

**O-470-18**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3216670  
BY EVE JARRETT TO REGISTER:**



**AS A TRADE MARK IN CLASSES 35, 41 & 45**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 409533 BY AVIDITY IP LIMITED**

## BACKGROUND & PLEADINGS

1. On 4 March 2017, Eve Jarrett (“the applicant”), applied to register the trade mark shown on the cover page of this decision for a range of services in classes 35, 41 and 45. The application was published for opposition purposes on 21 April 2017.

2. On 15 June 2017, the application was opposed by Avidity IP Limited (“the opponent”); the opposition is directed at various services in class 45 (shown in paragraph 14 below). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), in relation to which the opponent relies upon the services shown in paragraph 14 below in the following United Kingdom trade mark registration:

No. 2543743 for the trade mark **PURE IDEAS** which was applied for on 1 April 2010 and registered on 16 July 2010. The opponent states:

“The words “BUSINESS LAW” are entirely descriptive of the goods (sic) covered, are of low distinctiveness, and will not be recalled as a dominant part of the mark but rather as a description of the services provided under the mark. The words “GIVING YOU THE EDGE” are entirely allusory, and will be recalled as a slogan entirely separable from the trade mark itself.

The trade mark as a whole, will be seen as being the distinctive and dominant mark “PURE”, for the provision of BUSINESS LAW services, alongside the slogan “GIVING YOU THE EDGE”. Whilst the multiple elements of the mark applied for may satisfy the inherent registrability requirements of non-descriptiveness, the mark itself would be confusingly similar to the earlier mark “PURE IDEAS” due to the lack of non-descriptive elements which might serve to further distance the two marks. Both marks begin with the word “PURE”, which is the only non-descriptive element of the opposed mark, and must be given the most weight. The marks are confusingly similar.

The services opposed are identical to those relied upon...The services are such that the average consumer would not expect two separate commercial undertakings, in the same niche field of practice, to operate under such similar marks.”

3. Although in her counterstatement the applicant admits the opposed services in her application are “identical or similar” to the services upon which the opponent relies, she denies there is a likelihood of confusion.

4. In these proceedings, the opponent is represented by Pure Ideas Ltd; the applicant is recorded on the tribunal’s records as representing herself (I shall return to this point later in this decision). Both parties filed evidence and written submissions during the course of the evidence rounds. Neither party elected to attend a hearing or to file written submissions in lieu of attendance at a hearing.

## **DECISION**

5. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

“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.”

6. An earlier trade mark is defined in section 6 of the Act, which states:

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

(a) a registered trade mark, international trade mark (UK), 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

7. In these proceedings, the opponent is relying upon the UK trade mark shown in paragraph 2 above, which qualifies as an earlier trade mark under the above provisions. As the earlier trade mark upon which the opponent relies had been registered for more than five years at the date the application was published, it is subject to the proof of use provisions contained in section 6A of the Act. In its Notice of opposition, the opponent indicated it had used its earlier trade mark in relation to all the services upon which it relies in these proceedings and, in her counterstatement, the applicant asked the opponent to make good this claim.

### **The opponent’s evidence**

8. This consists of two witness statements. The first statement, filed in chief, comes from Anthony Williams, an associate attorney employed by Pure Ideas Ltd and is accompanied by seven exhibits. For reasons which will shortly become clear, it is not necessary for me to provide a summary of its contents here. I will, however, return to this evidence when I consider the distinctiveness of the opponent’s earlier trade mark.

9. The second statement, filed in reply, comes from Kevin Parnham, a trade mark attorney, also at Pure Ideas Ltd; it is accompanied by two exhibits. I will keep the contents of this statement in mind and, if necessary, refer to it later in this decision.

## **The applicant's evidence**

10. This consists of a witness statement from Ms Jarrett, accompanied by exhibit EJ1; I will return to this evidence later in this decision when I consider the likelihood of confusion.

## **The request for proof of use**

11. In her statement, the applicant comments upon Mr Williams' evidence in the following terms:

“5...Having read [Mr William's statement], I accept that the earlier mark has been put to genuine use within the five years ending with the date of publication of my application for the services in class 45 relied upon for the opposition.”

12. In light of that admission, I must proceed on the basis that the opponent has made genuine use of its earlier trade mark in relation to all the services upon which it relies in these proceedings.

## **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.

## **The principles:**

(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, who 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 greater 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 competing services are as follows:

<b>Opponent's services being relied upon in class 45</b>	<b>Applicant's services in class 45</b>
Intellectual property services; filing and prosecution for registration of intellectual property rights; advisory and representational services relating to obtaining protection for intellectual property rights; professional and legal advisory services, all relating to intellectual property rights; information, consultancy and advisory services all relating to the aforesaid, including such services provided online from a computer network or via the Internet.	Advisory services relating to intellectual property protection; Intellectual property consultancy; Legal consultancy relating to intellectual property rights; Legal services relating to intellectual property rights; Litigation advice; Litigation consultancy; Litigation services; Litigation services [services of a lawyer]; Litigation support services.

15. In her statement, the applicant states:

“6. I also accept that the services covered by my application under class 45 in respect of which the opposition is made are identical or similar to the services covered by the earlier mark upon which the opponent relies...”

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated:

“29. 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 fur 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”.

17. The applicant’s specification is shown above and the opponent’s specification includes the following phrases: “intellectual property services”, “professional and legal advisory services, all relating to intellectual property rights” and “information, consultancy and advisory services all relating to the aforesaid...”. The competing services are, as a consequence, either identical on the basis they are alternative ways of describing the same services or on the principle outlined in *Meric*.

### **The average consumer and the nature of the purchasing act**

18. As the case law above indicates, it is necessary for me to determine who the average consumer is for the services at issue. I must then determine the manner in which these services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:



“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

19. In its submissions, the applicant states:

“11. It is submitted that the average consumer of [both parties’ services] is likely to be a member of the general public possessing an average level of business acumen, who will select the services mainly by searching the internet and then discussing the matter on the telephone or by email. It is submitted that such an average consumer is likely to pay a moderate to high degree of attention to the identity and credentials of the source of the services, given the nature of the services and the likely importance of the outcome.”

20. Whilst I agree that members of the general public will be average consumers of the services at issue, so too will be the “start-ups, entrepreneurs, businesses, employers and senior executives” mentioned in paragraph 17.2 of the applicant’s witness statement. As searching the internet is likely to be one of the more popular methods by which the services at issue are selected, visual considerations will play an important part in the process. However, as the services at issue may also be the subject of word-of-mouth recommendations from, for example, one business user to another, aural considerations must also be kept in mind.

21. As to the degree of care with which the average consumer will select the services at issue, the applicant suggests a “moderate to high degree” of care to be appropriate. When considered from the perspective of, for example, a member of the general public

having a one off trade mark or patent application prosecuted on its behalf, what are likely to be not insignificant costs, combined with, as the applicant points out, “the likely importance of the outcome” to that individual, suggest to me that a level of attention significantly above the norm is likely to be utilised. When viewed from the perspective of a commercial undertaking embarking on, for example, the launch of a range of new products (and, inter alia, the investigations required prior to and the filings in support of such a launch), together with what is likely to be the significant costs involved, a high degree of attention will be displayed.

### **Comparison of trade marks**

22. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *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.”

23. It would be wrong, therefore, artificially to dissect the trade 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 they create. The trade marks to be compared are:

Opponent's trade mark	Applicant's trade mark
PURE IDEAS	

24. Both parties have made detailed submissions on this aspect of the case. In reaching a conclusion, I shall, of course take all these submissions into account. I do not, however, intend to record them all here.

25. The opponent's trade mark consists of the words "PURE" and "IDEAS" presented in block capital letters; both words will be very well known to the average consumer. Although the word "PURE" has a range of meanings (the most obvious relating to the purity of, for example, orange juice), I agree with the parties' submissions to the effect that it can also mean a specialism or expertise in a particular field. Consequently, any distinctive character this word alone may enjoy is fairly low. As "IDEAS" are the life blood of the services upon which the opponent relies, any distinctive character this word possesses is also likely to be fairly low. In my view, the words form a phrase in which the word "PURE" qualifies the word "IDEAS." The overall impression the trade mark conveys and its distinctive character lies in its totality.

26. The applicant's trade mark consists of a number of components. The first, is a device presented in grey of what looks like an upper case letter "L", but which also acts as a partial border. Although given its size and positioning this device will contribute to the overall impression conveyed, whether construed as a letter "L" or a partial border, any distinctive character it may enjoy, will be, at best, modest. The second component, consists of the words "PURE BUSINESS LAW" presented in upper case letters, in blue in an unremarkable font. The words "PURE BUSINESS LAW" also form a phrase in

which “PURE” will be understood as qualifying “BUSINESS LAW”. Although the size of this phrase in the context of the trade mark as a whole ensures that its contribution to the overall impression conveyed is significant, given its strong allusion to a specialism/expertise in business law, it possesses, at best, a low degree of inherent distinctive character. The final component consists of the words “GIVING YOU THE EDGE” presented in black in, once again, an unremarkable font. These words appear at the base of the trade mark and are much smaller than the words which appear above them. In its submissions, the opponent describes these words “...as a slogan, alluding to the benefits of the services...”, a submission with which I agree. That, combined with their size and positioning in the trade mark, means that any contribution they may make to the overall impression conveyed and distinctiveness is likely to be low.

27. I will now compare the competing trade marks from the visual, aural and conceptual standpoints with the above conclusions in mind.

28. The only point of similarity between the competing trade marks is the word “PURE”, which is the first word in both the opponent’s trade mark and in the combination “PURE BUSINESS LAW” in the applicant’s trade mark. The word “IDEAS” in the opponent’s trade mark and the other components present in the applicant’s trade mark are alien to the other party’s trade mark. Weighing the similarities and differences between the trade marks at issue, there is a low degree of visual similarity between them.

29. As all the words in the competing trade marks will be very well known to the average consumer, the manner in which the individual words will be pronounced is entirely predictable. As to how the competing trade marks will be referred to in the course of trade, the opponent’s trade mark will be articulated as the four syllable combination “PURE I-DE-AS”. As for the applicant’s trade mark, it is well established that when a trade mark consists of a combination of words and figurative components, it is by the words that the trade mark is most likely to be referred. In my view, the applicant’s trade mark is most likely to be referred to by the four syllable combination “PURE BUSI-NESS LAW” than by the nine syllable combination “PURE BUSI-NESS LAW GIV-ING YOU

THE EDGE”. Although the word “PURE” will be articulated first in both trade marks, that still only results in, at best, a medium degree of aural similarity in both scenarios.

30. Finally, the conceptual comparison. In her submissions, the applicant suggests the opponent’s trade mark will be understood as “ideas not mixed with anything, not adulterated” and will be conceptualised as meaning “focus on creativity”. She suggests that the word components in her trade mark will be interpreted thus, “PURE BUSINESS LAW” (meaning “specialisation in business law”) and “GIVING YOU THE EDGE” (meaning “commercial advantage and acuity.”). In its submissions, the opponent appears to agree with the applicant’s views on how the words “PURE BUSINESS LAW” will be interpreted, stating they will mean “experts in the service offering”, and it goes on to submit that both trade marks refer or allude to “dedication or focus on those legal services presently opposed.”

31. I agree with the parties that the words “PURE BUSINESS LAW” in the applicant’s trade mark are likely to convey the conceptual message suggested. I also agree with the applicant as to how the words “GIVING YOU THE EDGE” in her trade mark are most likely to be understood. As for the opponent’s trade mark, it is likely, in my view, to convey a message of specialisation/expertise in ideas. The fact that both trade marks contain a component which is likely to evoke in the average consumer’s mind the concept of specialism/expertise, results in a degree of conceptual similarity between them. However, the specific areas of that specialism are different i.e. “IDEAS” and “BUSINESS LAW.” Although introducing a concept completely alien to the opponent’s trade mark, the presence of the words “GIVING YOU THE EDGE” in the applicant’s trade mark, do nothing to modify the meaning of the phrase which includes the word “PURE”.

### **Distinctive character of the earlier trade mark**

32. The distinctive character of a trade mark can be appraised only, first, by reference to the services in respect of which registration is sought and, secondly, by reference to the

way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the services for which it has been registered as coming from a particular undertaking and thus to distinguish those services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

33. In its submissions filed in reply, the opponent states:

“The evidence of use for the mark PURE IDEAS shows it has been used. The opponent has not alleged they meet the legal tests necessary to prove acquired distinctiveness...”

34. Given the nature of the evidence filed by the opponent which, for example, contains no information regarding turnover, advertising or market share achieved under its “PURE IDEAS” trade mark, its approach to enhanced distinctiveness is sensible. In those circumstances, I have only the inherent characteristics of its trade mark to consider. In her submissions, the applicant submits that when considered as a whole, the opponent’s trade mark possesses “low inherent distinctiveness”. Earlier in this decision, I concluded that the opponent’s trade mark is likely to be construed as meaning a specialism/expertise in ideas. As I mentioned earlier, ideas are the life blood of the intellectual property services upon which the opponent relies. Considered in that context, the opponent’s trade mark enjoys a fairly low degree of distinctive character.

### **Likelihood of confusion**

35. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of

similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

36. Earlier in this decision, I concluded that: (i) the competing services are identical, and (ii) the average consumer is either a member of the general public or a business user who is likely to select the services at issue by both visual and aural means (with visual means likely to dominate the process) and who is likely to pay, at least, a level of attention significantly above the norm when doing so. Having assessed the competing trade marks, I found them to be visually similar to a low degree, aurally similar to at best a medium degree and conceptually similar to the limited extent that both are likely to evoke the concept of specialism/expertise. Finally, I found the opponent's earlier trade mark to be distinctive to a fairly low degree.

37. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson* and stated:

"18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and

conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

38. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He stated:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*.



However, it is a far from complete statement which can lead to error if applied simplistically.

39. 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.”

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

40. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and services down to the responsible undertakings being the same or related.

41. Earlier in this decision, I found that the individual words in the opponent’s trade mark formed a phrase which has a fairly low degree of distinctive character, and it is in that phrase, rather than in the individual words of which it is comprised, the distinctive character of the opponent’s trade mark lies. I also concluded that the words “PURE BUSINESS LAW” in the applicant’s trade mark created a phrase. Although that phrase will make a significant contribution to the overall impression the applicant’s trade mark conveys, for the reasons already explained, it has (at best) only a low degree of distinctive character. Based on a global assessment from the perspective of an average consumer paying even a normal degree of attention during the selection process, let alone the heightened degree of attention I have concluded is likely to be displayed (thus reducing still further the chances of imperfect recollection), and as the word “PURE”

alone has a fairly low degree of inherent distinctiveness and merely contributes to the integrated phrases formed, the various visual, aural and conceptual differences between them are, in my view, more than sufficient to avoid them being mistaken for one another.

42. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. 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 recognized 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 in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

43. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C., as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

44. Even in relation to the identical services at issue, I see absolutely no reason why an average consumer, displaying the traits I have described earlier, would assume the services at issue originate from the same or related undertakings, simply because the competing trade marks contain the word “PURE” integrated as part of a phrase. Much

more likely, in my view, is that they will assume that the word “PURE” has been adopted by completely unrelated commercial undertakings to reflect what those undertakings consider to be their particular specialisms/expertise.

45. In reaching the above conclusions, I have not considered it necessary to refer to the Internet searches conducted by the applicant and provided as exhibit EJ1 to her statement. Such searches are rarely of assistance and that, in my view, is also the case here.

### **Overall conclusion**

**46. The opposition in relation to the named services in class 45 has failed. Subject to any successful appeal, the application will proceed to registration for all the services for which registration has been sought.**

### **Costs**

47. As the applicant has been successful, she is entitled to a contribution towards her costs. Awards of costs in proceedings commenced after 1 July 2016 are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. As the applicant is recorded on the tribunal’s records as unrepresented, at the conclusion of the evidence rounds the tribunal invited her, inter alia, to indicate whether she intended to make a request for an award of costs, and if so, to complete a pro-forma indicating a breakdown of her actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the opposition.

48. In an email dated 28 February 2018, the applicant responded to that invitation. I note that she claims costs in the amount of £5000 (excluding VAT), in respect of activities described as, for example, “Advising on merits of notice of opposition...special capped fees of counsel...”, “counsel settling 1<sup>st</sup> witness statement of Eve Jarrett...” and “Pure Business Law solicitors legal costs...”. I also note that the applicant’s

counterstatement and written submissions were prepared on her behalf by Mr Chris Pearson of counsel. Thus it appears to me that although Ms Jarrett is recorded on the tribunal's database as unrepresented, in fact she has been represented throughout the proceedings. Consequently, I shall award her costs on that basis, but making no award to her in respect of the evidence she filed which did not form any part of my considerations.

Reviewing the Notice of Opposition and preparing a counterstatement:	£200
Considering the other side's evidence:	£500
Written submissions:	£300
<b>Total:</b>	<b>£1000</b>

49. I order Avidity IP Limited to pay to Eve Jarrett the sum of **£1000**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 30th day of July 2018**

**C J BOWEN**  
**For the Registrar**