

**O/128/22**

**TRADE MARKS ACT 1994**

**CONSOLIDATED PROCEEDINGS**

**IN THE MATTER OF INTERNATIONAL REGISTRATION NOS.  
WO0000001448483, WO000001448470 AND WO0000001445917**

**DESIGNATING THE UNITED KINGDOM  
IN THE NAME OF L1 CAPITAL PTY LTD:**



**L1 CAPITAL**

 **L1 CAPITAL**

**L1**

**IN CLASSES 35 AND 36**

**AND IN THE MATTER OF OPPOSITIONS THERETO UNDER NOS. 417305,  
417437 AND 417773**

**BY LETTERONE HOLDINGS S.A.**

## Background And Pleadings

1. The holder of the following international trade marks is L1 Capital Pty Ltd (“the holder”):



**L1 CAPITAL**

(“the First Contested Mark”)



(“the Second Contested Mark”)



(“the Third Contested Mark”)

(together “the Contested Marks”)

2. The Contested Marks were registered with effect from 30 November 2018. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the Contested Marks under the terms of the Protocol to the Madrid Agreement. The holder seeks protection for the Contested Marks in relation to the services set out in paragraph 25 below. The holder claims priority from 15 November 2018.

3. The request to protect the First and Third Contested Marks was published in the UK for opposition purposes on 10 May 2019. The request to protect the Second Contested Mark was published on 24 May 2019.

4. On 12 and 22 August 2019 respectively, LetterOne Holdings S.A. (“the opponent”) opposed the First and Second Contested Marks on the basis of sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

5. On 13 August 2019, the opponent opposed the Third Contested Mark on the basis of sections 5(1), 5(2)(a), 5(3) and 5(4)(a) of the Act.

6. Under sections 5(1), 5(2) and 5(3), the opponent relies upon UKTM no. 3050550 for the mark **L1** which was filed on 8 April 2014 and registered on 25 July 2014. The goods and services for which the earlier mark is registered are set out in the Annex to this decision.

7. Under sections 5(1) and 5(2), the opponent relies upon only those services underlined in the Annex. The opponent claims that the earlier mark is identical or similar to the Contested Marks and that they cover identical or similar services. Consequently, the opponent claims that the registration of the Contested Marks should be refused pursuant to sections 5(1) and 5(2) of the Act.

8. Under section 5(3), the opponent originally claimed that the earlier mark had a reputation in relation to the full breadth of the goods/services listed in its registered specification. At the hearing described below, the opponent changed its position on this matter. It (rightly) accepted that the evidence could not support the claim that the earlier mark has a reputation, except in relation to financial and investment services. The opponent claims that use of the Contested Marks would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or reputation of the earlier mark.

9. The opponent also claims that it has used the unregistered sign **L1** throughout the UK since June 2013 in relation to the same goods and services for which UKTM no. 3050550 is registered and has acquired goodwill under this sign. According to the opponent, use of the Contested Marks would constitute a misrepresentation to the public that would damage the goodwill in its business. Therefore, use of the Contested Marks would be contrary to the law of passing off pursuant to section 5(4)(a) of the Act.

10. The holder filed counterstatements denying the claims made. I note, in particular, that:

- (i) the holder relied on the fact that there have been no instances of confusion between the parties' marks/services;
- (ii) the holder raised defences of honest concurrent use and acquiescence.

11. On 2 December 2019, the proceedings were consolidated pursuant to Rule 62(g) of the Trade Marks Rules 2008.

12. A hearing took place before me, by video conference, on 4 May 2021. The holder was represented by Mr Andrew Norris QC, instructed by K&L Gates LLP. The opponent was represented by Ms Ashton Chantrielle of Counsel, instructed by Jones Day. Both parties filed skeleton arguments in advance of the hearing.

### **Suspension of proceedings**

13. The parties have made repeated requests for stays of these proceedings in order that they could reach a negotiated settlement. Most of the requested stays were accepted. The first such request was made in April 2020. The parties made a request for a further stay after the hearing described in the previous paragraph. Further stays were agreed. At my direction, the response to the parties' final request for a further stay up until 31<sup>st</sup> January 2022 indicated that no further stays would be agreed after that date. The parties have had ample time (22 months) to reach a settlement. The public interest in completing proceedings and clarifying whether the Contested Marks will be registered, or not, now requires a decision in these proceedings.

### **Evidence**

14. The opponent filed evidence in chief in the form of the witness statement of Rebecca Swindells dated 24 February 2020, accompanied by 7 exhibits. Ms Swindells is a Partner at Jones Day.

15. The holder filed evidence in chief in the form of the witness statement of Joel Arber dated 27 July 2020, accompanied by 12 exhibits. Mr Arber is a director of L1 UK

Property Investments Pty Ltd, which he states is a wholly owned subsidiary of the holder. Mr Arber has held this position since 18 May 2017.

16. The opponent filed evidence in reply in the form of the witness statement of Vitalij Farafonov dated 28 October 2020. Mr Farafonov is the Chief Operating Officer of the opponent.

### **Application to file further evidence**

17. On 26 April 2021, the opponent made an application to file further evidence as follows:

*“We write to apply for permission for the Opponent to introduce the evidence filed with this letter, namely the Second Witness Statement of Rebecca Swindells dated 26 April 2021 and its exhibits RS2.1-RS2.5, as evidence into the Opposition Proceedings in accordance with Rule 20(4) of the Trade Marks Rules 2008.*

*The exhibits comprise five documents (namely four media articles and one document showing two screenshots of Google searches conducted by the Opponent’s legal team) demonstrating evidence of confusion or association between the [holder] and the Opponent. These documents have only recently been discovered in the course of preparing for the Hearing by the legal representatives for the Opponent. The parties have been focused on settlement negotiations prior to this month.*

*[...]*

*The exhibits enclosed are highly material to the issues which the Hearing Officer will need to determine. In particular, the [holder] has relied repeatedly in its Statement of Case on the fact that there have been no instances of confusion (see paragraphs 3(c), 5(d) and 6(b) of the Counterstatements in respect of Opposition No. OP000417305 and OP000417437, and paragraphs 4(c) and 7(b) of the Counterstatement in respect of Opposition No. OP000417773). These documents dispel that position.*

*In view of the above, it would be highly prejudicial to the Opponent to exclude these documents from evidence. By contrast, as the Opponent is seeking to*

*introduce only a small number of publicly available documents into evidence, the [holder], which is represented by a Queen's Counsel in these Opposition Proceedings, will suffer no injustice as a result of being subjected to the burden of this evidence at this stage. [...]"*

18. This was dealt with as a preliminary point at the hearing.

19. I refused the application for the following reasons:

- a) The application was made very late on in proceedings; the additional evidence could have and should have been filed as evidence in chief or, at the very least, as evidence in reply. The opponent submitted that it had only just come to light, but as the application itself makes clear, this was because the opponent only looked for this evidence as part of its preparation for the hearing.
- b) The materiality of the evidence was marginal. It appeared to show limited confusion between the parties amongst journalists, some of whom were obviously based outside the UK. It did not show any confusion amongst average consumers of the parties' services, let alone confusion that arose as a result of the use of the marks during the course of trade in the UK. In my view, the materiality of this evidence was not sufficient to offset the gross delay in filing it.
- c) There was potential prejudice to the holder because if the holder had had more time to consider the evidence they could have taken steps to respond to it; for example, they could have contacted the authors of the articles in question and sought greater information about what the author had in mind or what their sources were and whether or not this was genuine confusion. The delay in filing the evidence denied the holder that opportunity.
- d) Had I admitted the evidence I would have had to have allowed the holder to undertake those investigations which would have resulted in an adjournment of the hearing. Given the only marginal materiality of the evidence, I did not consider that appropriate.

## Defences

20. I note that in the counterstatement the holder raised defences of honest concurrent use and acquiescence. Mr Arber's evidence was directed at demonstrating the use made of the applied-for marks by the holder. However, prior to the hearing, the holder confirmed that it no longer intended to pursue these defences.<sup>1</sup> Consequently, I will not address them any further.

## Section 5(1)


21. Section 5(1) of the Act reads as follows:

“(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

22. By virtue of its earlier designation date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier trade mark had not completed its registration process more than 5 years before the priority date of the Contested Marks, it is not subject to proof of use pursuant to section 6A of the Act and the opponent can rely upon all of the services identified.

## Identity of the marks

23. The respective trade marks are shown below:

Opponent's trade mark	Holder's trade mark
L1	 (the Third Contested Mark)

<sup>1</sup> Skeleton argument of Mr Andrew Norris QC, paragraph 11.

24. It is common ground that these marks are identical for the purposes of section 5(1) (and 5(2)) of the Act.

**Comparison of services**

25. The competing services are as follows:

Opponent's services	Holder's services
<p><u>Class 36</u>            Financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services; Private equity consultant services; Private equity fund investment services; Providing venture capital, development capital, private equity and investment funding; Financial services, namely, raising debt and equity capital for others; Financial advice; Advice relating to investments; Equity capital investment; Financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; Investment banking services; Hedge fund investment services; Financial services, namely, dealing in securities as a market maker and in trading commodities, securities, options, futures, equities and fixed income products in the U.S. and overseas market securities; Financial services, namely, operation and</p>	<p><u>Class 35</u>            Market reporting services; preparation of business reports; preparation of commercial reports; preparation of economic reports; writing of business reports; business management advisory services; consultancy relating to business management; corporate management consultancy; business consultancy.</p> <p><u>Class 36</u>            Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of information relating to financial services; capital fund management; provision of investment information; real estate financing; real estate leasing; real estate management; real property</p>



<p>management of hedge funds, commodity pools and other collective investment vehicles, and trading for others of securities, options, futures, derivatives, debt instruments and commodities; Consultancy, information and advisory services relating to any of the aforesaid services.</p>	<p>management; property portfolio management; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of property; management of shares; share management; share portfolio management; share services; preparation and analysis of financial reports; preparation of financial reports; trading in bonds; advisory services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.</p>
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26. In *Gérard Meric v Office for Harmonisation in the Internal Market*,<sup>2</sup> the General Court stated that:

*“29. ....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 für 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.”*

27. In the judgment of the CJEU in *Canon*,<sup>3</sup> the court stated at paragraph 23 of its judgment that:

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<sup>2</sup> Case T- 133/05

<sup>3</sup> Case C-39/97

*“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”.*

28. In *Kurt Hesse v OHIM*,<sup>4</sup> the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,<sup>5</sup> the General Court stated that “complementary” means:

*“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.*

In *Sanco SA v OHIM*,<sup>6</sup> the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited*:<sup>7</sup>

*“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”*

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<sup>4</sup> Case C-50/15 P

<sup>5</sup> Case T-325/06

<sup>6</sup> Case T-249/11

<sup>7</sup> BL-0-255-13

29. In Mr Norris' skeleton argument, various admissions were made as to the similarity of the services. Consequently, I will use this as a starting point for my comparison.

### Class 35

#### *Market reporting services;*

30. Ms Chantrielle submitted that *marketing reporting services* are the type of services that the average consumer would see as being sold together with some of the other services covered by the earlier marks. By way of example, she submitted that *market reporting services*, would be provided as part of the same service as *financial advice*, including advice relating to investments. According to the opponent, these are highly similar services.

31. Mr Norris accepted that *market reporting services* have a medium degree of similarity to the opponent's services. However, he submitted that Ms Chantrielle's submission placed too much weight on the complementary nature of the services and tended to ignore other relevant factors, such as the different purposes of the services: one being a financial service and the other being the provision of information about business trends.

32. I agree. These services are similar to a medium degree.

#### *Preparation of business reports; preparation of commercial reports; preparation of economic reports; writing of business reports*

33. Ms Chantrielle submitted that *preparation of business reports; preparation of commercial reports; preparation of economic reports* were similar services to the services covered by the earlier mark to the same degree as *marketing reporting services*. According to the opponent, all of those reports would be done as part of the service of providing financial advice, including advice relating to investments.

34. Mr Norris accepted that these services are similar to those covered by the opponent's specification to a low degree. My attention was drawn to *Sky v Skykick*,<sup>8</sup> in which Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the correct approach to interpreting broad and/or vague terms, as follows:

*"...the applicable principles of interpretation are as follows:*

*(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.*

*(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.*

*(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.*

*(4) A term which cannot be interpreted is to be disregarded."*

35. The core meaning of providing business/commercial/economic reports includes the provision of information about business (either a specific business or business generally), commerce or economics. This includes information to assist in predicting patterns in particular sectors. For example, such reports might be prepared in order to assist in determining which market or business should be invested in. Consequently, I consider it likely that these services would be offered by investment fund managers to their clients. Whilst the purpose of the services differs, I consider it likely that there will be an overlap in trade channels. The nature and method of use of the services are likely to differ. I do not consider the services to be in competition, although they are complementary.<sup>9</sup> There will clearly be overlap in user. Taking all of this into account, I consider there to be a medium degree of similarity between the services.

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<sup>8</sup> [2020] EWHC 990 (Ch)

<sup>9</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

*Business management advisory services; consultancy relating to business management; corporate management consultancy; business consultancy.*

36. The core meaning of these services is advice and consultancy about business/corporate management or (in the case of *business consultancy*) about the operation of a business. According to Ms Chantrielle, they go hand-in-hand with financial advice, advice relating to investments, financial services, dealing with investments and acquisitions and are therefore similar to a high degree. This was because:

*“...you do get a lot of entities that provide all of those services together. You get the investment banks that do that; you get the big management consultancy firms in the UK that offer business consultancy as well as investment advice or financial advice.”*

37. There is no evidence that it is common for entities that offer business management services to also offer financial or investment advisory services. Ms Chantrielle submitted that this is a notorious fact, but I do not accept that it is. In any event, the nature and purpose of the services differ, and they are not in competition. Even accepting that there will be overlap of users, any complementarity between the services is insufficient to justify the opponent’s claim that the services are highly similar.

38. Mr Norris accepted that the respective services are similar to a low degree. I see no reason to find that they are any more similar than that.

### Class 36

*Real estate management; real property management; management of property*

39. Mr Norris accepts that these services also share a low degree of similarity with those covered by the opponent’s specification. At the hearing, Ms Chantrielle submitted as follows:

*“I suppose, if there is a management of property in the sense of [...] a managing agent, that may not be similar – I accept that – but there will be management of property. For example, your property portfolio will be relevant in the financial-advice sense, where a business or even a person owns a bunch of property and may need financial advice in the management of that property from a financial perspective. [...]”*

40. The core meaning of management of property/real estate is the administration of such assets. I accept that property may be seen as a type of investment. However, the management of property is typically a service which is provided by estate and leasing agents, rather than by financial advisors or providers of financial investment services. I accept that there may be some limited overlap in nature, method of use and purpose, as both parties’ services involve the management of different types of assets. However, in my view, any such overlap is very high level. I do not consider these services to be in competition and I do not consider them to be complementary. I can see no reason to find that these services are more similar than the ‘low degree’ accepted by Mr Norris. Taking all of this into account, I find these services to be similar to a low degree.

#### *Real estate leasing*

41. Mr Norris accepted that these services are similar to the opponent’s services to a medium degree. I can see no reason why the level of similarity would be any higher than this. Consequently, I will proceed on the basis of the applicant’s concession that they are similar to a medium degree.

*Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of information relating to financial services; capital fund management; provision of investment information; real estate financing; property portfolio management; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of shares; share*

*management; share portfolio management; share services; preparation and analysis of financial reports; preparation of financial reports; trading in bonds; advisory services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.*

42. Mr Norris accepted that the remaining services in class 36 of the applied-for specification (listed above) are highly similar to the opponent's services. However, in my view, some of these terms are identical to terms in the opponent's specification. I find as follows:

- a) The terms *provision of information relating to financial services* and *provision of investment information* in the holder's specification are self-evidently identical to "[...] information [...] services relating to any of the aforesaid services" in the opponent's specification.
- b) The terms *advisory services relating to money management* and *advisory services relating to finance* in the holder's specification are self-evidently identical or identical on the principle outlined in *Meric* to "financial advice" in the opponent's specification.
- c) The term *investment business services* in the holder's specification is likely to cover businesses that offer investment services. Consequently, this term is identical on the principle outlined in *Meric* to "financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services" in the opponent's specification.
- d) I see no reason to find that *real estate financing* and *property portfolio management* in the holder's specification are identical to any of the terms in the opponent's specification. Consequently, I will proceed on the basis that they are highly similar, as accepted by Mr Norris.

- e) The terms *preparation and analysis of financial reports* and *preparation of financial reports* in the holder's specification are likely to include the preparation and analysis of financial reports relating to investments. These are likely to overlap in nature, method of use and purpose with "consultancy, information and advisory services relating to any of the aforesaid services" in the opponent's specification as they all include conveying information to customers about investments. I also consider it likely that there will be an overlap in trade channels as businesses specialising in investment fund services are likely to offer all of these services. The users will clearly overlap. Consequently, I agree that these services are highly similar.
- f) The remaining terms in class 36 of the holder's specification are all self-evidently identical or identical on the principle outlined in *Meric* to "financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services", "financial and investment services, namely, asset and investment acquisition, consultation, advisory and development" and/or "investment banking services" in the opponent's specification.

43. The opposition against the Third Contested Mark based upon section 5(1) succeeds in relation to those services that I have found to be identical:

Class 36      Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of information relating to financial services; capital fund management; provision of investment information; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of shares; share management; share portfolio management; share services; trading in bonds; advisory



services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.

## **Section 5(2)**

44. Section 5(2) of the Act reads as follows:

“5(2) A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is registered for goods or services similar to those for which the earlier trade mark is protected, or

(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.”

45. The following principles are gleaned from the decisions 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 to mind the earlier mark, 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**

46. I have already made findings above in relation to the similarity of the services for which the Third Contested Mark is applied-for and the services relied upon by the opponent. As the specifications of the Contested Marks are identical, the same findings will apply here for all of the consolidated oppositions.

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

47. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the services are likely to be selected by the average consumer.

48. The average consumer of the holder's class 35 services is likely to be a business. The average consumer of the holder's class 36 services could be either a member of the general public or a business user. The business or person concerned will be seeking business information, business management advice, financial services or property/estate management services. The services may be purchased as a one-off or may be purchased on an ongoing basis. Mr Norris submitted at the hearing that these are highly specialised services which would be highly considered purchases. I accept that the following underlined services will be selected with a high degree of attention.

Class 36

Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of

information relating to financial services; capital fund management; provision of investment information; real estate financing; real estate leasing; real estate management; real property management; property portfolio management; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of property; management of shares; share management; share portfolio management; share services; preparation and analysis of financial reports; preparation of financial reports; trading in bonds; advisory services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.

49. In my view, given that the average consumer is likely to be concerned with matters such as security, interest rates and service standards, I consider it likely that a high degree of attention will be paid during the purchasing process for the services.

50. The opponent noted that the holder's specification covers the broad term "financial services" which could itself include services which attract a lower level of attention. The example given by Ms Chantrielle was "cash-dispensing services" which she states would fall within "financial services" at large; such services would be low (or no) cost. However, even in relation to financial services which are low (or no) cost, the security and customer service standards of the business offering the facility will be carefully considered. The financial consequences of mistakes being made or security breaches, even when using low (or no) cost services, is likely to result in an above-average level of attention being paid during the selection process. The same applies to *provision of information relating to financial services; advisory services relating to money management; financial asset management; management of finances; management of financial assets; advisory services relating to finance; personal finance services.*

51. This leaves *real estate leasing; real estate management; real property management; property portfolio management; management of property* in class 36. These services are far from impulse purchases. Real estate is a very valuable commodity. Therefore, a person or business selecting a party to lease or manage its property is likely to be particularly careful to select a service provider with the right

skills and experience. This is likely to result in an above-average level of attention being paid during the selection process.

52. The quality and cost of the services covered by class 35 of the application are also likely to be important to the business selecting a service provider. Therefore, the average consumer of such services is also likely to pay an above-average level of attention during the selection process.

53. The services are likely to be selected following perusal of signage on premises frontage or on advertisements/websites. Consequently, visual considerations are likely to dominate the selection process. However, I recognise that there may also be an aural component to the purchase given that word-of-mouth recommendations may play a part.

### **Comparison of trade marks**

54. 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 the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in *Bimbo SA v OHIM*<sup>10</sup> 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.”*

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<sup>10</sup> Case C-591/12P

55. 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.

56. I have already found the Third Contested Mark to be identical to the earlier mark. The remaining trade marks for comparison are shown below:

Opponent's trade mark	Holder's trade marks
L1	 <p><b>L1 CAPITAL</b> ("the First Contested Mark")</p>  <p><b>L1 CAPITAL</b> ("the Second Contested Mark")</p>

56. The opponent's mark consists of the letter and numeral combination L1. Therefore, the overall impression lies in the combination of this letter/numeral. The First Contested Mark consists of the words L1 CAPITAL presented beneath a black square device containing what is likely to be seen as the letter/numeral L1, in a white font. Mr Norris submitted at the hearing that the text within the device may be seen as two letters 'L', with one presented upside down. However, given that the letter/numeral L1 is present beneath the device, I consider it more likely that an average consumer paying an above average (or higher) level of attention will view the device as a stylised version of the letter/numeral L1. Given the relative size of the device, I consider that the wording L1 CAPITAL and the device play a roughly equal role in the overall impression. The Second Contested Mark consists of the words L1 CAPITAL presented alongside the device described above. Given the size of the wording relative to the

size of the device, I consider the words L1 CAPITAL are likely to play the greater role in the overall impression, with the device playing a lesser role (despite appearing first to those reading from left to right).

### Visual Comparison

#### *The earlier mark and the First Contested Mark*

57. Visually, the marks coincide in the letter/numeral combination L1. They differ in the presence of the word CAPITAL in the holder's mark, which is absent from the opponent's mark. The device in the holder's mark is also a point of visual difference, although the impact of this is lessened given that it is also likely to be seen as representing the letter/numeral combination L1. Taking this into account, I consider the marks to be visually similar to a medium degree.

#### *The earlier mark and the Second Contested Mark*

58. Visually, the same comparison will apply as set out above. I do not consider that the difference in arrangement of the device/text impacts upon my overall findings. Consequently, I consider the marks to be visually similar to a medium degree.

### Aural Comparison

#### *The earlier mark and the First Contested Mark*

59. Aurally, I consider it unlikely that the letter/numeral L1 in the holder's mark will be articulated twice; rather, it seems more likely that the mark will simply be pronounced as the letter/numeral L1 (ELL-ONE) and the word CAPITAL, which will be given its normal (i.e. three syllable) English pronunciation. Although shorter, the L1 element will be spoken first because of its position above and to the left of CAPITAL. It will therefore have at least as much impact as CAPITAL. Consequently, I consider the marks to be aurally similar to a medium degree.

*The earlier mark and the Second Contested Mark*

60. Aurally, the same comparison applies as identified above. Consequently, I consider the marks to be aurally similar to a medium degree.

Conceptual Comparison

*The earlier mark and the First Contested Mark*

61. Conceptually, I do not consider that any meaning will be conveyed by the letter/numeral L1. This will apply to both L1 in text form and within the device. Consequently, I consider this aspect of the marks to be conceptually neutral. The word CAPITAL in the holder's mark will be given its ordinary dictionary meaning, although this will not be a distinctive point of difference for financial and investment services.

*The earlier mark and the Second Contested Mark*

62. Conceptually, the same comparison applies as set out above.

**Distinctive character of the earlier trade mark**

63. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*<sup>11</sup> 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-2779, paragraph 49).*

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<sup>11</sup> Case C-342/97



*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)."*

64. Trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are descriptive or allusive of a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words with a high degree of originality and no descriptive or allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

65. I will begin by assessing the inherent distinctiveness of the earlier mark L1. The earlier mark consists of the letter/numeral combination L1. Although L1 has no descriptive meaning in relation to the services at issue, a simple single letter and single numeral combination is not highly distinctive in relation to the services at issue. In my view, the earlier mark is inherently distinctive to an average degree.

66. The opponent has filed evidence of use. I will, therefore, now consider whether the distinctiveness of the earlier mark has been enhanced through use. I note that the use that has been made of the mark appears to relate to use made by a number of companies which the opponent states are within the same group.<sup>12</sup> For the purposes of my assessment, I will proceed on the basis that all of this use is use with the opponent's consent and use upon which the opponent can rely.

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<sup>12</sup> Exhibit RS1

67. I remind myself that the relevant market for assessing enhanced distinctiveness is the UK market. However, the opponent's evidence is not targeted at the UK market.

68. The opponent has provided lengthy documents (such as annual reviews), without any indication as to the sections of those documents that it considers to be most relevant. I note that the Annual Reviews of all the L1 entities confirm net assets of \$21.1billion in 2015, \$22.2billion in 2016, \$25.1billion in 2017 and \$22.2billion in 2018.<sup>13</sup> I note that the figures provided in the documents are given in US dollars, so it is not clear what proportion of the business relied on is targeted at UK customers. Ms Chantrielle drew my attention to the 2015 annual review which states that "*L1 Treasury is one of the top 10 investors of student accommodation in the UK*". However, as I pointed out, the 2017 annual review says that a decision had been made to sell the student accommodation portfolio. This was a year before the relevant date. The annual reviews are public documents, but there is no evidence as to how many relevant average consumers in the UK would have seen these documents prior to the relevant date (or at all). It is not clear how else relevant average UK consumers would have known that L1 Treasury was at one time a major investor in UK student accommodation.

69. Ms Chantrielle directed me to a prize operated by the opponent in the UK market, which is a competition operated in the field of economics.<sup>14</sup> However, as Mr Norris noted, no information is provided about how many people attended the award ceremony for this event or how the mark relied upon was used in relation to it. As Mr Norris pointed out, the opponent also uses the mark LetterOne, and so without further information about how the earlier mark was used in relation to this competition (if at all), it is difficult to assess whether it shows significant exposure of the mark in the UK.

70. Accounts and financial statements for various companies within the same group as the opponent have been provided for the years 2016 to 2019.<sup>15</sup> However, the figures contained within them are not broken down by market or the services to which

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<sup>13</sup> Exhibit RS3

<sup>14</sup> Exhibit RS3

<sup>15</sup> Exhibits RS6 and RS7. These are Letterone Corporate Partner S.a.r.L, L1 Energy (UK) LLP and L1 Energy Holdings Limited.

they relate, nor do they identify which proportion of the amounts generated relate to use of the marks relied upon. I note that the accounts record the value of the opponent's shareholding in businesses such as L1 Energy, but this does not assist in identifying the extent of use of the mark relied upon in the UK. I also note that the opponent's group owns/invests in businesses located in the UK, such as Holland & Barrett, but that does not provide any information about UK customers for the services relied upon.<sup>16</sup> I have no information about who the opponent's customers are or where they are based.

71. I note that "L1" was the principal sponsor of the Royal Academy exhibition "Revolution: Russian Art from 1917-1932" in London in 2016.<sup>17</sup> I also note that there have been references to the earlier mark in UK publications between 2013 and 2019. Those articles from 2019 are dated after the relevant date; of those dated prior to the relevant date, they include 28 articles published in, inter alia, *The Daily Mail*, *City AM*, *FT.com*, *The Independent*, *Financial Times*, *Guardian*, *Sky News*, *Privateequitywire.co.uk*, *The Telegraph* and *The Economist*.<sup>18</sup> These articles include references to Letterone (often then shortened to L1), L1 Energy, L1 Treasury, Letterone Technology and L1 Technology. They are in the nature of corporate news. Some are about people joining or leaving the companies. Others are about investments or divestments, mostly connected with North Sea oil and gas assets and Holland and Barrett. Many make it clear that the group is a global investor. For example, an online article was published on *Privateequitywire.co.uk* in February 2016 under the title "*Letterone makes \$200m strategic investment in Uber.*" These articles show that companies within the opponent's group were active between 2013 – 2018, but they shed little or no light on the services provided under L1 in the UK during this period.

72. Admittedly, an online article published by City AM in June 2013 under the title "*Lord Browne to advise \$20m oil and gas fund*" stated that L1 Energy was to be based in London. However, as Mr Norris pointed out at the hearing, the organisational chart

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<sup>16</sup> Exhibit RS2

<sup>17</sup> Exhibit RS3

<sup>18</sup> Exhibit RS5

in the consolidated group 2018 accounts for Letterone Holdings S.A.<sup>19</sup> indicated that L1 Energy Holdings Limited acted purely as a holding company for a German company, and L1 Energy Limited was dormant. Ms Swindells provided copies of the accounts of two other UK entities, namely L1 Energy (UK) LLP and L1 Retail (UK) LLP, which she says use the L1 mark with the opponent's consent. The accounts cover the 15/12 months (respectively) ending on 31<sup>st</sup> March 2019. They therefore span the relevant date. According to the Members Report for L1 Energy (UK) LLP, the partnership's principal activity was the provision of investment advice to Letterone Corporate Advisor Limited. This company is incorporated in Gibraltar and appears to be a member of the same group of companies. The Members Report for L1 Retail (UK) LLP states that its principal activity was the provision of investment advice. It does not say to whom, or where. The figures in the accompanying accounts are presented in US dollars. None of this information assists me in assessing the extent of the use of L1 in relation to investment advice provided to consumers in the UK.

73. The burden of proving enhanced distinctiveness is on the opponent. In my view, the evidence filed is not sufficient to establish any enhanced distinctiveness. It is not targeted at the relevant market and, in some cases, does not identify specific services or marks. Whilst I recognise that there has been some coverage in UK publications, I have no information about the opponent's market share (or any information that would enable me to determine market share), nor do I have any information about overall advertising and promotional spend. The opponent has provided no evidence that it has any customers in the UK. Consequently, I do not consider that the distinctiveness of the earlier mark has been enhanced through use.

### **Likelihood of confusion**

74. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the services down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether

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<sup>19</sup> See the last page of exhibit RS7

there is a likelihood of confusion; rather, it is a global assessment where all relevant 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. It is also necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to 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 that he/she has retained in his or her mind.

75. I have made the following findings:

- a) The First and Second Contested Marks are visually and aurally similar to the holder's mark to a medium degree.
- b) The common element of all of the marks, L1, is conceptually neutral. However, the word CAPITAL in the First and Second Contested Marks will act as a point of conceptual difference (albeit a non-distinctive one for financial and investment services).
- c) The Third Contested Mark and the holder's mark are identical.
- d) The earlier marks are inherently distinctive to a medium (or average) degree.
- e) The average consumer is a member of the general public or a business user who will pay an above-average (or higher) degree of attention during the purchasing process.
- f) The purchasing process is predominantly visual, although may also include an aural component.
- g) The services vary from being similar to a low degree to being identical.

76. Whilst I recognise that the average consumer will pay an above-average (or higher) degree of attention during the purchasing process, I consider it likely that the contested marks will be mistakenly recalled or misremembered as the earlier mark. This is because once some allowance is made for imperfect recollection, it is the element L1 which is likely to remain in the mind of the consumer, leading to direct confusion when the contested marks are used in relation to identical services, or services which are similar to a medium degree or higher. Even if the differences between the marks are identified, the common presence of the letter/numeral L1 is likely to lead a significant proportion of average consumers to conclude that the marks originate from the same or economically linked undertakings. This will result in indirect confusion. In these circumstances, the stylisation/background in the Contested Marks is likely to be viewed as simply an alternative presentation to the conventional use of L1, and the addition of the word CAPITAL is likely to be viewed as indicating a part of the same business, or a related business, that specialises in capital investments/services. Even where the word CAPITAL is not obviously descriptive, the L1 letter/numeral combination retains an independent distinctive role and relevant average consumers are still likely to perceive this as indicating common origin. Where the services are the same or similar to a medium degree or more, I do not consider that the above-average (or even high) degree of attention paid by consumers during the selection process is likely to be sufficient to avoid this perception.

77. In relation to those services that are similar to only a low degree, I consider that the distance between the services will be sufficient to avoid a likelihood of confusion. This is because L1 is a mark of only average distinctiveness and average consumers paying an above-average level of attention are, in these circumstances, likely to perceive the common use of L1 as a mere coincidence.

78. Consequently, the oppositions against the Contested Marks succeed in relation to the following services:

Class 35: Market reporting services; Preparation of business reports; preparation of commercial reports; preparation of economic reports; writing of business reports

Class 36: Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of information relating to financial services; capital fund management; provision of investment information; real estate financing; real estate leasing; property portfolio management; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of shares; share management; share portfolio management; share services; preparation and analysis of financial reports; preparation of financial reports; trading in bonds; advisory services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.

### **Section 5(3)**

79. Section 5(3) of the Act states:

*“5(3) A trade mark which -*

*(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”*

80. As noted above, the mark relied upon qualifies as an earlier mark pursuant to section 6 of the Act and is not subject to proof of use pursuant to section 6A of the Act.

81. I bear in mind the relevant case law set out in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-*

*Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier mark is similar to the Contested Marks. Secondly, the opponent must show that the earlier mark is known to a significant part of the relevant public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the Contested Marks. Fourthly, assuming that the first three conditions are met, section 5(3) requires that one or more of the types of unfair advantage/damage set out in that provision would occur. It is unnecessary for the purposes of section 5(3) for the services to be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

## **Reputation**

82. In *General Motors*<sup>20</sup> the CJEU held that:

*“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.*

*26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.*

*27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.*

*28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence*

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<sup>20</sup> Case C-375/97



*of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."*

83. I have already summarised the opponent's evidence of use above. The relevant market for determining a reputation is the UK market. I have no information regarding the market share held by the trade mark or the geographical spread of use within the UK market. The opponent has not provided any overall turnover figures for the services provided under L1 within the UK market, nor has it provided any information about advertising spend. Taking all of this into account, I am not satisfied that the opponent has established the requisite reputation.

84. The opposition based upon section 5(3) of the Act is dismissed in its entirety.

#### **Section 5(4)(a)**

85. I do not consider that this ground puts the opponent in any stronger position than its 5(2)(b) case. I have already explained the problems with the opponent's evidence. I am not convinced that it is targeted enough for me to find goodwill in the UK market. Further, as Mr Norris pointed out at the hearing, the opponent has not proved that any goodwill generated by the legal entities such as L1 Retail (UK) LLP and L1 Treasury would have accrued to it rather than to those businesses. This is a pre-requisite for bringing an opposition under section 5(4)(a).<sup>21</sup>

86. In any event, although the test for misrepresentation is different from that for likelihood of confusion in that it entails "*deception of a substantial number of members of the public*" rather than "*confusion of the average consumer*", it is unlikely that the difference between the legal tests will produce different outcomes.<sup>22</sup> I believe that to be the case here. I consider that for those services in relation to which I have found no likelihood of confusion, the differences in fields of activity would be sufficient to avoid a substantial number of the relevant public from being misled into believing that

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<sup>21</sup> See The Trade Marks (Relative Grounds) Order 2007

<sup>22</sup> *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501

the holder's services are the services of the opponent or an entity linked to it. Consequently, this ground of opposition does not take the opponent any further and I dismiss it.

## **Conclusion**

87. The opposition against the Contested Marks is successful in relation to the following services for which the applications are refused:

Class 35: Market reporting services; Preparation of business reports; preparation of commercial reports; preparation of economic reports; writing of business reports.

Class 36: Capital fund investment; monitoring of investment funds; financial investment; financial investment management services; investment; investment asset management; investment business services; investment management; investment portfolio management services; financial services; provision of information relating to financial services; capital fund management; provision of investment information; real estate financing; real estate leasing; property portfolio management; advisory services relating to money management; financial asset management; management of finances; management of financial assets; corporate funds management; management of shares; share management; share portfolio management; share services; preparation and analysis of financial reports; preparation of financial reports; trading in bonds; advisory services relating to finance; personal finance services; financial fund management; financial investment fund services; investing of funds; investment fund management; investment of funds; management of funds.

88. The Contested Marks can proceed to registration for the following services:

Class 35: Business management advisory services; consultancy relating to business management; corporate management consultancy; business consultancy.

Class 36: Real estate management; real property management; management of property.

## Costs

89. The opponent has enjoyed the greater degree of success in all three oppositions and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In making this award, I bear in mind:

- a. An appropriate reduction must be made to reflect the opponent's only partial success.
- b. Although the opponent filed lengthy evidence, it has been of no assistance to its case. Consequently, it would not be appropriate to make a significant award in respect of the opponent's evidence.
- c. The holder's evidence was intended to support claims of honest concurrent use and acquiescence which were ultimately (and correctly) abandoned.

90. In the circumstances, I award the opponent the sum of **£1700** calculated as follows:

Filing Notices of opposition and considering the holder's counterstatements	£350
Considering the holder's evidence	£500
Preparing for and attending hearing	£550
Official fee for filing an opposition under sections 5(1)/5(2) x3	£300

91. I therefore order L1 Capital Pty Ltd to pay LetterOne Holdings S.A. the sum of **£1700**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated 14<sup>th</sup> February 2022**

**Allan James**  
**For the Registrar**

## **ANNEX**

### **Class 9**

Telecommunications and telephonic apparatus and instruments; mobile and fixed telephones; Encoded cards; Smart cards; Data communication apparatus and instruments.

### **Class 36**

Financial services, namely, investment advice, investment management, investment consultation and investment of funds for others, including private and public equity and debt investment services; Private equity consultant services; Private equity fund investment services; Providing venture capital, development capital, private equity and investment funding; Financial services, namely, raising debt and equity capital for others; Financial advice; Advice relating to investments; Equity capital investment; Financial and investment services, namely, asset and investment acquisition, consultation, advisory and development; Investment banking services; Hedge fund investment services; Financial services, namely, dealing in securities as a market maker and in trading commodities, securities, options, futures, equities and fixed income products in the U.S. and overseas market securities; Financial services, namely, operation and management of hedge funds, commodity pools and other collective investment vehicles, and trading for others of securities, options, futures, derivatives, debt instruments and commodities; Consultancy, information and advisory services relating to any of the aforesaid services.

### **Class 38**

Telecommunication, mobile and fixed telecommunication and telephone, satellite telecommunication, cellular telecommunication, radio and cellular telephone, radio facsimile, radio paging and radio communication services; Message sending, receiving and forwarding; Transmission and receiving by radio; Rental of telephone, radio, radio telephone and radio facsimile apparatus; Communication of data by radio, telecommunication systems and satellite; Provision of internet services, in particular internet access services; Electronic mail services; Provision of location based services for telecommunications apparatus; Provision of wireless application protocol services,

including those utilising a secure communications channel; Consultancy, information and advisory services relating to any of the aforesaid services.

**Class 39**

Transmission, distribution and/or supply of oil, electricity, gas and other energy sources; Transportation of oil and gas by pipeline; Oil and gas supply services; Electricity supply services; Consultancy, information and advisory services relating to any of the aforesaid services.

**Class 40**

Exploration and production of gas and oil; Generation of electricity; Consultancy, information and advisory services relating to any of the aforesaid services.