

O/435/18

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3260447 BY
JUNO PROPERTY LAWYERS LIMITED
TO REGISTER:**

JUNO

AS A TRADE MARK IN CLASS 35, 36 & 45

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600000775 BY
JUNO WEALTH MANAGEMENT LIMITED**

Background and pleadings

1. Juno Property Lawyers Limited (“the applicant”) applied to register the trade mark JUNO in the UK on 30 September 2017. It was accepted and published in the Trade Marks Journal on 20 October 2017 in respect of the following services:

35	Negotiation of business contracts for others excluding payment solution services; Arranging of trading transactions and commercial contracts; Advertising; Price comparison services; Provision of online price comparison services; Arranging subscriptions to telecommunication services for others; Arranging of collective buying; Promoting the goods and services of others; Promotion of financial and insurance services, on behalf of third parties.
36	Advisory services relating to insurance contracts; Insurance; Insurance broking; Mortgage broking; Estate agency; Computerised information services relating to real estate; Insurance services relating to real estate; Providing information in insurance matters; Provision of information relating to real estate.
45	Legal services; Conveyancing; Legal support services; Legal services in relation to the negotiation of contracts for others; Legal services relating to wills.

2. On 5 January 2018, the application was partially opposed under the fast track opposition procedure by Juno Wealth Management Limited (“the opponent”). The opposition is based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), with the opponent relying upon its earlier UK Trade Mark registration no. 3019627 which has an application date of 27 August 2013 and registration date of 22 November 2013. When answering Question 12 of the notice of opposition, the opponent stated that only some of the services were identical or similar to the services it relied upon, namely the following services proper to Class 36:

- Advisory services relating to insurance contracts;
- Insurance;

- Insurance broking;
- Mortgage broking.

The opponent relied upon the following services proper to Class 36:

- Financial advice;
- Financial intermediary services;
- Financial planning;
- Financial advisory services for companies;
- Financial advisory services for individuals.

3. The applicant amended the specification on 7 March 2018. The changes to Class 36 are shown in the table below, with additions in bold and italics and deletions in strike-through:

Original specification	Amended specification
<p>Class 36</p> <p>Advisory services relating to insurance contracts; Insurance; Insurance broking; Mortgage broking; Estate agency; Computerised information services relating to real estate; Insurance services relating to real estate; Providing information in insurance matters; Provision of information relating to real estate.</p>	<p>Class 36</p> <p>Insurance broking <i>relating to real estate</i>; Estate agency; Computerised information services relating to real estate; Insurance services relating to real estate; Providing information in insurance matters; Provision of information relating to real estate; <i>none of the aforesaid services relating to payment solutions.</i></p>

4. The opponent confirmed on 28 March 2018 that it wished to continue with the opposition. When doing so it referred to “Class 36 overall” despite its more limited attack as outlined in paragraph 2. However, following comments from the applicant in its counterstatement, and following a request for clarification from the Tribunal, the opponent confirmed on 30 April 2018 that the continuance of its opposition was against

the one (amended) remaining term that had originally been opposed, namely, the following service proper to Class 36:

- Insurance broking relating to real estate.

This term should be read in the context of the exclusion of payment solutions, which applies to the whole specification.

5. On 12 April 2018, the applicant filed a counterstatement denying the ground of opposition. It stated that:

A cursory examination of our two websites shows that the branding, tone and core messages of our website is completely different from that of JWM [Juno Wealth Management] – and indeed all the other financial service firms whose names include the word Juno. It would be simply impossible for a member of the public to confuse our residential conveyancing firm with Juno Wealth Management, Juno Monetas or any of the other firms whose names include the word Juno.

6. In these proceedings the opponent was originally self-represented and is now represented by Palmer Biggs IP. The applicant is represented by Filemot Technology Law Ltd.

7. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013/2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.

8. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.

9. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. Only the opponent filed a written submission and did so on 4 June 2018. This submission will not be summarised but will be referred to as and where appropriate during this decision.

Decision

10. Section 5(2)(b) of the Act states that:

5(2) A trade mark shall not be registered if because-

...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

11. An “earlier trade mark” is defined in section 6 of the Act:

6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

12. The Registration upon which the opponent relies qualifies as an earlier trade mark under the above provision. As this earlier mark was registered within the five years before the date on which the applicant’s mark was published, it is not subject to proof

of use. The opponent is therefore entitled to rely upon it for all the services for which it stands registered.

Section 5(2)(b) case law

13. The following principles are gleaned from the decisions of the courts of the European Union in *Sabel BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*(Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v OHIM* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05P) and *Bimbo SA v OHIM* (Case C-591/12P):

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of services

14. The opponent has claimed that the remaining service in the specification for the applied-for mark, the subject of its opposition, is identical to services for which its earlier mark is protected. The competing services are shown in the table below:

The opponent's services	The applicant's services
Class 36 – Financial advice; Financial intermediary services; Financial planning; Financial advisory services for	Class 36 – Insurance broking relating to real estate; ... none of the aforesaid services relating to payment solutions.

companies; Financial advisory services for individuals.	
---	--

15. In comparing the services, I have considered the meaning of the expressions used in the specifications, following the comments of Floyd J in *YouView TV Ltd v Total Ltd*:

... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.¹

16. As this opposition concerns services rather than goods, I have been mindful of the principle set down by Jacob J in *Avnet Incorporated v Isoact Limited*:

In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.²

17. I have also taken into account the guidance provided by Jacob J in *Treat*:

In construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade.

¹ [2012] EWHC 3158

² [1988] FSR 16

Words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning.

18. In its written submissions, the opponent states that “financial intermediary services” encompasses “insurance broking”:

The literal meaning of the term “financial intermediary services” is financial services provided by an intermediary, and as such the term encompasses any financial service which is provided by a person who acts between two parties in a financial transaction. On this interpretation, the term “financial intermediary services” encompasses insurance broking.

19. Services that are not worded identically may still be considered identical if one term is encompassed by a more general term used in the specification of the earlier mark, or vice versa, as set out by the General Court in *Gérard Meric v OHIM*:

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 trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM (Educational Services (ELS))* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.³

20. The applicant argues that the services are different. While it did not file a formal written submission, in correspondence with the Tribunal it quoted a technical dictionary definition. This is summarised in the opponent’s written submissions:

The applicant contends that the term “financial intermediary services” should not be given its literal meaning, and contends that the term is usually understood as meaning services provided by an institution, such as a bank, building society, or unit-trust company, that holds funds from lenders in order

³ T-133/05, para. 29

to make loans to borrowers. On this interpretation, the term “financial intermediary services” does not encompass insurance broking.

21. The opponent maintains that the term has another meaning and can be used in relation to any service provided by an Independent Financial Advisor (IFA).

22. “Financial intermediary services” refers to services provided by someone who acts as a middleman between two parties in a financial transaction. This may be an institution, but it is also possible for it to be an individual, such as an IFA. In my view, it would be unnaturally narrow to restrict the meaning to institutions that lend investors’ funds to borrowers. Individuals or companies who arrange for the selection and purchase by a client of financial services are also within the core of possible meanings attributable to the phrase “financial intermediary services”.

23. I must now turn to the question of whether insurance broking relating to real estate is included in the category of “financial intermediary services”. Arnold J recently considered the relationship between financial services and insurance in *FIL Limited & another v Fidelis Underwriting Limited & ors.*⁴ He took the view that financial services comprised all the economic services provided by the finance sector and that “insurance services are within the core of the ordinary meaning of “financial services””.⁵ Insurance brokers act as middlemen by advising their clients on the products that best meet their needs and facilitating the arrangement of, and payment for, the policies.

24. My view of the matter is that insurance broking is encompassed by “financial intermediary services”. I consider that the average consumer would understand a financial intermediary to be someone who facilitates the choice and purchase of financial services, and that insurance would be understood as a financial service. I find that, as per *Meric*, the services can be considered identical.

25. The exclusion of payment solutions does not affect my view. The services covered by the earlier mark are not limited to those relating to payment solutions.

⁴ [2018] EWHC 1097

⁵ Para. 90

Average consumer and the nature of the purchasing act

26. In accordance with the case law cited in paragraph 13, I must now determine who is the average consumer and the nature of the purchasing act. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.⁶

27. The specification is for insurance broking relating to real estate. This will include services offered to members of the public and specialist services offered to business customers. I therefore find that the average consumer may be a member of the general public or a professional.

28. Decisions on such services are reasonably important to most consumers, as they concern the individuals or companies that the consumer will trust to help them choose appropriate products. They are also taken fairly infrequently. The average consumer of insurance broking can be expected to pay at least a medium level of attention when selecting a service provider.

29. Service providers are likely to be selected by largely visual means, from websites, brochures, newspapers, magazines, etc. Word of mouth recommendation can also be expected to play some part in the way some consumers undertake the selection process, so it is important also to keep in mind the aural impacts of the marks.

Comparison of marks

30. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions

⁶ *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, C-342/97, para. 26

created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (CJEU) stated in *Bimbo SA v OHIM* that:

...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.⁷

31. It would be wrong, therefore, artificially to dissect the marks, although, it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

32. The respective marks are shown below:

Opponent's mark	Applicant's mark
	JUNO

33. The applicant's mark consists of the word "JUNO" presented in upper case letters in a standard font with no stylisation. The overall impression of the contested mark rests in just that word.

34. The opponent's mark is a figurative mark consisting of the words "JUNO WEALTH MANAGEMENT" in a sans serif font, with a peacock device decorating the "O" of

⁷ C-591/12P, para. 34

“JUNO”. In my view, this is clearly an “O” with the addition of a peacock. The word “JUNO” is in a larger font and darker colour than the words “WEALTH MANAGEMENT”, which indicate the service provided under the mark. It is the word “JUNO” and the peacock device that contribute most strongly to the overall impression created by the mark, each making a roughly equal contribution. The words WEALTH MANAGEMENT play only a minor role.

Visual comparison

35. The fact that both marks include the word “JUNO” results in some degree of similarity between them. However, there are several differences:

- the opponent’s mark contains additional words after “JUNO” (“wealth management”), although I found that these words played a lesser role in the overall impression created by the mark;
- in the opponent’s mark, the word “JUNO” is in large dark blue letters and ‘WEALTH MANAGEMENT’ is in smaller, lilac letters whereas the applicant’s mark is presented in a standard font with no colour or stylisation. However, this aspect has little significance in terms of creating a difference because the word mark could notionally be used in any normal font and colour;
- the opponent’s mark contains a figurative element, with a peacock decorating the final letter of “JUNO”. The body of the bird is seen on top of the letter, with its tail falling below it. This gives the impression of a peacock sitting on the letter O.

Weighing the similarities and differences, and bearing in mind my assessment of the overall impression of the marks, I consider there to be a medium degree of visual similarity between the marks.

Aural comparison

36. Both marks will be articulated as JOO-NO. I consider it unlikely that the average consumer will pronounce the words “wealth management” when referring to the earlier mark, as this phrase indicates the services offered under the mark. In my view, the marks are aurally identical. Even for those consumers who would use the full name, there is a reasonably high degree of aural similarity, with the position of the word “Juno” at the start of the name, with the other words playing only a minor role in the overall impression.

Conceptual comparison

37. Juno is the name of a Roman goddess, the consort of Jupiter, ruler of the gods. In its counterstatement, the applicant noted the “mythological association between financial good fortune and the Graeco-Roman goddess known as Juno or Juno Monetas [sic]”. To make this association, in my view, requires a level of knowledge of classical mythology that is unlikely to be possessed by the average consumer. It is also my view that the average consumer is likely not to identify Juno as a goddess at all. While he or she may have heard of Venus or Jupiter, Juno is not one of the better-known gods. I think it more likely that the average consumer would understand Juno as a name or even as an invented word.

38. For the consumer who thinks of Juno as an invented word, there would be no conceptual similarity between the two marks as the word JUNO has no concept. Indeed, the earlier mark contains a peacock which creates some form of conceptual hook which is different from the contested mark.

39. For those consumers who see the word Juno as a name, I must consider the earlier mark as a whole. This, as I have already stated, contains a peacock device decorating the letter O. In its written submissions, the opponent states that the peacock device depicts “the sacred animal of the Roman goddess Juno”. As per my earlier finding, I consider that it is unlikely that the average consumer would make that association. It will be conceptualised purely on the basis of the bird. I find that there is a medium degree of conceptual similarity between the marks.

Distinctive character of the earlier trade mark

40. Having compared the marks, it is necessary to determine the distinctive character of the earlier mark, in order to make an assessment of the likelihood of confusion. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).⁸

41. The opponent has not filed any evidence to show that it has used its mark, so I must consider only the question of inherent distinctiveness. In doing so, I have considered the guidance given by Iain Purvis QC, acting as the Appointed Person, in *Kurt Geiger v A-List Corporate Limited*:

⁸ C-342/97, paras. 22-23

It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.

In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask “in what does the distinctive character of the earlier mark lie?” Only after that has been done can a proper assessment of the likelihood of confusion be carried out.⁹

42. In its counterstatement, the applicant notes that there are “many other firms operating in the area of financial services and whose name includes the word Juno” and provides an extract from the Financial Services Register. This does not, however, indicate that the average consumer would be aware of them on the market and, even if they did, it does not follow that the mark’s inherent capacity to distinguish is altered. As Floyd J stated in *Nude Brands Limited v Stella McCartney Limited & ors*, the inherent character of a mark is a different question from the use that other traders have made of it.¹⁰ It is, as I have noted, inherent character that I must consider here.

43. Earlier in the decision, I found that some average consumers would see Juno as a name, while others would interpret it as an invented word. Neither describes nor alludes to the services provided under the mark. In the light of this finding, the mark has at least a medium level of distinctiveness. If it is seen as an invented word, the distinctiveness is higher than average.

44. The peacock device also makes a contribution to the distinctiveness of the opponent’s mark. However, as noted in the case law, this will not increase the likelihood of confusion.

⁹ BL O-075/13, paras. 39-40

¹⁰ [2009] EWHC 2154 (Ch), para. 29: “Ground 7(1)(b) [i.e. refusal of registration on the ground that the trade mark is devoid of any distinctive character] is concerned with the inherent character of the mark, not with what other traders have done with it.”

Conclusions on likelihood of confusion.

45. I have so far considered the factors that need to be taken into account when assessing the likelihood of confusion and now come to a global assessment. As the CJEU stated:

A global assessment of the likelihood of confusion implies some interdependence between the relevant factors, and in particular a similarity between the trade marks and between these goods or services. Accordingly, a lesser degree of similarity between these goods or services may be offset by a greater degree of similarity between the marks, and vice versa. The interdependence of these factors is expressly mentioned in the tenth recital of the preamble to the Directive, which states that it is indispensable to give an interpretation of the concept of similarity in relation to the likelihood of confusion, the appreciation of which depends, in particular, on the recognition of the trade mark on the market and the degree of similarity between the mark and the sign and between the goods or services identified.¹¹

46. There are two types of confusion that must be considered:

- direct confusion, where one mark is mistaken for another; and
- indirect confusion, where the similarities lead the consumer to believe that the goods or services come from the same, or a related, undertaking.

47. The applicant notes in his counterstatement that the “branding, tone and core messages of our website is completely different from that of JWM” and that it would be “simply impossible” to confuse the marks. I must not take account of how the services are marketed, following *Devinlec Développement Innovation Leclerc SA v OHIM*, where the CJEU stated that:

As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance

¹¹ *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, C-39/97, para. 17

was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.¹²

48. The principle of interdependency, quoted in paragraph 45 above, states that a lesser degree of similarity in the marks may be offset by a greater degree of similarity in the goods or services. While I found the services to be identical, I found that the marks had at medium degree of visual and conceptual similarity and a reasonably high degree of aural similarity. The average consumer would, in my view, be paying at least an average level of attention during the purchasing process. As noted in paragraph 28, these are services that are purchased fairly infrequently and are related to money and property, which will be reasonably important issues for the average consumer.

49. As stated earlier, the average consumer will see the marks on websites, promotional material or other printed matter, and they will be paying at least average attention. In my view, and given the differences between the marks, particularly the peacock device (which I have found plays a strong role in the earlier mark, roughly equal with the word JUNO), they are likely to notice the differences between the marks. However, there is still potential for indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Mr Iain Purvis QC, as the Appointed Person noted the differences between direct and indirect confusion:

Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element

¹² C-171/06P, para. 59

in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”¹³

50. However, it is not sufficient that a mark merely calls to mind another mark, as stated by Mr James Mellor QC, as the Appointed Person, in *Duebros Limited v Heirler Cenovis GmbH*.¹⁴ I have considered this point carefully. This is a sector where undertakings often use sub-brands for particular services. The inclusion of the word JUNO (a word with at least an average level of inherent distinctiveness), whether it is perceived as an invented word or as a name would, in my view, result in a likelihood that on coming across the marks, the average consumer would think that the identical services offered under the marks come from the same or an economically linked undertaking. The presence of the peacock is not sufficient to avoid such an assumption. Given the nature of the word JUNO, its commonality in the competing marks would not be put down to co-incidence. There is a likelihood of indirect confusion.

51. Even if the above view were wrong, I am also conscious that, as I have already found, the nature of the purchasing process is not wholly visual. Word-of-mouth recommendations, either in person or over the telephone, are likely to play a role in choosing someone to provide these services. The applicant itself notes in its counterstatement that personal recommendations account for a proportion of new business enquiries. If a consumer is recommended to go to “Juno” for insurance broking for real estate, they are likely to believe they have found the right service provider, whether they find the opponent’s mark or that of the applicant.

52. The opposition succeeds under section 5(2)(b) of the Act in respect of “insurance broking relating to real estate...; none of the aforesaid services relating to payment solutions” in Class 36.

¹³ Case BL O/375/10

¹⁴ Case BL O/547/17

Conclusion

53. The partial opposition has been successful. The application will be refused in respect of the following services:

Insurance broking relating to real estate

54. It can proceed to registration in respect of the following services:

Class 35 (all services listed in the amended specification)

Class 36: Estate agency; Computerised information services relating to real estate; Insurance services relating to real estate; Providing information in insurance matters; Provision of information relating to real estate; none of the aforesaid services relating to payment solutions.

Class 45 (all services listed in the amended specification)

Costs

55. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 July 2016 are governed by Tribunal Practice Notice (TPN) 2/2016. For fast track opposition proceedings, costs are capped at £500, excluding the official fee.¹⁵ The opponent was initially unrepresented, but appointed representation before filing written submissions. I have awarded £100 as a contribution towards the cost of preparing the statement and considering the other side's statement. The breakdown of the award is as follows:

Official fee - £100

Preparing a statement and considering the other side's statement - £100

¹⁵ TPN 2/2015.

Written submissions - £300

Total: £500

56. I therefore order Juno Property Lawyers Limited to pay Juno Wealth Management Limited the sum of £500. The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

Dated this 17th day of July 2018

**Clare Boucher
For the Registrar,
The Comptroller-General**