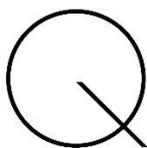


O-585-18

TRADE MARKS ACT 1994

IN THE MATTER OF CONSOLIDATED PROCEEDINGS INVOLVING:

TRADE MARK APPLICATIONS 3210646 & 3210648 FOR THE MARKS:



&



BY SAMSUNG ELECTRONICS CO., LTD

AND

OPPOSITIONS THERETO (Nos. 409310 & 409535) BY SKY PLC

Background and pleadings

1, The marks detailed on the cover page of this decision were filed on 3 February 2017 by Samsung Electronics Co., Ltd (“the applicant”). Registration is sought in respect of televisions in class 9. Application 3210646 was published on 17 February 2017, 3210648 on 17 March 2017.

2. Sky Plc (“the opponent”) oppose registration of the marks. It pleads grounds under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under the first two grounds, the opponent relies on the following marks:

i) European Union Trade Mark (“EUTM”) 015869951 for the mark  (currently opposed) which was filed on 29 September 2016 and published on 16 March 2017.

Under section 5(2)(b), the opponent relies on the following goods and services:

Class 9 – Apparatus for recording, transmission or reproduction of sound or images; television apparatus; televisions; LCD and plasma screens; remote controls; set-top boxes; parts and fittings for all of the above.

Class 38 – Television broadcasting.

Under section 5(3), the opponent claims a reputation in respect of:

Class 9: Broadcasting-related and television-related apparatus; apparatus for decoding encoded signals; telecommunications equipment; data processing apparatus; apparatus for recording, transmitting, reproducing or receiving sound, images and/or audio visual content; apparatus for use in the decoding and/or reception of satellite, terrestrial or cable broadcasts; computer hardware; computer games programmes downloaded via the internet; computer programmes for interactive television and interactive games; computer games apparatus adapted for use with television receivers; remote controls; games controllers; games consoles; set-top boxes; personal video recorders; recorded programmes for broadcasting or other transmission on television, mobile telephones and on PCs; encoded cards; electronic publications.

Class 38: Telecommunications; broadcasting services; broadcasting and transmission of television programmes; transmission of sound and/or pictures; communications services by satellite and/or television; computer aided transmission of messages and images; telecommunications information; audio visual services; provision of audio visual content; communication services; distribution of content via the internet and/or broadband and/or mobile telephone; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport and interactive entertainment; providing movies and television programmes to viewers on demand and near on demand; enabling access to the internet; internet portal services; web portal services; provision of broadband services; providing internet chatrooms, message boards and forums.

Class 41: Entertainment; television entertainment services; production and presentation of television programmes; audio visual services; provision of audio visual content; distribution of entertainment via the Internet and/or broadband and/or mobile telephone; on-line game services; games portal services; interactive services for television viewers; production presentation and distribution of television programmes, interactive television, interactive games and interactive entertainment; provision of interactive entertainment, news and sport for television viewers; viewing guide services; providing movies and television programmes to viewers on demand and near video on demand; electronic publications (not downloadable).



ii) UK registration 3157089 for the series of marks  and  which were filed on 30 March 2016 and registered on 1 July 2016. Under section 5(2)(b), the opponent relies on the following goods and services:

Class 9 – Apparatus for recording, transmission or reproduction of sound or images; televisions; LCD and plasma screens; remote controls; set-top boxes; parts and fittings for all of the above.

Class 38 – Television and radio broadcasting.

Under section 5(3) the opponent claims a reputation in respect of:

Class 9: Broadcasting-related and television-related apparatus; apparatus for decoding encoded signals; telecommunications equipment; data processing apparatus; apparatus for recording, transmitting, reproducing or receiving sound, images and/or audio visual content; apparatus for use in the decoding and/or reception of satellite, terrestrial or cable broadcasts; computer hardware; computer games programmes downloaded via the internet; computer programmes for interactive television and interactive games; computer games apparatus adapted for use with television receivers; remote controls; games controllers; games consoles; set-top boxes; personal video recorders; recorded programmes for broadcasting or other transmission on television, mobile telephones and on PCs; encoded cards; electronic publications and/or broadcast and/or transmission and/or decoding and/or image processing and/or audio visual instruments and apparatus.

Class 38: Telecommunications; broadcasting services; broadcasting and transmission of television programmes; transmission of sound and/or pictures; communications services by satellite and/or television; computer aided transmission of messages and images; telecommunications information; audio visual services; provision of audio visual content; communication services; distribution of content via the Internet and/or broadband and/or mobile telephone; broadcasting and transmission of interactive television, interactive games, interactive news, interactive sport and interactive entertainment; providing movies and television

programmes to viewers on demand and near on demand; enabling access to the Internet; internet portal services; web portal services; provision of broadband services; providing internet chatrooms, message boards and forums..

Class 41: Entertainment; television entertainment services; production and presentation of television programmes; audio visual services; provision of audio visual content; distribution of entertainment via the Internet and/or broadband and/or mobile telephone; on-line game services; games portal services; interactive services for television viewers; production presentation and distribution of television programmes, interactive television, interactive games and interactive entertainment; provision of interactive entertainment, news and sport for television viewers; viewing guide services; providing movies and television programmes to viewers on demand and near video on demand; electronic publications (not downloadable).

3. Under section 5(4)(a), the opponent relies on the use of the sign Q (and its Q logo) since 2015 in relation to a range of goods and services broadly matching the goods/services for which it claims a reputation under section 5(3).

4. The claims are based on the use of the marks causing confusion (section 5(2)(b)), unfair advantage, tarnishing and/or dilution (section 5(3)), or would amount to passing-off (section 5(4)(a)).

5. The applicant filed a counterstatement denying the various grounds of opposition. Whilst it makes a number of points, one of its main points is that the earlier marks do not constitute a Q, whereas its marks clearly do.

6. Both sides filed evidence. The opponent's evidence focuses on the use of the earlier marks and, also, the letter Q as part of the opponent's SKY Q television service and related equipment (set-top boxes, hubs, remotes etc). The applicant's evidence merely serves to introduce a number of precedent cases into the proceedings. I will touch on the evidence, to the extent necessary, later in this decision. The cases were consolidated. A hearing then took place before me on 9 August 2016 at which the applicant was represented by Ms Fiona Clark, of counsel, instructed by Withers & Rogers LLP, and at which the opponent was represented by Mr Guy Hollingworth, also of counsel, instructed by CMS Cameron McKenna Nabarro Olswang LLP.

Section 5(2)(b)

7. I will focus, in the first instance, on the opponent's UK registration (particularly the black and white mark), to the extent that it covers televisions, goods which are clearly identical to those for which the applicant seeks registration. This initial approach means that I do not need to consider the evidence filed because Mr Hollingworth accepted that the evidence did not enhance the distinctiveness of the opponent's mark in relation to televisions. Obviously, if the opponent does not succeed in relation to this initial focus, I will go on to consider the position in respect of the other goods/services relied upon (for which enhanced distinctive character was argued) and, indeed, the other grounds, to see if the opponent is in a stronger position.

8. 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.”

9. The following principles are gleaned from the judgments of the EU courts 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, 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 goods

10. As already stated, the goods are identical.

The average consumer and the purchasing process

11. In terms of the average consumer, I note that they are 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97. 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.”

12. The average consumer of the goods will be a member of the general public. Televisions are not everyday purchases, they are purchased on an infrequent basis. Whilst certainly not cheap, televisions are not perhaps as expensive as they once were. They are now frequently bought in supermarkets, in addition to specialist

electrical retailers. The average consumer will likely have due regard to the technical aspects of the goods, such as screen size and type, what features they possess. All of this suggests a degree of care and attention higher than the norm, however, I would only put this at slightly higher than the norm given the supermarket purchasing effect that is now in play.

13. The goods will be subject to a selection process that is predominantly visual in nature, with the goods being self-selected, perused on websites and advertisements etc. However, this is an area where the goods may also be discussed with salespeople, particularly in electrical stores, so aural similarity is not to be ignored.

Comparison of marks

14. In terms of the marks, 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 created by them, bearing in mind their distinctive and dominant components. The 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.”

15. The applied for marks are:



16. Which are to be compared with the earlier mark, which is:



17. The overall impression of the first applied for mark is based solely upon the letter Q of which it consists. Its stylisation is minimal, so the overall impression is strongly dominated by the letter itself. In terms of the second applied for mark, whilst I will come back to the significance of the word QLED later, it is clear, in my view, that the overall impression is dominated (although not to the exclusion of the other elements) by the larger Q element in the mark.

18. There is only one component in the earlier mark which, therefore, comprises the sole element in its overall impression. There is a dispute as to whether the marks will be seen as a letter Q (which I come on to below), but, for the time being, it is suffice to say that if they are so perceived, I come to the view that the letter and the stylisation make a roughly equal contribution to the overall impression.

19. Visually, and comparing the opponent's mark with the first applied for mark, it is clear, regardless of whether they are Qs or not, that both marks comprise a circular element, with an intersecting straight component, crossing the circle in roughly the same place, with the straight components being roughly the same length. The opponent's stylisation is much more involved than that of the applied for mark, given the impression of being slightly liquid (or metallic) in the applied for mark and what Ms Clark described as the glint that intersects it. Taking into account the similarities and differences, my view is that there is at least a medium level of visual similarity.

20. Aurally, and again comparing the first applied for mark, the position depends very much on perception. If the earlier mark is seen as a Q, it will be articulated purely on the basis of the conventional sound of that letter – QUEUE; from that perspective, the marks would be aurally identical. If, on the other hand, no such perception will arise, the marks would be very different from an aural perspective because one mark will be

articulated as QUEUE whereas the other would have no verbal element to articulate at all.

21. Conceptually, exactly the same point arises. If perceived as a Q, the earlier mark would be conceptually identical to the applied for mark (to the extent that letters have a concept), whereas, if not perceived in that way, the marks would be conceptually different (one being a Q the other having no clear concept).

22. In terms of the second applied for mark, the addition of QLED TV creates a further point of difference. However, bearing in mind my view of the overall impressions of the marks, together with what I have already said about the first mark, I consider that the degree of visually similarity, whilst there is less than my first assessment, is not of a low degree, it is slightly less than medium. In terms of aural and conceptual similarity, if the earlier mark is perceived as a Q there is still a reasonable degree of similarity.

23. It is at this point that I give my views on perception. Ms Clark submitted that the average consumer would not see the earlier mark as a Q and that it would, instead, be seen as a metallic ring with a glinting effect added to it. Mr Hollingworth submitted that it would be clearly and unambiguously perceived as a Q. He argued that it was human nature to look for familiarity and meaning in signs and given that the ring was of the same thickness as a traditional Q and that what Ms Clark described as the glinting effect was in the same position, and had a typical length/angle as the strikethrough of a Q, the sign would be seen as a Q. Mr Hollingworth also referred to the fact that the evidence showed that the sign was intended to be seen as Q, that it had been perceived in press articles as a Q, and if there had been any doubt as to the perception, consumers had been educated to see it as a Q.

24. In relation to Mr Hollingworth's point regarding intention, I place no significant weight on this because regardless of the intention of a designer, they do not always achieve what they might set out to achieve. In relation to the reference to Q boxes in press articles then this, similarly, has little weight because one does not know what the writers of those articles had seen. Finally, in relation to the education point, the part of the case I am currently considering relates to televisions, for which no use has been made, so, similarly again, this does not assist.

25. I accept the very rough rule of thumb that consumers will normally look for something that is familiar to them. However, the average consumer will not embark on an analytical exercise to look for such meaning/familiarity. In other words, the perception will still need to be a fairly obvious one. In my view, the average consumer will see the letter Q when they encounter the earlier mark. Whilst they will notice its stylisation and that it is more than just a standard font, I agree with Mr Hollingworth that the circle and the intersecting element matches the typical size and orientation of a Q so that the average consumer will see it as such.

26. I also accept Mr Hollingworth's fall-back position that even if this is wrong from the perspective of the notional average consumer, some consumers would clearly see the mark as a Q. The relevance of this point is reflective of the fact that the average consumer may not always perceive a single meaning of a particular sign. In *Soulcycle Inc v Matalan Ltd*, [2017] EWHC 496 (Ch), Mann J. approved the approach of the Hearing Officer at first instance in considering the reactions of average consumers who did, and did not, recognise the word SOUL within the mark SOULUXE. The judge said:

"27. I do not consider that the Hearing Officer made an error of principle in this respect. In considering the question of the effect of the mark within the class, by reference to proportions who did not share the same view, he was following the same line as that pursued by Arnold J at first instance in *Interflora Inc v Marks and Spencer plc* [2013] EWHC 1291 (Ch) . Arnold J considered at some length whether there was a "single meaning rule" in trade mark law under which the court had to identify one, and one only, perception amongst the relevant class of average consumer, and judge confusion accordingly. At paragraph 213 he found there is no such rule and then set out his reasoning over the following paragraphs. Paragraph 224 set out important parts of his conclusion; the references to Lewison LJ is to that judge's judgment in an earlier case.

"224 ... Thirdly, Lewison LJ expressly accepts that a trade mark is distinctive if a significant proportion of the relevant public identify goods as originating from a particular undertaking because of the mark. Thus he accepts that there is no single meaning rule in the context of validity.

As I have said, that is logically inconsistent with a single meaning rule when one comes to infringement. Fourthly, the reason why it is not necessarily sufficient for a finding of infringement that "some" consumers may be confused is that, as noted above, confusion on the part of the ill-informed or unobservant must be discounted. That is a rule about the standard to be applied, not a rule requiring the determination of a single meaning. If a significant proportion of the relevant class of consumers is confused, then it is likely that confusion extends beyond those who are ill-informed or unobservant. Fifthly, Lewison LJ does not refer to many of the authorities discussed above, no doubt because they were not cited. Nor does he discuss the nature of the test for the assessment of likelihood of confusion laid down by the Court of Justice. The legislative criterion is that "there exists a likelihood of confusion on the part of the public". As noted above, the Court of Justice has held that "the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion". This is not a binary question: is the average consumer confused or is the average consumer not confused? Rather, it requires an assessment of whether it is likely that there is, or will be, confusion, applying the standard of perspicacity of the average consumer. It is clear from the case law that this does not mean likely in the sense of more probable than not. Rather, it means sufficiently likely to warrant the court's intervention. The fact that many consumers of whom the average consumer is representative would not be confused does not mean that the question whether there is a likelihood of confusion is to be answered in the negative if a significant number would be confused ." (my emphasis)

28. That justifies a consideration of confusion in relation to a proportion of the class of average consumer by reference to perceptions, in the manner in which the Hearing Officer went about the matter. It also justifies applying the same technique (where appropriate on the facts) to validity and infringement proceedings alike."

27. Mr Hollingworth put the proposition slightly differently, based on the perception (and confusion) of a non-negligible part of the relevant public, based on what had been said in a number of earlier cases (e.g. case T-521/15), however, he later clarified that he was not seeking to draw any different type (or level) of test than the line of case-law mentioned in *Souluxe*. For her part, Mr Clark accepted in principle that different consumers may perceive marks differently and that sometimes this would be relevant, but her submission was that in this case it did not matter because no one would see the mark as a Q.

28. For the reasons I have already given in respect of the average consumer, my fall-back finding is that even if I was wrong to have found that the average consumer would perceive the mark as Q then, at the very least, a significant proportion of the relevant public would perceive the mark as a Q and potentially warrant the Tribunal's intervention.

Distinctiveness of the earlier marks

29. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. 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).

23. 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).”

30. As already stated, there has been no enhancement of distinctive character insofar as televisions are concerned. In relation to the inherent characteristics of the earlier mark, as a whole, and bearing in mind its stylisation, it has, at the very least, a normal level of distinctiveness. However, it is pertinent to consider what level of distinctive character the letter Q per se has and, therefore, what contribution that letter makes to the inherent qualities of the mark; this is pertinent because it is the distinctiveness of the common element that really matters¹.

31. I note from Ms Clark’s skeleton argument her submission that it is settled law that single letters are inherently weak. However, it is clear that each case must be assessed on its own merits. In my view, and whilst accepting that a single letter Q (for televisions) is unlikely to be regarded as highly distinctive, there is no reason why I should accord only a very weak or low level of inherent distinctiveness. Its distinctiveness may be slightly lower than the norm, but not by much.

Likelihood of confusion

32. The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. Confusion can be

¹ See, for example, *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

direct (which effectively occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same, but puts the similarity that exists between the marks/services down to the responsible undertakings being the same or related). In terms of indirect confusion, this was dealt with by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 where he noted that:

“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”.

33. The goods are identical, televisions. The purchasing process is likely to be slightly more considered than the norm. Notwithstanding the principle of imperfect recollection, I come to the view that the average consumer will not directly confuse the marks and will at least recall that one mark has some form of stylisation which is not shared by the other plainer mark(s). But will there be indirect confusion?

34. In her skeleton, and during submission, Ms Clark referred to a number of cases in which there was no likelihood of confusion between various letter marks (see paragraph 10 of the skeleton). In his skeleton, and in submission, Mr Hollingworth countered with a number of letter conflicts that had gone the other way. I agree with Mr Hollingworth that the best that one can take from all this is that there can be no hard and fast rules. Each case must be determined upon its own merits.

35. In terms of indirect confusion, and whilst accepting that the letter Q per se is not highly distinctive, the average consumer would regard the use of a fairly plain letter Q on the one hand, and the more stylised Q on the other, as a signal that the respective televisions sold under the competing marks are the responsibility of the same or a related undertaking. They will simply assume that the responsible (or related) undertaking is simply moving to/from a simple version of their Q brand, to presenting it on a more ornate manner. There is a likelihood of indirect confusion. This would be so even if I was wrong on my assessment of the average consumer's reaction to the earlier mark – there is still a significant proportion of the relevant public that would see the earlier mark as a Q and who would go on to be confused in the manner I have set out.

36. I extend this finding to the other earlier mark. Whilst there is a dispute between the parties as to the significance or otherwise of the term QLED (there is evidence in a witness statement provided by Emma Campbell, for the opponent, that this is a category of television, although it is not particularly strong evidence in terms of average consumer recognition), the dominance of the letter Q in the overall impression of the mark, coupled with the fact that even in the secondary element of the mark the letter precedes the word LED, I would still find a likelihood of indirect confusion.

37. The ground of opposition under section 5(2)(b) of the Act succeeds in relation to both applied for marks.

Other grounds/marks/goods

38. Given that the opposition has succeeded in relation to the identical goods, it is not necessary or proportionate to consider whether it would also have succeeded in relation to the other goods (which are further away) or, indeed, the other grounds of opposition.

Conclusion

39. Subject to appeal, the applications are to be refused.

Costs

40. The opponent has been successful and is entitled to an award of costs. I award the opponent the sum of £2200 as a contribution towards the cost of the proceedings.

The sum is calculated as follows:

Official Fee - £200 x 2

Filing statements of case and considering the counterstatements: £400

Filing and considering evidence: £800

Attending the hearing - £600

41. I therefore order Samsung Electronics Co., Ltd to pay Sky Plc the sum of £2200. 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 24th day of September 2018

Oliver Morris

For the Registrar,

the Comptroller-General