive character of the earlier mark having regard to its inherent characteristics and the reputation it enjoys with the public in respect of the goods for which it is registered. HK has not filed evidence and thus I am unable to find that the distinctiveness of its mark has been enhanced through its use. That said, the mark has a degree of inherent distinctiveness.

Similarity of goods and services

43. In his evidence, Mr Jackson gives details some of the projects his company has carried out. Whilst Wireless may have used its mark on such projects, I am required to consider the issue on a notional basis across the whole range of goods and services as registered and applied for and not just on the goods and services on which the marks may have been used. In doing so I take into account the well established guidance given in *Canon (supra)* and in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281.

44. I intend to carry out this comparison in relation, firstly, to the goods applied for in class 9 and with regard to earlier mark no 1417831 insofar as it covers goods in class 9. ...”

14. The Hearing Officer then carried out a series of comparisons of particular goods/services in Wireless’s specification against goods/services in the specifications of the earlier marks. She found numerous identities between them. She drew this all together in paragraphs 60-63 of her decision:

“60. In reaching a decision on whether there is a likelihood of confusion I must make a global assessment based on all relevant factors. I have already found the goods and services to be identical and I have found the marks to have a significant degree of visual and aural similarity and to have a very high level of conceptual similarity. Taking all factors into

account, and on a global appreciation, I consider there is a likelihood of confusion. **The opposition based on section 5(2)(b) of the Act succeeds in respect of all of the goods and services of the application.**

61. In its written submissions Wireless proposed a limitation to its specification in the event that I found there to be a likelihood of confusion in respect of the specification of goods and services as set out in paragraph 3 above. The proposal seeks to limit the goods and services to those “for use by emergency services, government organizations, public bodies, corporations and educational establishments”.

62. I take note of the decision of the Court of First Instance (now the General Court) in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)(OHIM) (“Meric”)* Case T-133/05, where, at para 29, it is stated:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application ...[*the Hearing Officer included further references here*]”

63. Whilst the proposed limitation would reduce the coverage of the goods and services for which registration is sought, these limited goods and services would still be included within the more general category designated by the earlier marks. That being the case, the limitation put forward by Wireless would not alter my finding that identical goods and services are involved.”

15. The opposition therefore succeeded in relation to all of the goods and services in the applicant's specification, and Mrs Corbett made an order for costs in HK's favour.

16. On 24 March 2010, Messrs Beck Greener, Wireless's trade mark attorneys, filed the current Grounds of Appeal. This challenged Mrs Corbett's ruling on the Rule 17 point and her findings as to the likelihood of confusion. The Form TM55 was filed under cover of a letter of the same date in which Wireless requested that the opposition “be suspended until such time as proceedings against the cited earlier European

trade marks reach a final decision, if necessary by invoking the provisions of Rule 62 (1)(f).” On 1 April 2010, Messrs Beck Greener sent the UKIPO copies of the applications for revocation of HK's Community trade marks, also dated 1 April 2010. Those applications are based upon an allegation of non-use of each of the Community trade marks. In relation to HK's registration number 1421700, for instance, the application refers to the registration of the mark having been completed on 26 March 2004 and requests that the mark be revoked in respect of all the goods and services for which it is currently registered in accordance with Articles 51 (1)(a) or 51(2) with effect from “26 March 2009 or such date as may apply.” Similarly, the applications in relation to the other three marks seek revocation from the dates in 2008/9 which are five years from the respective dates of registration of each of the marks.

17. The UKIPO forwarded the TM55 together with related documents to the Treasury Solicitors, saying "The case may proceed to appeal before the Appointed Person in the usual manner... Please note the applicant's request to suspend the above proceedings in the letter of 24 March 2010 and also find enclosed a copy of their letter dated 1 April 2010." When Messrs Beck Greener were informed of the proposed date for the hearing of the appeal they wrote to the UKIPO to object that they had not yet had an opinion from the Registrar relating to their request for a stay; subsequently, they complained that the Registrar had failed to exercise his powers under Rule 62(1) and asked for a hearing. The UKIPO responded, saying that the Registrar's powers in respect of managing proceedings under Rule 62 did not apply because the proceedings before the Registrar had been concluded and the Hearing officer was *functus officio*, and that the application for suspension would have to be pursued in front of me. Wireless had already asked that if the Registrar failed to deal with the matter, I should consider granting a stay, and in the circumstances (and in particular as that request was made shortly before the date fixed for the hearing of the appeal) I decided that the issue of whether or not there should be a stay ought to be heard as a preliminary issue at the hearing of the appeal.

Matters to be decided on the appeal

18. The preliminary points which I have to decide are as follows:

- (a) Was the UKIPO right in saying that the question of whether to grant a stay was for me rather than the Registrar to decide?
- (b) If not, should that question be remitted to the Registrar?
- (c) If the Registrar was right, or if otherwise I decided that I should deal with the request, should a stay be granted pending resolution of the revocation proceedings at OHIM?
- (d) If so, should I decide the substantive points of the appeal and (assuming that the appeal failed in whole or in part) stay the effect of the appeal, or should I suspend the appeal undecided?

In addition there are these substantive points:

- (e) Did the Hearing Officer err in her application of Rule 17 (5)?
- (f) Did the Hearing Officer err in her application of section 5(2)(b)?

The preliminary points

Who should rule on the application for a stay?

19. Mr Buerhlen submitted on behalf of Wireless that the Registrar had the power to grant the stay which he had requested on 24 March pursuant to Rule 62 (1)(f) which provides "... the registrar may give such directions as to the management of any proceedings as the registrar thinks fit, and in particular may -- ... (f) stay the whole, or any part, of the proceedings either generally or until a specified date or event." Moreover, he said, under Rule 63 (1) the registrar was required to give his client an opportunity to be heard, before taking any decision under the Rules which was adverse to his client, but the registrar had signally failed to do so by indicating that the application for a stay should be addressed to the Treasury Solicitor. Mr Buerhlen also argued that the registrar's power pursuant to Rule 77 to extend a party's time for lodging an appeal indicated that the registrar retained the wider powers to control the proceedings given to him under Rule 62 even after a decision had been given by a Hearing Officer.

20. Rule 73(4) provides that Rule 62 "shall apply to the person appointed and to proceedings before the person appointed as they apply to the registrar and to proceedings before the registrar." It seems to me, therefore, that the question of whether Wireless's application for a stay should have been dealt with by the registrar, or properly falls to be dealt with by me as the person appointed, depends on the point at which "the proceedings" before the registrar ceased being such proceedings and became "proceedings before the person appointed." In my judgment, the UKIPO was right to say that once the registrar's decision had been delivered, the Hearing Officer was *functus officio*, because "the proceedings" before the registrar were then complete. Indeed, the application for the stay was made at the same time as the appeal was lodged. Mr Buehrlen argued that those proceedings are not closed or final until the time for lodging an appeal has elapsed, however, I do not think that his argument can be right in view of Rule 70(1), which provides

"... an appeal lies from any decision of the registrar made under these Rules relating to a dispute between two or more parties in connection with a trade mark, including a decision which terminates the proceedings as regards one of the parties or a decision awarding costs to any party ("a final decision") or a decision which is made any point in the proceedings prior to a final decision ("an interim decision")."

The Hearing Officer's decision in this case was a final decision and it is clear from Rule 70 (1) that the decision terminated the proceedings, subject to any appeal. As a result, following such a decision there are no proceedings unless and until an appeal is lodged, and at that stage reference to "the proceedings" must mean the proceedings before the appointed person. The question of whether a stay should be granted pending the appeal is, therefore, for the person appointed to decide, pursuant to the powers conferred on him by Rules 73(4) and 62(1)(f). It does not seem to me that the specific power conferred upon the registrar to extend the time for lodging an appeal affects that conclusion, because the power to alter time limits set out in Rules 77 relates to any time period prescribed by the Rules, and is not related to the pendency of proceedings before the registrar.

21. For those reasons, it seems to me that the UKIPO was right to decline to deal with the application for suspension of the appeal. It does not seem to me that the registrar made any decision adverse to Wireless on this point, nor has Wireless been deprived of a hearing which it ought to have had under Rule 63. As a result, there is no need for me to remit the question to the registrar.

22. On the other hand, it would have been more helpful had the need for the appointed person to consider the application for the stay been clearly set out in the correspondence from the UKIPO sent both to Messrs Beck Greener and to the Treasury Solicitor. The role of the Treasury Solicitor in relation to appeals to the appointed person was described by Mr Richard Arnold QC as he then was, sitting as the appointed person in BL O/333/05 *m.d.e.m.* as follows:

“the administration of such appeals is handled by the Treasury Solicitor, whose department acts in effect as the Appointed Persons’ secretariat. Once a notice of appeal with grounds has been duly filed under rule 63, the Registry collates the relevant papers and sends them to the Treasury Solicitor. The Treasury Solicitor then sends the papers to the Appointed Person allocated to the appeal. Correspondence relating to the pending appeal is also dealt with by the Treasury Solicitor. If, for example, a party wishes to make some application or seek directions during the pendency of the appeal, such requests must be directed in the first instance to the Treasury Solicitor who will, if the matter calls for a decision or guidance by the Appointed Person, pass the relevant correspondence to him and then disseminate any decision or directions he may give. Once the Appointed Person has issued a final decision determining the appeal, it is usual for the Treasury Solicitor to draw up a formal order embodying the decision.”

The application for the stay should, therefore, have been addressed to the Treasury Solicitor the first instance and passed to me for decision.

22. Unfortunately, the lack of clarity in the UKIPO’s letter to the Treasury Solicitor dated 21 April 2010 meant that the request for a stay was not drawn to my attention until after Messrs Beck Greener wrote to raise the issue on 21 June 2010, in response to

the parties being given notice of the date of the appeal hearing. The result of that was that the preliminary issue was heard at the same time as the substantive appeal, when it is possible (though not certain) that it might otherwise have been addressed separately and in advance of the appeal. However, given my findings as to the merits of the application for a stay, it seems to me that no loss has been caused to Wireless (or to HK) by the way the matter was handled.

Should a stay be granted?

23. The application to stay the appeal is made on the basis of applications to revoke each of HK's earlier CTMs on grounds of non-use. The applications for revocation lodged at OHIM on 1 April 2010 seek revocation of HK's marks in their entirety. As I have mentioned above, the applications specify the dates from which revocation is sought, which are all well after the date of Wireless's trade mark application (April 2005) and the publication of its application (November 2007).
24. I have a discretion to grant a stay if it is appropriate to do so both in terms of the potential effect of the revocation proceedings on the current appeal, and in terms of the circumstances in which the application for a stay is made.
25. The essence of Mr Buerhlen's submissions on behalf of Wireless was that it would be right to grant the stay sought, because if the CTMs are revoked, the opposition will fail. He submitted that a revoked mark is not a registered mark upon which reliance can be placed in opposition proceedings. HK, on the other hand, argued that even if the CTMs are revoked, that would not prevent it from relying upon them to oppose Wireless's application, on the basis that the CTMs were validly registered when the application was made, when the application was published, when the opposition was filed and at the time of the Hearing Officer's decision. In other words, the CTMs were at the relevant date (the date of publication of Wireless's application) earlier trade marks within the meaning of section 6 of the Act. They were then not subject to the "use conditions" of section 6A because the registration procedures for the CTMs were completed less than five years before the date of publication. Wireless's

argument suggests that revocation for non-use has a retroactive effect which goes back before the date specified in the order for revocation.

26. Wireless sought to rely first of all upon the decision of the European Court of Justice in *Levi Strauss & Co v Casucci*, Case C-145/05, [2006] E.C.R. I-3703, [2007] F.S.R. 8. There the issue was whether the national court could order the cessation of use of the junior mark if the senior mark had lost its distinctive character and been revoked. The Court held at paragraph 36 that after revocation the national court could not order cessation of the use of the junior mark. However, it does not seem to me that this judgment affects the question which I must decide, as the Court was not considering the question of the impact of the senior mark prior to revocation, but whether a mark which had been revoked could have continuing effects for the future. Mr Buehrlen reminded me that I had considered *Levi* in an appeal which I heard in 2007, BL O/364/07, *T-Mobile*. In that case, T-Mobile had relied in opposition proceedings upon a mark which was later revoked for non-use. The date from which the revocation took effect was later than the relevant date for the opposition. The applicant, O2, then wished to make an application to invalidate the earlier mark altogether. The question before me was whether such an application could be made at all, but I also had to consider whether T-Mobile would have been able to rely upon the 'validity' of its revoked mark up to the date of revocation. It seemed to me that clearly it would have been able to do so, broadly for the reasons set out in the following paragraphs of this decision. In my judgment, the decision in *Levi* is not determinative of the question which I now have to decide, because the Court was only considering whether it would be appropriate to grant an injunction on the basis of a mark which had been revoked, looking to control activities after the mark was deemed invalid. The Court did not consider the question before me, which is whether it is appropriate to give effect in opposition proceedings to a mark which has been revoked, in relation to a time when it was valid.

27. Article 55 of Regulation 207/2009 provides:

“The Community trade mark shall be deemed not to have had, as from the date of the application for revocation ... the effects specified in this

Regulation, to the extent that the rights of the proprietor had been revoked. An earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision at the request of one of the parties."

That is to be contrasted with Article 55 (2) which provides:

"The Community trade mark shall be deemed not to have had, as from the outset, the effects specified in this Regulation, to the extent that the trade mark has been declared invalid."

28. Article 55(3), which provides that the retroactive effect of revocation shall not affect previous decisions on infringement or contracts concluded prior to the revocation, does not seem to me to detract from the generality of Article 55(1). In my view, all of those provisions make it clear that revocation does not affect the validity of the mark up to the date when revocation takes effect, unlike a declaration of invalidity which affects the mark from the outset.

29. Moreover, that seems to me to be consistent with the position under the 1994 Act, section 46(6) of which provides:

"Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-- (a) the date of the application for revocation, or (b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date."

The words "the rights of the proprietor shall be deemed to have ceased" in this subsection again show that revocation does not affect the validity of the mark up to the date when revocation takes effect. The rights are valid up to that date, and then cease. That approach is again consistent with the provisions of sections 6 and 6A of the Act which impose a use requirement upon earlier marks relied upon for the purposes of opposing a UK trade mark application only if they have been registered for more than 5 years. Marks which have been registered for less than 5 years at the date of publication of the mark opposed can be relied upon even if they have not been used, and (logically) even if subsequently revoked for non-use.

30. In *Hormel Foods Corp v. Antilles Landscape Investments NV* [2005] R.P.C. 28, Mr Richard Arnold Q.C. then sitting as a deputy judge of the Chancery Division said at paragraph 97

“A claim for revocation of a trade mark is fundamentally different to a claim that the trade mark was invalidly registered. A claim that a trade mark is invalidly registered is a claim that the mark should never have been registered for whatever reason, and has wrongly remained on the Register ever since. It thus essentially concerns the position as at the application date (subject to the slight anomaly created by the proviso to s. 47(1) of the 1994 Act). By contrast a claim that a trade mark should be revoked is a claim that the mark, even though it may have been validly registered, should be removed from the Register because of events occurring subsequent to registration, e.g. because it has not been used by the proprietor for five years.”

That view is echoed in Kerly’s *Law of Trade Marks and Trade Names*, 14th ed at 10-003-5. I do not believe that the position is affected by the decision of the Court of First Instance in Case T-191/04, *MIP Metro Group Intellectual Property GmbH & Co KG v OHIM*, (13 September 2006) for the reasons which I gave in my decision in *T-Mobile*.

31. Next on this point Wireless relied upon a decision of OHIM’s Second Board of Appeal in Case R 787/2005-2, *Mejerigaarden Holdings A/S v Berentzen Brennereien GmbH* (23 January 2007). There an appeal against a successful opposition was suspended by the Board of Appeal until after a decision had been made in revocation proceedings. The earlier mark having been revoked in part, the appeal proceeded on the basis of the narrower specification of goods, on which basis the appeal was allowed. Unfortunately for present purposes, no explanation is given in the decision as to why the suspension was granted or why the appeal proceeded only on the basis of the uncanceled part of the earlier mark’s specification. In the circumstances, I do not consider that this decision provides me with any basis upon which to depart from what seems to me to be the clear meaning of Article 55(1), that the effects of

revocation run from the specified date, and (by necessary implication) not from any earlier date.

32. Lastly, Mr Buehrlen referred me to a more recent decision of the General Court in Case T-27/09, *Stella Kunststofftechnik GmbH v OHIM*, 10 December 2009. In that case, the applicant had applied for a CTM consisting of the word ‘Stella’ on 29 February 1996 and the mark was registered on 19 September 2001. On 11 May 2004, the intervener applied to register a figurative mark containing the words ‘Stella Pack.’ The applicant filed a notice of opposition based upon its earlier CTM; the intervener countered by applying to revoke it. That application for revocation was partially successful and the CTM was revoked in respect of some but not all of the goods within the specification with effect from 22 December 2006. The applicant appealed both on the merits and on the basis that the revocation proceedings should have been suspended until the opposition proceedings had been resolved. I was referred to paragraph 38 of the judgment, where the Court said:

“.. the Board of Appeal also did not err in law in considering ... that revocation proceedings initiated after opposition has been raised could at most give rise to suspension of the opposition proceedings. Indeed, in the event that the earlier mark was revoked the opposition proceedings would be devoid of purpose.”

The Court continued at paragraph 39:

“However, bringing opposition proceedings without awaiting the outcome of the revocation proceedings would not be of any advantage to the proprietor of the earlier mark cited in the opposition proceedings and to which the application for revocation relates. Even if the opposition proceedings resulted in dismissal of the Community trade mark application, there would be nothing to prevent the same application from being filed again once the earlier mark had been revoked.”

33. It was submitted on Wireless's behalf that this decision shows that if the mark relied on by the opponent has been revoked by the time the final decision was reached, it cannot be relied

upon in the opposition. However, in *Stella* the Court found that there was no basis for saying that *revocation* proceedings had to be suspended whilst *opposition* proceedings based on the challenged mark were pending. Wireless argued that the last sentence of paragraph 38 shows that the Court considered that the opposition would fail if the earlier mark had been revoked, even where the revocation only took effect after the relevant date for the opposition. It does not seem to me that that is what the Court said. The Court did not go so far as to say that the opposition proceedings would fail, but commented that the opposition would be "devoid of purpose." The Court did not explain what it meant by that expression, but when taken with paragraph 39 of the Court's decision, it seems to me that the Court was suggesting that continuing with an opposition based upon a revoked mark might be of limited commercial benefit to the opponent. Paragraph 39 in my judgment shows that the Court contemplated that the opposition proceedings based on the revoked mark might succeed, but that this would give no advantage to the opponent, as there would be nothing to prevent the same application being made, after the revocation, without the risk of opposition. It does not seem to me, therefore, that the General Court's decision supports Wireless's argument that revocation takes effect from an earlier date than that specified in the order for revocation. I think the decision does the opposite, and supports the view I have expressed above as to the effect of Article 55.

34. For these reasons, it seems to me that there is no purpose in granting the stay requested by Wireless. Even if its revocation applications succeed in relation to all of the goods and services in HK's specifications and for each of its CTMs, it seems to me that the effect of revocation will not be back-dated to the relevant date for this opposition.

35. For the sake of completeness, I would add that I would in any event have been reluctant to exercise my discretion to grant the stay to Wireless at this stage, because of its delay in seeking to revoke HK's CTMs. Applications to revoke the CTMS for non-use could have been made on a variety of dates from December 2008 to May 2009 and

certainly could have been made before Mrs Corbett made her decision. When I asked why the applications had not been made at an earlier stage, Mr Buehrlen said, perfectly reasonably, that his client would not have wished to incur the costs of applying to revoke CTMs had it proved unnecessary for them to do so. I accept that. Nevertheless, at the least, it seems to me that Wireless could have indicated to the Hearing Officer that if she were minded to uphold the opposition, it would wish to apply to revoke the CTMs, and could have asked her to order a stay of her decision.

36. For all of these reasons, the stay sought by Wireless is refused. I do not need to consider more of the preliminary points identified above, and I will move on to consider the substantive points in the appeal.

Standard of review

37. This appeal is a review of the Hearing Officer's decision. That decision with regard to each of the issues in this case involved a multi-factorial assessment of the kind to which the approach set out by Robert Walker LJ in *REEF TM* [2002] EWCA Civ 763, [2003] RPC 5 at [28] applies:

“In such circumstances an appellate court should in my view show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. A decision does not contain an error of principle merely because it could have been better expressed.”

Did the Hearing Officer err in her application of Rule 17 (5)?

38. Wireless's complaint was that Rule 17(5), which is in identical terms to Rule 13(2) of the 2004 Rules which were in force at the relevant time, requires a representation of the opponent's mark to be included in Form TM7, but HK merely inserted the wording of its composite marks, adding “stylised” in brackets, without depicting the stylisation itself. Mrs Corbett dealt with this complaint in paragraph 9 of her decision, set out above,

finding that the written descriptions amounted to a “representation” as required by the rule, and in any event, declining to reject the opposition on the basis of “such a technicality” when Wireless’s own counterstatement showed that it was aware of the stylisation concerned.

39. Wireless appeals on the basis that this was an error by the Hearing Officer. It argued that the representation required by Rule 17(5) should be the same as the representation required by Rule 3 of Regulation 2868/95 (the Implementing Regulation) which describes the nature of the reproduction of the mark which must be included in an application for a Community Trade Mark. It further argued that it is no technicality to require an opponent properly to identify the earlier mark upon which he relies. HK argued that the TM7s gave an adequate representation of the marks as giving the mark number and a description of the mark, or, if not, that as the applicant was in no doubt as to the marks concerned, the Hearing Officer was right to waive any defect.

40. I am grateful for the written submissions made to me on behalf of the Comptroller-General on this point. It was submitted that the Rule should be given a purposive construction, and that on that basis it was sufficient that the opponent stated that the marks were stylised. Alternatively, if there was a failure to provide a proper representation, it was submitted that this was an irregularity which could be rectified at the discretion of the registrar under what was Rule 66 (the equivalent to Rule 74 of the 2008 Rules).

41. In my view, even giving the Rule a purposive construction, a description of a mark with visual elements simply as being “stylised” does not amount to a “representation” of the mark. I have some doubts as to whether the Hearing Officer was right to say that the Rule does not require a duplicate or exact copy of the opponent's mark to be filed on or with the TM7. It seems to me that as matter of principle an opponent ought to identify with precision the mark upon which he will seek to rely, in particular because the purpose of the provision is to enable the applicant to identify properly the mark

which is relied upon by the opponent. That may be of particular importance where the earlier right relied upon is not a registered trade mark. It seems to be, therefore, that HK's TM7s did not comply with the Rule.

42. However, in this case, HK had at least indicated that its marks were "stylised" and so made it plain that they were not simply word marks. The applicant was put on notice that it needed to look at the form in which the marks were represented and, because these were CTMs, it was able to inspect the register through its own endeavours, using the information in the Forms and so could see the nature of the stylisation of the marks for itself. Indeed, Wireless was able to include representations of the HK marks in its counterstatement. In those circumstances, it is clear that the inadequacies of HK's TM7s caused no real prejudice to Wireless.

43. It therefore seems to me that the Hearing Officer erred in finding that HK had included a "representation" of its mark in its TM7s. However, it seems to me that this was, in the circumstances, an irregularity which the Hearing Officer could have waived, and it is clear from paragraph 9 of Mrs Corbett's decision that she would have done so had she shared my view of the impact of Rule 17(5). I, too, consider that it would have been appropriate to waive that defect in the circumstances of this case. For those reasons, the appeal on this ground is refused.

Did the Hearing Officer err in her application of section 5(2)(b)?

44. Wireless argued that the Hearing Officer had failed properly to analyse the distinctive element(s) of the parties' respective marks and had erred in failing to take the visual element of HK's marks sufficiently into account. Wireless thought this was exacerbated by HK's failure properly to represent the device marks in its notice of opposition. The visual element of HK's marks was, Wireless said, particularly important in making comparisons between the marks because the word elements of the marks are so descriptive.

45. The Hearing Officer appears to have taken into account all of the relevant authorities as to the global assessment of the likelihood of confusion and she went on to assess the various aspects of the global assessment. In particular, in paragraphs 34-41 of her decision she compared the marks applied for with HK's two strongest marks. She noted the descriptive nature of elements of the applicant's marks and the applicant's own somewhat inconsistent submissions about the level of distinctiveness of the word NOW "*simpliciter*." She found the suffix elements of Wireless's marks to be negligible in terms of distinctiveness and so found the dominant and distinctive element of those marks to be the word Now. She then noted the nature of the visual elements of HK's marks, which she described as "something of a starburst pattern." If by that phrase she was suggesting that the visual element of HK's marks 1421700 and 1417831 was visually insignificant or unimpressive, that would seem to me a fair comment. It seems to me that the conclusions that she drew in paragraph 41 as to the visual similarities and differences between the marks were clearly open to her and I do not think that Wireless has identified any error of principle in this part of her decision. Nor do I think that there is any reason to think that the inadequacies in the Form TM7 had any impact upon her decision; on the contrary, it seems to me quite clear from paragraphs 34 and 44 of the decision that she reached her views as to the visual similarities of the marks with a proper representation of HK's marks before her.

46. In addition, Wireless argued that the word NOW *simpliciter* (*i.e.* without the visual elements of the marks) would not have been registrable, so that the extent of protection offered by the marks should be limited accordingly. I do not think that I can judge whether the word NOW alone would have been registrable as a CTM at the relevant time. More importantly, perhaps, it must be accepted that the protection granted by a trade mark registration extends beyond the immediate scope of the registration: see the comments of Jacob LJ at paragraphs 78-80 of *Phones 4u Ltd v Phone4u.co.uk. Internet Ltd* [2007] R.P.C. 5.

47. The Grounds of Appeal state that the Hearing Officer erred in her assessment of the visual, conceptual and phonetic similarities between the marks, but apart from the point as to the impact of the visual element of HK's marks, discussed above, that argument was taken no further, and I see no error of principle in this part of paragraph 41 of the decision.

48. The Grounds of Appeal also alleged that the Hearing Officer failed to carry out a proper comparison of the parties' respective specifications of goods and services, bearing in mind that the mark applied for was (it was said) intended to gain registration for a very specialist range of goods and services, and that she therefore failed properly to identify the relevant consumer. The original specification of goods and services was very wide, for instance, in Class 9 it included computer software, hardware and peripheral equipment, and in Class 42 it included computer services. I have set out above the Hearing Officer's analysis of the relevant consumer and the purchasing act in paragraphs 31 to 33 of the decision. It does not seem to me that there was any error in that analysis in relation to the original specification of goods and services of which Wireless can complain on appeal.

49. As I have said, Wireless had sought to narrow the scope of the specifications by a proposed limitation. As may be seen from Annex A below, this qualified certain elements of the specification by inserting the words "for emergency services, government organizations, corporations and educational establishments." In Class 9, the limitation was inserted so as to limit the scope of "computer networking equipment" but it did not limit large parts of the specification, and did not, in particular, affect the general wording mentioned above. No limitation was offered for any part of the Class 42 specification. Wireless argued in the Grounds of Appeal that the proposed limitation would affect the identity of the relevant consumer, because the mark was for specialist goods. However, as the proposed limitation affected only small parts of the

broad specification of goods and services, it does not seem to me that it had this effect across the board.

50. I am afraid that it is not clear to me whether this limitation was taken into consideration by the Hearing Officer in paragraph 33 of the decision, or whether the limitation to business users to which she referred was a reference to the wording of the original specification. On balance, I think that she had only the original specification in mind when dealing with the identification of the relevant consumer in this part of her decision. That being so, I think that Wireless has some grounds to complain that the Hearing Officer did not consider specifically whether the limitation offered in Wireless's written submissions would have affected her analysis of the identity of the relevant consumer. However, it does not seem to me that the Hearing Officer would have reached a different conclusion given what she had already said on the subject, and it does not seem to me that there is any material error in her decision in this respect which would justify overturning it on appeal.

51. I am not sure whether (as HK thought was the case) Wireless also wished to argue on the appeal that the limitation affected the identity of the relevant goods and services so as to take them out of the scope of the HK's specification. That was a point which the Hearing Officer considered at paragraphs 61-63 of her decision and (if pursued) it does not seem to me that there is any error of principle in her conclusion on a point which would justify setting it aside on appeal.

52. For all these reasons, the appeal is dismissed.

53. At the end of the hearing before me, Mr Fernando indicated that he wished to apply for an award of costs "off the scale" if the appeal was dismissed, because of the additional costs incurred in relation to the application for a stay. Whilst I accept that HK will have

been put to some additional cost by reason of the application, it does not seem to me that Wireless's application was made for an inappropriate reason or was otherwise liable to attract the sanction of an award of costs off the scale. HK has won and should have its costs of the appeal assessed on the usual scale. Accordingly, Wireless shall pay HK £2,000 as a contribution towards its costs of the appeal, to be paid within 21 days of the date of this judgment.

Amanda Michaels
13 September 2010

Mr Rowland Buehrlen of Messrs Beck Greener appeared on behalf of the applicant/appellant

Mr Giles Fernando of counsel, instructed by Dechert LLP appeared on behalf of the opponent/respondent.

Mr Oliver Morris provided written submissions on behalf of the Comptroller-General.

ANNEX A

Now Wireless's amended specification:

Class 9

Computer software, firmware, hardware and peripheral equipment, namely, servers, firewalls, VPN gateways, routers, modems, LAN access points, wireless access points, wireless systems, instant hotspots, cardbus adapters, pci adapters, USB network adapters, voice over internet equipment, VPN, wireless connectivity, digital security, SMS, MMS, WAP, email systems, instant messaging, security hardware and software, CCTV cameras and CCTV recording equipment, monitors and sensors; computer networking equipment, for emergency services, government organizations, corporations and educational establishments; computer security apparatus, instruments and software; wireless computer security apparatus, instruments and software; wireless telecommunications apparatus and equipment; wireless gateways; MMS, SMS and WAP gateways; data encryption apparatus; mobile broadband and position location apparatus and instruments; wireless networks; firewalls, wireless firewalls; virtual private networks; variable message signs and ticket machines; telecommunications apparatus and equipment for emergency services, law enforcement, security, public transport, traffic controlsystems and public CCTV; mobile telephones, mobile telephone cases, fascias, for emergency services, government organizations, corporations and educational establishments, operator logos; wireless security apparatus and instruments; parts, fittings and accessories for all the aforesaid goods.

Class 38

Provision of advice and information relating to communications, broadcasting and networking services, Internet television and radio broadcasting services, telecommunication services, wireless telecommunication services, transmission and broadcast of publications, text, signals, software, information, data, code, sounds and images, broadcasting and communications by telephone, line, cable, wire or fibre, broadcasting and transmission of text, messages, information, sound, images and data, provision of SMS, MMS and instant messaging services, general packet radio services (GPRS), interactive video text services, message and text message sending, dissemination of information over the internet and by mobile telephone, computer-aided transmission of messages and images to mobile telephones, interactive communication and telecommunication services, interactive mobile telephone, telephone, facsimile, Internet, television and television text services, communications by telegram, telex, telephones, mobile, wireless telecommunications, network services and computer terminals, video, wire, satellite, microwave or cable; communications services provided to businesses institutions and public bodies for the broadcasting and transmission of information by electronic means, broadcasting and transmission via communication and computer networks and broadcasting and transmission of digital information, electronic mail services, transmission and reception of data and of information, satellite communication services, communications by and/or between computers and computer terminals, computer aided transmission of information, messages, text, sound, images, data and radio and television programmes, transmission of on-line computerised information, provision of access to worldwide web facilities and structures, communications services for the provisions of access to information, text, sound, images and data via communications and computer networks, telecommunication access services for access to a communications or computer network, digital communications services, wireless communications services, provision of user access to a global computer network, provision of access to databases; leasing and rental services in connection with telecommunications apparatus and equipment; provision to businesses, institutions and public bodies of advice and information relating to computer gateway services, computer services for accessing communications for computer networks, computer services for accessing entertainment, education, information and data wirelessly or via telephone, line, cable, wire or fibre, computer services for accessing and retrieving information, messages, text, sound, images and data via a computer or computer network, computer services for provision of information on-line from a computer database or computer network.

Class 42

Computer services, namely, consultancy services and installation, maintenance and repair of computer software for networks; computer firewall and data security services; design and development of computer networks; design and development of virtual private networks; installation and maintenance of computer software; computer services for interactive communications and broadcasting; rental of computer software and computer apparatus; provision of information relating to

computers, computer software, firmware, hardware and peripheral equipment; provision of advice and information from a relating to all the aforesaid services.

ANNEX B HK' EARLIER MARKS

1421700

Registration date: 26 March 2004



Class 35

Advertising and promotion services and information services relating thereto; rental of advertising space; television advertising commercials; compilation of advertisements for use as web pages on the Internet; rental of advertising space; television advertising commercials; preparations and presentation of audio visual displays for advertising purposes; dissemination of advertising matter; business information services; receipt, storage and provision of computerised business information data; marketing studies; business planning, business appraisal; marketing and business research; compilation of business statistics and commercial information; advice and assistance in the selection of goods and services; all provided via the Internet, terrestrial or satellite television or radio or other means of communications; provision of information, advisory and consultancy services in relation to sales of electrical and electronic goods; organisation of promotional activities through audio-visual media; but none of these services being provided in relation to steel and iron ware, metal fittings, building elements, tools, building engines and industrial supply, sanitary installations or heating

Class 41

Education and entertainment services in the nature of planning, production and distribution of live or recorded audio, visual or audio-visual material for broadcasting on terrestrial cable, satellite channels, the Internet, wireless or wirelink systems and other means of communication; provision of information relating to television and radio programmes, entertainment, music sport and recreation; information relating to entertainment or education, provided on-line from a computer database or the Internet or via terrestrial cable, satellite channels, wireless or wirelink systems and other means of communication; electronic games services provided by means of the Internet or via terrestrial cable, satellite channels, wireless or wirelink systems and other means of communication; providing on-line electronic publications (not downloadable); publication of electronic books and journals on-line; organisation and sponsorship of competitions; box office services; information and advisory services relating to education and entertainment; hiring, rental and leasing of televisions,

television display apparatus, set-top boxes, computers, computer programs, computer terminals, monitors, computer keyboards, laptop computers, modems, computer peripherals, remote controls, loudspeakers, any Internet devices and other apparatus and equipment for use in the delivery or receipt of education and entertainment services and parts and accessories for those goods; but none of these services being provided in the hairdressers field or in relation to steel and iron ware, metal fittings, building engines and industrial supply, sanitary installations or heating

Class 42

Design, drawing and commissioned writing, all for the compilation of web pages on the Internet; information provided on-line from a computer database or from the Internet; creating and maintaining web sites; hosting web sites of others; installation and maintenance of computer software; provision of access to the Internet; provision of Internet services; provision of access to sites on an electronic information network; provision of access to various databases; leasing access time to a computer database (other than by Internet service providers); news and current affairs information services; hiring, rental and leasing of computers, set-top boxes, computer programs, computer terminals, monitors, computer key boards, laptop computers, modems, computer peripherals, any other Internet devices and parts and accessories for all these goods; but none of these services being provided in the hairdressers field or in relation to steel and iron ware, metal fittings, building elements, tools, building engines and industrial supply, sanitary installations or heating.

1418060

Registration date: 16 December 2003



Class 9

Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; telecommunication apparatus; television, television display apparatus and receivers for use with computers, television transmitting apparatus; data processing equipment; computers, computer apparatus and peripherals, laptops/notebooks, devices, keyboards, monitors and instruments for transmitting data; computer software, computer programs relating to telecommunications; decoders; demodulators; modems, remote control apparatus, audio visual teaching apparatus; scanners, transmitters of electronic signals; parts and accessories for all the aforesaid goods; all included in class 9; none of the aforementioned goods being for use in connection

with cosmetics or hair care or being for use with either cosmetics or hair care material.

Class 38

Telecommunication services; broadcasting services; subscription television broadcasting; transmission of data, documents, messages, images, sounds, voices, text, audio, video and electronic communications and information via television, microwave, radio, electronically linked computer systems, electronic means computer, cable, telephone, teleprinter, teletype, electronic mail, telecopier, laser beam, satellite and/or any other means or apparatus; Internet and Intranet communication and access services; operation of earth-to-satellite television transmitters for transmission of signals to satellite; provision of communication facilities by telephones, computer terminals, fibre optic networks, wire; provision of multi-media information and interactive multimedia services; electronic mail services; facsimile communication services; mobile radio communication services; paging services (radio, telephone or other means of electronic communication); news agencies services; rental of communication apparatus and equipment, electronic mail-boxes, modems, facsimile apparatus, message sending apparatus, telephones and telecommunication apparatus; advisory and consultancy services in relation to all the foregoing services; all included in class 38.

1417831

Registration date: 24 May 2004



Class 9

Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; telecommunication apparatus; televisions, television display apparatus and receivers for use with computers, television transmitting apparatus; data processing equipment; computers, computer apparatus and peripherals, laptops/notebooks, devices, keyboards, monitors and instruments for transmitting data; computer software, computer programs relating to telecommunications; decoders; demodulators; modems, remote control apparatus, audio visual teaching apparatus; scanners, transmitters of electronic signals; parts and accessories for all the aforesaid goods; all included in Class 9; none of the aforesaid goods being for use in connection with cosmetics or hair care or being for use with either cosmetics or hair care products; and not including sound recordings and audio visual recordings featuring musical

performances, electronic transmission recordings featuring musical performances

Class 38

Telecommunication services; broadcasting services; subscription television broadcasting; transmission of data, documents, messages, images, sounds, voices, text, audio, video and electronic communications and information via television, microwave, radio, electronically linked computer systems, electronic means, computer, cable, telephone, teleprinter, teletype, electronic mail, telecopier, laser beam, satellite and/or any other means or apparatus; Internet and intranet communication and access services; operation of earth-to-satellite television transmitters for transmission of signals to satellite; provision of communication facilities by telephones, computer terminals, fibre optic networks, wire; provision of multi-media information and interactive multimedia services; electronic mail services; facsimile communication services; mobile radio communication services; paging services (radio, telephone or other means of electronic communication); news agencies services; rental of communication apparatus and equipment, electronic mailboxes, modems, facsimile apparatus, message sending apparatus, telephones and telecommunication apparatus; advisory and consultancy services in relation to all the foregoing services; all included in Class 38.

1417807

Registration date: 6 May 2004



Class 35

Advertising and promotion services and information services relating thereto; rental of advertising space; television advertising commercials; compilation of advertisements for use as web pages on the Internet; rental of advertising space; television advertising commercials; preparations and presentation of audio visual displays for advertising purposes; dissemination of advertising matter; business information services; receipt, storage and provision of computerised business information data; marketing studies; business planning, business appraisal; marketing and business research; compilation of business statistics and commercial information; advice and assistance in the selection of goods and services; all provided via the Internet, terrestrial or satellite television or radio or other means of communications; advisory and consultancy services in relation to sales of souvenirs; business services relating to the provision of sponsorship for competitions; organisation of promotional activities through audio-visual media; but none of these

services being provided in relation to steel and ironware, metal fittings, building elements, tools, building engines and industrial supply, sanitary installations or heating.

Class 38

Distribution of live or recorded audio, visual or audio-visual material for broadcasting on terrestrial cable, satellite channels, the Internet, wireless or wirelink systems and other means of communication; teletext services; provision of access to the Internet; provision of Internet services; provision of access to sites on an electronic information network

Class 41

Education and entertainment services in the nature of planning, production of live or recorded audio, visual or audio-visual material for broadcasting on terrestrial cable, satellite channels, the Internet, wireless or wirelink systems and other means of communication; provision of information relating to television and radio programmes, entertainment, music sport and recreation; information relating to entertainment or education, provided on-line from a computer database or the Internet or via terrestrial cable, satellite channels, wireless or wirelink systems and other means of communication; electronic games services provided by means of the Internet or via terrestrial cable, satellite channels, wireless or wirelink systems and other means of communication; providing on-line electronic publications (not downloadable); publication of electronic books and journals on-line; organisation of competitions; box office services; information and advisory services relating to education and entertainment; hiring, rental and leasing of televisions, television display apparatus, set-top boxes and other apparatus and equipment for use in the delivery or receipt of education and entertainment services and parts and accessories for those goods; but none of these services being provided in the hairdressers field or in relation to steel and ironware, metal fittings, building elements, tools, building engines and industrial supply, sanitary installations or heating.

Class 42

Design, drawing and commissioned writing, all for the compilation of web pages on the Internet; information provided on-line from a computer database or from the Internet; creating and maintaining web sites; hosting web sites of others; installation and maintenance of computer software; provision of access to various databases; leasing access time to a computer database (other than by Internet service providers); news and current affairs information services; hiring, rental and leasing of computers, televisions and television display apparatus, set-top boxes, computer programs, computer terminals, monitors, computer key boards, laptop computers, modems, computer peripherals, remote controls, loudspeakers and any other Internet devices and parts and accessories for all these goods; but none of these services being provided in the hairdressers field or in relation to steel and ironware, metal fittings, building elements, tools, building engines and industrial supply, sanitary installations or heating.