

BL O/782/18

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 3246824

BY

LIMA NETWORKS LIMITED

TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 42:



Technology tailored to you

AND

OPPOSITION THERETO (NO. 411665)

BY

ALLPORT CARGO SERVICES LIMITED

Background and pleadings

1. LIMA Networks Limited (the applicant) applied to register the trade mark:



Technology tailored to you

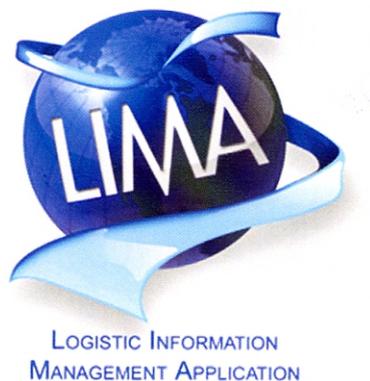
in the UK on 28 July 2017. It was accepted and published in the Trade Marks Journal on 17 November 2017, in respect of the following services:

Class 42: Advisory services relating to computer based information systems; Advice relating to the design of computer hardware; Advice relating to the development of computer systems; Advisory and consultancy services relating to computer hardware; Advisory and consultancy services relating to the design and development of computer hardware; Advisory and information services relating to computer peripherals; Advisory and information services relating to computer software; Advisory and information services relating to the design and development of computer hardware; Advisory and information services relating to the design and development of computer peripherals; Advisory services in the field of product development and quality improvement of software; Advisory services relating to computer based information systems; Advisory services relating to computer hardware; Advisory services relating to computer hardware design; Advisory services relating to computer programming; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to computer software used for graphics; Advisory services relating to computer software used for printing; Advisory services relating to computer software used for publishing; Advisory services relating to computer systems analysis;

Advisory services relating to computer systems design; Advisory services relating to technological research.

2. Allport Cargo Services Limited (the opponent) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). The opposition is raised against all of the services applied for. The opposition is based on an earlier UK Trade Mark, namely:

UK 2400538, filed on 01 September 2005 and registered on 10 March 2006, for the following mark:



3. The earlier mark is registered in classes 39 and 42, however, for the purposes of this opposition, the opponent relies only on the class 42 element of the earlier mark, namely:

Class 42: Design and development of computer software for the freight industry.

4. In its statement of grounds, the opponent claims that the marks and the services at issue are identical or highly similar, and a strong likelihood of confusion or association will arise as a result.

5. In its counterstatement, the applicant claims that it has no interest in proprietary software or the freight industry. It denies that any confusion would arise as the marks and branding are quite different.
6. The opponent submitted written submissions which will not be summarised here, but will be referred to later in this decision if and where necessary.
7. The applicant did not provide any written submissions or evidence in response.
8. No hearing was requested and so this decision is taken following a careful perusal of the papers.
9. Throughout the proceedings the opponent has been professionally represented by Blake Morgan LLP. The applicant has represented itself.

Decision

Section 5(2)(b) of the Act

10.5(2)(b) of the Act states:

“(2) A trade mark shall not be registered if because –

(a) ...

(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. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“the CJEU”) 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 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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

12. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

13. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

14. In *Gérard Meric v Office for Harmonisation in the Internal Market ('Merici')*, Case T- 133/05, the General Court stated that:

“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”.

15. The parties' respective specifications are:

Earlier mark	Application
Class 42: Design and development of computer software for the freight industry.	Class 42: Advisory services relating to computer based information systems; Advice relating to the design of computer hardware; Advice relating to the development of computer systems;

	<p>Advisory and consultancy services relating to computer hardware; Advisory and consultancy services relating to the design and development of computer hardware; Advisory and information services relating to computer peripherals; Advisory and information services relating to computer software; Advisory and information services relating to the design and development of computer hardware; Advisory and information services relating to the design and development of computer peripherals; Advisory services in the field of product development and quality improvement of software; Advisory services relating to computer based information systems; Advisory services relating to computer hardware; Advisory services relating to computer hardware design; Advisory services relating to computer programming; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to computer software used for graphics; Advisory services relating to computer software used for printing; Advisory services relating to computer software used for publishing; Advisory services relating to computer systems analysis; Advisory services relating to computer systems design; Advisory</p>
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	services relating to technological research.
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16. The applied for services '*Advisory and information services relating to computer software; Advisory services in the field of quality improvement of software; Advisory services relating to computer programming; Advisory services relating to computer software; Advisory services relating to computer software design*' are all services that are not limited to any specific area of interest and which therefore encompass such services relating to the freight industry. As such, these services are found to be highly similar to the earlier services '*Design and development of computer software for the freight industry*'.
17. The applied for services '*Advisory services relating to computer based information systems; Advice relating to the development of computer systems; Advisory services in the field of product development; Advisory services relating to computer based information systems; Advisory services relating to computer systems design; Advisory services relating to computer systems analysis*' are all services that are not limited to any specific area of interest and which therefore cover such services relating to the freight industry. These services may be provided by the same undertakings and may be found via the same channels of trade as the earlier '*Design and development of computer software for the freight industry*'. It is also possible that the end-user of these services may be the same. These services are considered to be similar to a medium degree
18. The applied for services '*Advice relating to the design of computer hardware; Advisory and consultancy services relating to computer hardware; Advisory and consultancy services relating to the design and development of computer hardware; Advisory and information services relating to computer peripherals; Advisory and information services relating to the design and development of computer hardware; Advisory and information services relating to the design and development of computer peripherals; Advisory services relating to computer hardware; Advisory services relating to computer hardware design*', are all IT services providing expert advice in the field of designing and developing of computer hardware and

peripherals, and consultancy services relating to hardware and peripherals. The earlier services are design and development of computer software for the freight industry. Whilst the providers of these services may be the same, or linked undertakings as, e.g. the manufacturers of smart phones, smart televisions and personal computers will often also be the developer of the software which comes installed in those products and is essential in the operation of them, the specificity of the earlier services is such that only a low degree of similarity between these services is likely, as the provider of advice and consultancy services relating to hardware and peripherals *per se*, is unlikely to be a specialist in the freight industry. It is possible however, that these services may share end-user, channels of trade and could be said to be complementary. These services are therefore considered to be similar, but to only a low degree.

19. The applied for services '*Advisory services relating to computer software used for graphics; Advisory services relating to computer software used for printing; Advisory services relating to computer software used for publishing*', are services providing advice about computer software in specific fields of interest

20. In *Mercury Communications Ltd v Mercury Interactive (UK) Limited* [1995] FSR 850, Mr Justice Laddie said that:

“In my view the defining characteristic of a piece of computer software is not the medium on which it is recorded, nor the fact that it controls a computer, nor the trade channels through which it passes but the function it performs. A piece of software which enables a computer to behave like a flight simulator is an entirely different product to software which, say, enables a computer to optically character read text or design a chemical factory. In my view it is thoroughly undesirable that a trader who is interested in one limited area of computer software should, by registration, obtain a statutory monopoly of indefinite duration covering all types of software, including those which are far removed from his own area of trading interest.”

21. Recently, Arnold J has also expressed agreement with these views in *Sky v. SkyKick* [2018] EWHC 155 (Ch).

22. Advisory services relating to computer software are clearly quite distinct from the actual good 'software', however it is appropriate to consider whether the provider of 'design and development of computer software for the freight industry' may claim such broad rights, so as to obtain a monopoly covering all types of software related services, including advisory services in such specific fields as computer software for use in printing, publishing and graphics.

23. Whilst I take note of the findings of Mr Justice Laddie in *Mercury*, I believe that the situation in respect of the advisory services at issue, rather than actual goods for specified purposes, is somewhat different. I find that these services may be provided by the same undertakings and may be found via the same channels of trade. It is also possible that the end-user of these services may be the same. These services are therefore considered to be similar to a low degree.

24. Consequently, the services at issue have been found to be highly similar, similar to a medium degree and similar to a low degree.

Average consumer and the purchasing act

25. 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: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

26. 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.”

27. The average consumer of ‘design, development, consultancy and advisory services, all relating to computer software, computer hardware, computer systems and computer peripherals’ will be a professional consumer who, due to the technical and specialised nature of those services, will pay a higher than normal level of attention during the purchasing process.
28. The selection of the services at issue will largely be via websites and high street outlets, and also through word of mouth recommendations. These services may also be selected following discussion over the telephone. The selection process can therefore be said to be primarily a visual one, however an aural selection cannot be ruled out.

Comparison of marks

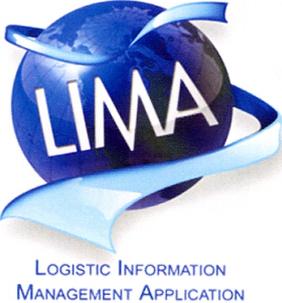
29. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference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

30. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the

marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

31. The respective trade marks are shown below:

Earlier mark	Contested trade mark
	

32. The opponent's mark is a complex mark, comprised of verbal and figurative elements, including a blue spherical device which will be perceived as a globe of the world, with a ribbon encircling it. The mark also contains the word 'LIMA' in large white lettering, placed at the centre of the globe, and the words 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' presented in smaller blue lettering at the base of the mark. Whilst the words 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' are quite small in the mark, the globe and ribbon device and the word 'LIMA' are of equivalent size and dominance, and contribute roughly equally to the overall impression of the mark.

33. The applicant's mark is also a complex mark consisting of the word 'LIMA' presented in large black lettering and placed at the centre of the mark; the words 'Technology tailored to you', in smaller black lettering placed at the base of the mark and three orange angular device elements that may be perceived to be brackets or corners of a rectangular frame. Where those orange figurative elements are perceived as brackets or corners of a frame, the letter 'L' in the word 'LIMA' plays a dual role in the mark, as it will be perceived as the bottom left hand 'corner' of the frame, as well as the first letter in the word 'LIMA'. Due its dominance in the mark, the overall impression in the applied for mark lies in the word 'LIMA'.

Visual similarity

34. Visually, the respective marks are similar inasmuch as they share the word 'LIMA'. They differ visually in the words 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' of the earlier mark and the words 'Technology tailored to you' in the applied for mark. The marks also differ visually in the figurative elements in each mark which have no counterparts in the other. Notwithstanding the obvious differences between the marks, the word 'LIMA' is dominant or co-dominant in both marks and forms the centrepiece of each and, as a result, the marks are considered to be visually similar to at least a medium degree.

Aural similarity

35. Aurally, both marks will be articulated in the traditional manner, with each verbal element enunciated normally. The word 'LIMA' however, will be the first verbal element articulated in both marks and will be enunciated identically as /LEE/MA/. Whilst the additional verbal elements 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' and 'Technology tailored to you' in the marks are not similar, these straplines are likely to be perceived as descriptive and non-distinctive matter and may possibly not be articulated by the average consumer. For that part of the public which will not articulate these elements, the marks can be said to be aurally identical in respect of the element 'LIMA'. For that part of the relevant public who will articulate all of the words in the marks, as 'LIMA' will be articulated first, the marks are aurally similar to a medium degree.

Conceptual similarity

36. The earlier mark combines a depiction of a globe and ribbon device, with the words 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' and the invented word 'LIMA'. The mark as a whole has no clear or obvious conceptual message, however the globe and the strapline 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' may convey the notion of a global logistical information management tool. The word 'LIMA' may be perceived as the acronym of the strapline, however

this is not certain. The word 'LIMA' will more likely be considered to be an invented word or recognised as the capital city of Peru.

37. The later mark contains figurative elements which cannot be said to carry any concept as such. The verbal element 'LIMA' will be perceived to be an invented word or to be referring to the capital city of Peru. The strapline 'Technology tailored to you' will be seen to refer to the kind of services on offer, i.e. the provision of services that deliver bespoke technological requirements to the customer.

38. As the verbal elements 'LOGISTIC INFORMATION MANAGEMENT APPLICATION' and 'Technology tailored to you' are likely to be dismissed as non-distinctive straplines, for that part of the relevant public which considers the word 'LIMA' to be referring to the capital city of Peru, the marks are conceptually similar to a high degree. For that part of the public which does not perceive the word LIMA to be the capital city of Peru, but considers the word to be an invented term with no obvious meaning, the marks are conceptually dissimilar.

39. In conclusion, the marks are found to be visually similar to at least a medium degree, aurally identical or similar to a medium degree, and conceptually highly similar or dissimilar.

Distinctive character of the earlier trade marks

40. 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).”

41. The opponent has made no claim that its earlier mark has acquired an enhanced degree of distinctive character. I must therefore assess the mark purely on its inherent distinctive character.

42. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis Q.C., sitting as the Appointed Person, observed 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 said:

“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.”

43. In this instance, the common element 'LIMA' will be perceived as either an invented word or the capital city of Peru, with no obvious link or association with the services at issue. As such it can be said to be inherently distinctive to a higher than normal degree. When considered in tandem with the additional verbal and figurative elements in the mark, I find that the earlier mark can be said to enjoy a high degree of inherent distinctive character.

Likelihood of Confusion

44. 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.

45. Confusion can be 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).

46. The marks have been found to be visually similar to at least a medium degree, aurally identical or similar to a medium degree and conceptually highly similar or dissimilar.

47. In written submissions dated 23 October 2018, the opponent claims that the applicant has admitted that its Class 42 services are identical to the opponents, as it is stated in the TM8 counterstatement that "*LIMA admits to requesting the same classification as Allport Cargo Services*". Having considered this carefully, I do not accept that this statement from the applicant results in an admission that the services themselves are identical, but rather, I take from the applicant's statement the conclusion that, when referring to "*the same classification*", the applicant is merely agreeing that both parties are interested in services that fall within class 42 of the Nice classification system.

48. That said, in my earlier assessment of the services at issue, I found them to be highly similar, similar to a medium degree or similar to a low degree.

49. As the services concerned are specialised and technical in nature, and the average consumer is considered to be a professional, the level of awareness and attention paid during the selection process will be higher than normal.

50. During the selection process the visual impact of the marks will carry the most weight in the mind of the average consumer, however the aural impact of the marks cannot be dismissed.

51. Notwithstanding the similarities set out above, between the marks and the services at issue, I find that the visual differences between the marks are such that the average consumer will distinguish between them readily. Consequently, I am satisfied that direct confusion will not occur i.e. the relevant public will not mistake the earlier mark for the later one, or vice-versa.

52. Having found that direct confusion will not occur when the average consumer is faced with one of the marks to hand, having previously encountered the other, I now go on to consider whether the average consumer, would consider the common elements in the marks and determine, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking, thereby indirectly confusing the marks.

53. Mr Iain Purvis QC, sitting as the Appointed Person, in L.A. Sugar Limited v By Back Beat Inc, Case BL-O/375/10 noted that:

“16. ...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.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

54. I have previously found the element ‘LIMA’ to be inherently distinctive to a higher than normal degree. I believe, in the context of the services at issue, that this is the case whether the average consumer perceives that element of the marks to be an invented word or a reference to the capital city of Peru. I have also concluded that the other verbal matter in each mark, ‘Technology tailored to you’ and ‘LOGISTIC INFORMATION MANAGEMENT APPLICATION’ is likely to be given little weight and will be perceived as non-distinctive or descriptive matter that may not be articulated by the relevant public. That being the case, in relation to services which are highly similar or similar to a medium degree, I believe that the average consumer will consider the ‘LIMA’ element that both marks share, in the same manner in which Mr Purvis has set out ‘TESCO’ above, as an example of a highly distinctive element to which additional, even distinctive matter, may be added, without diluting the overarching ‘brand’ that will be perceived by the relevant public.

55. Taking all of this into consideration, I conclude that, in respect of the services which have been found to be similar to a high or medium degree, the marks at issue will be indirectly confused by the average consumer who, whilst recognising that the marks are different, will assume, due to the sharing of the highly distinctive word 'LIMA', placed at the centre of both marks, and the similarities in the services on offer, that those services are provided by the same, or an economically linked, undertaking.

56. The application is therefore refused for the following services:

Advisory and information services relating to computer software; Advisory services in the field of quality improvement of software; Advisory services relating to computer programming; Advisory services relating to computer software; Advisory services relating to computer software design; Advisory services relating to computer based information systems; Advice relating to the development of computer systems; Advisory services in the field of product development; Advisory services relating to computer based information systems; Advisory services relating to computer systems design; Advisory services relating to computer systems analysis.

57. However, where the services at issue have been found to be similar only to a low degree, I believe that, due to the specificity of the earlier services, combined with the visual differences between the marks, an exclusion added to those services of the later mark is sufficient to avoid a likelihood of confusion.

58. Accordingly, taking into account paragraph 3.2.2(b) of Tribunal Practice Notice 1/2012, the application may proceed to registration for the following services, to which I have added a 'save for' exclusion:

Advice relating to the design of computer hardware; Advisory and consultancy services relating to computer hardware; Advisory and consultancy services relating to the design and development of computer hardware; Advisory and information services relating to computer peripherals; Advisory and information services relating to the design and development of computer hardware; Advisory and information services relating to the design and

development of computer peripherals; Advisory services relating to computer hardware; Advisory services relating to computer hardware design; Advisory services relating to computer software used for graphics; Advisory services relating to computer software used for printing; Advisory services relating to computer software used for publishing; none of the aforesaid services related to or concerned with the freight industry.

Conclusion

59. The opposition is partially successful. Subject to appeal the application is refused for the services listed in paragraph 56. The application may proceed for the services listed in paragraph 58.

Costs

60. Both parties have achieved a measure of success in their arguments. I therefore decline to make a costs award in favour of either party and direct that each party bears their own costs.

Dated this 6th day of December 2018

**Andrew Feldon
For the Registrar
The Comptroller-General**