

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 3468225
'PRODUCT RELATIONSHIP MANAGEMENT PLATFORM'
IN THE NAME OF KORE LABS LIMITED**

**AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
FROM THE DECISION OF MS LINDA SMITH
DATED 24 SEPTEMBER 2020**

DECISION

1. This is an appeal from a decision of Ms Linda Smith, on behalf of the Registrar, BL O/466/20, in which she refused on absolute grounds an application to register a series of 2 marks consisting of the words 'PRODUCT RELATIONSHIP MANAGEMENT PLATFORM' for goods and services in Classes 9, 36 and 42. The Applicant appeals. For the reasons given below, the appeal fails.

Background

2. On 19 February 2020, Kore Labs Limited ("the Applicant") applied to register as a series of trade marks 'PRODUCT RELATIONSHIP MANAGEMENT PLATFORM' and 'product relationship management platform.' The specification of goods and services was:
Class 9: Computer software; downloadable software; application software
Class 36: Financial services; provision of financial advice; provision of financial information; financial information services; financial management services; provision of information in relation to investments and securities and in relation to the management of investments and securities

Class 42: Software as a service; software as a service featuring information and advice in relation to financial products and services; software as a service relating to the management of financial products and services.

3. An examination report was issued on 20 March 2020 and objections were raised under sub-sections 3(1)(b) and (c). The Report stated

"Research conducted during the examination of your application has shown that "product relationship management" is a term used to describe an approach to marketing in which the primary focus is the product and how it can provide long-term profit. Profit relationship management as an approach is often contrast with customer relationship management."

Reference was made to certain Internet pages which were exhibited to the report, and which also found their way into Annex A of the Decision under appeal. I will not set them out here. Suffice to say that there were three 'hits', from 2010, 2011 and 2016, each of which referred to 'product relationship management,' but not to a product relationship management platform. The Report concluded that the average consumer seeing the marks applied for "would not attribute any trade mark significance to the sign, but would instead perceive it as describing a software platform relating to product relationship management and financial services being delivered through a product relationship management platform."

4. The Applicant requested a hearing, which took place on 8 April 2020. As I understand it, at the hearing Mr McLeod who appeared on behalf of the Applicant (as he did before me on the appeal) submitted that the internet hits included in Annex A were insufficient to sustain the objection. I understand that Mr McLeod raised informally at the hearing the possibility of limiting the trade mark specification, but that suggestion was not pursued, nor was it sufficient to avoid the Hearing Officer reaching the same conclusion as had been reached in the examination report. Mr McLeod told me at the appeal that he was pursuing the original specification, not an amended version, and I leave that point to one side.

5. It seems from the hearing report dated 14 April that after the hearing, the Hearing Officer carried out some further Internet research and found an additional web page on a website at <https://gtr.ukri.org>. That page contained an article ("the Kore article") about the Applicant, under this headline: "Kore: a world-first PRM (Product Relationship Management) platform for Financial Institutions." As I understand it, the Kore article was based upon a press release, which Mr McLeod says was not created by the Applicant, but certainly the article was not on the Applicant's own website. It referred to "current product management platforms" which it criticised as likely to cause "an inconsistent approach and oversight to product management" and said that there was a demand for "a platform to support the management of products in a consistent and regulatory compliant way." Hence, it said, the Applicant sought to create "a financial product lifecycle management platform."
6. The Hearing Officer refused the application, maintaining the objections under both subsections (b) and (c). The hearing report gave the Applicant 4 months to respond to the decision, in light of the fact that the Hearing Officer had included the reference to the Kore article. However, as I understand it, no further response was made. Instead, she was asked to give her reasons in writing, which form the Decision under appeal.
7. Mr McLeod of course accepted that the appeal is by way of a review not a rehearing, and submitted that the Hearing Officer had made errors of principle or had simply gone wrong in her Decision. The Grounds of Appeal raised three areas of concern:
 - 1) that the Hearing Officer had placed an excessive emphasis on internet research and extracts
 - 2) errors leading to the finding of descriptiveness under 3(1)(c); and
 - 3) errors leading to the finding of lack of distinctiveness under 3(1)(b).

Both of the latter points turned, in essence, upon the submission that the Hearing Officer had wrongly dissected the mark.

8. There was no criticism of the Hearing Officer's analysis of the relevant legal principles which is set out in paragraphs 7 to 13 of the Decision. Neither was there any criticism of her finding at paragraph 15 that she had to consider the mark as a whole and "not

only take into account the individual meaning of the words within the mark, but also what has become known by the term 'relationship management'." In that paragraph the Hearing Officer refers to the online website Investopedia, which defined relationship management as "a strategy in which an organisation maintains an ongoing level of engagement with its audience" and stated "Relationship management involves strategies to build client support for a business and its offerings, and increase brand loyalty." She noted that it was an American website, but she considered that the same meaning would be likely to be relevant throughout the financial world.

9. Having looked at the dictionary definitions of the four words in the mark, the Hearing Officer held at paragraph 16 that "the mark in totality indicates a platform offering support strategies for businesses in relation to the products they have purchased or are considering purchasing. ... 'Product relationship management' ... is where an organisation focuses on the product rather than the customer, whether this be a tangible product or non-tangible product, such as financial services."
10. She went on to consider the specification of goods and services in question and made reference in paragraphs 17 and 18 to the Kore article, describing it, wrongly, as the Applicant's article. She concluded that the mark would be seen as descriptive of the goods and services. At paragraph 19 she rejected any distinction to be made between tangible goods and non-tangible services, and the relevance of that distinction was not a point which was pursued on appeal.
11. Then she said at paragraphs 20-21:

"20. Turning to the Internet hits included in Annex A of the examination report (and shown below in Annex A of this statement), Mr McLeod did not consider these relevant as they refer to tangible products and the hits were not recent. I agree that the hits were not recent. However, my main reasons for finding the words descriptive are their dictionary meanings, reinforced by the applicant's own use of the term. I believe that they indicate that 'product relationship management' has become a known term in business to indicate that it is

important to put an emphasis on the product an organisation is selling in addition to concentrating on the customer and that would apply not only to tangible products but also to non-tangible product. Even if the term may not be currently widely known, I should stress that the legal test is whether it could be and, in that regard, I have no doubts.

21. I have taken into account the guidance set out in relevant case law and I consider that the average consumer of the relevant goods and services will not perceive the signs as indicating trade origin of the goods and services. I therefore conclude that the marks consist exclusively of signs which may serve, in trade, to designate a characteristic of the goods and services, being the kind and intended purpose of the goods and services and which are therefore excluded from registration by section 3(1)(c) of the Act. Any mark found to be unacceptable under 3(1)(c) will automatically be found to be non-distinctive. The objection taken under 3(1)(b) is solely on the basis that the marks designate a characteristic of the goods and services and for no other reason. In other words, the objections under section 3(1)(b) and (c) in this case are co-extensive; there is no independent, contingent or separate rationale required under section 3(1)(b).”

12. The Applicant submitted that the Hearing Officer had erred in relying heavily upon the small number of webpages turned up as a result of the IPO’s own searches. These, Mr McLeod argued, were isolated and sporadic instances, not sufficient to raise a valid objection to the mark. The Kore article, which was based upon a press release, came from a third party site. If that is so, it seems to me that it is unfortunate that the Applicant did not make that point to the Hearing Officer upon receipt of the preliminary letter dated 14 April 2020, but simply asked for full reasons for the decision.
13. The main complaint raised on the appeal was whether or to what extent the Hearing Officer’s view was reinforced by the Annex A webpages, as well as by the Kore article, and whether any reliance upon those webpages was wrong. Mr McLeod submitted that either way, the Kore article, together with 3 isolated further internet examples spread over many years, was not enough to justify the Hearing Officer’s objections.

That was especially so when two of the 4 examples related to tangible not intangible products. He also submitted that the mark was ambiguous, as the combination of the words did not exclusively designate the characteristics of the goods/services, and so was distinctive. On that footing, it was not objectionable under 3(1)(b) or (c). Lastly, he suggested that the Hearing Officer had wrongly dissected the mark, rather than looking at it as a composite phrase.

14. The UKIPO did not appear before me on the appeal, but provided written submissions dated 1 December 2020. These concentrated upon paragraph 20 of the Decision and in particular the last sentence of that paragraph which, it submitted "relegates the status of the Internet hits to material which merely reinforces the hearing officer in her primary view based solely on dictionary meaning alone." In addition, it said that the Hearing Officer had applied the right legal test, in considering whether the mark applied for could designate a characteristic of the goods or services, and pointed out that there is no burden on the registrar to prove that the mark currently does so, or is a term widely known in the trade. In the circumstances, the Internet hits were not strictly needed. The registrar apologised for the mistake in attribution of the Kore article, but suggested that did not change the overall decision at all. Even if it was not from the Applicant's own website it was "a clear illustration of nominative and descriptive use." The fact that the 'product' might be innovative did not detract from the difficulty that simply adding 'platform' to the phrase 'product relationship management' did not add distinctiveness to the phrase.
15. In my judgment, the Applicant has not identified any error of principle or approach or any relevant error of fact which may form the basis of a successful appeal. I agree with each of the points made on behalf of the UKIPO. In particular, it seems to me that the Hearing Officer was entitled to reach the view that the dictionary meanings of the words in the mark all tended to designate a characteristic of the goods/services, whether already known as such or capable of doing so in the future. I do not consider that the fact that the use shown to date was sporadic, or related to goods not services, means that the Hearing Officer erred in her conclusion that the mark was capable of being used descriptively etc.

16. It seems clear from paragraphs 4 (“there is not a considerable amount of use of the term”) and 20 (“the hits were not recent”) that the Hearing Officer was well aware of the small amount of evidence before her. Her error as to the provenance of the article was unfortunate, but in my judgment the Kore article does have some bearing on the question. Either the article was based upon a press release put out by the Applicant, in which case the Hearing Officer was right to think that it had used the mark descriptively, or it was genuine, unrelated third party use, in which case that third party had so used it. I do not consider that by taking that article into account, the Hearing Officer can be said to have erred when she concluded that ‘product relationship management’ was a known term in business.
17. Moreover, I agree with the registrar that the last sentence of paragraph 20 indicates that the Hearing Officer did not rely solely upon the webpages. She stated in terms that her conclusion was based principally upon the dictionary definitions of the words in the mark, which she plainly saw as amounting to no more than a phrase liable to designate the characteristics of the goods and services. As a result, in my judgment, the Hearing Officer was entitled to conclude that even if the mark was not already in current use, or currently well-known, it was capable of such use.
18. Nor, lastly, do I consider that the Hearing Officer wrongly dissected the words in the mark. On the contrary, from paragraph 16 I consider that she carefully considered what would be the impact of that particular combination of words.
19. For these reasons, I reject the appeal. As is usual, I make no order as to the costs of the appeal.

Amanda Michaels
The Appointed Person
30 July 2021

CHRIS McLEOD of Elkington & Fife LLP appeared on behalf of the Applicant/Appellant

The Registrar was not represented but provided written submissions.