

O-502-18

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3133421
BY UHOZZ (TIANJING) NETWORK TECHNOLOGY CO., LTD
TO REGISTER THE TRADE MARK:**



IN CLASSES 9, 35, 36, 39, 41 AND 43

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 405993
BY HOZZ, INC.**

SUPPLEMENTARY DECISION

Background

1. On 16 July 2018 I issued an interim decision in these proceedings (BL O/429/18). My primary conclusion was that the opposition failed under ss. 5(3) and 5(4)(a) but succeeded under s. 5(2)(b) against the following goods and services:

Class 9: Computer software, recorded; computer programs [downloadable software]; computer software applications, downloadable; computer programmes [programs], recorded; electronic publications, downloadable

Class 35: On-line advertising on a computer network; presentation of goods on communication media, for retail purposes; advertising; business information; providing business information via a web site; provision of an on-line marketplace for buyers and sellers of goods and services; auctioneering; marketing

Class 41: Providing on-line electronic publications, not downloadable; Publication of electronic books and journals on-line; Publication of books.

2. Having reached that conclusion, I went on:

“109. Notwithstanding my primary conclusion, I indicated at paragraph 43 of this decision that although I have found that certain goods in class 9 of the application are similar to the earlier specification, there may be goods within the scope of the applicant’s specification which are not similar to the opponent’s services. I have no evidence from the applicant as to the nature of its business and, given that the applicant was offered the opportunity to file a fall-back specification in the tribunal’s letter of 20 February 2018 but did not avail itself of the opportunity, I have paused before offering the applicant another opportunity to provide a restriction to its specification which may avoid the clash with the opponent’s services. However, I consider it appropriate to invite the applicant to consider its position in relation to:

Class 9: Computer software, recorded; computer programs [downloadable software]; computer software applications, downloadable; computer programmes [programs], recorded; electronic publications, downloadable.

110. In accordance with Tribunal Practice Notice 1/2012, paragraph 3.2.2, the applicant may file submissions in which it should identify any goods falling within the above descriptions, which it wishes to register. It should explain why it considers that such goods are not similar to the services relied upon by the opponent. A period of fourteen days is allowed from the date of this decision for such submissions to be filed. A further period of fourteen days from receipt of those submissions is allowed for the opponent to comment upon any revised list of goods. I will then consider the position and issue a supplementary decision in which I will decide whether any of the goods in the revised list is free from objection. If the applicant chooses not to respond, I will issue a supplementary decision confirming my primary conclusion and the application will, subject to appeal, be refused for all of the goods and services listed at paragraph 108, above”.

3. The applicant did not respond to that invitation. As a consequence, there are no further submissions on the point for me to consider and I confirm my primary conclusion, as set out above and at paragraph 108 of BL O/429/18.

Conclusion

4. The application will, subject to appeal, be refused for the goods and services set out at paragraph 1, above. The application will proceed to registration for the remaining goods and services.

Costs

6. Given the date upon which these proceedings were launched, the relevant Tribunal Practice Notice (“TPN”) regarding costs is TPN 4/2007. Although the opposition under s. 5(2)(b) has succeeded in part against goods and services in classes 9, 35 and 41, the applicant has had a greater share of success. Accordingly, I make the following award in favour of the applicant:

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| Considering the notice of opposition and preparing the counterstatement: | £200 |
| Considering the opponent’s evidence: | £400 |
| Total: | £600 |

7. I order Houzz, Inc. to pay Uhouzz (Tianjing) Network Technology Co., Ltd the sum of **£600**. 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 15th day of August 2018

Heather Harrison
For the Registrar