

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 2534124
("THE BASICS")**

IN THE NAME OF O2 HOLDINGS LIMITED

**AND IN THE MATTER OF THE APPLICANT'S APPEAL TO THE
APPOINTED PERSON**

**FROM THE DECISION OF MR NATHAN ABRAHAM
DATED 17 FEBRUARY 2011**

DECISION

Introduction

1. This is an appeal by O2 Holdings Limited against the partial refusal of its application to register THE BASICS (words only) as a trade mark for a variety of goods and services in Classes 9, 38, 41 and 42 ("**the Mark**").
2. The full specification applied for is set out in the attached Schedule. This has been marked up by striking through those goods and services for which the mark has been refused, following a hearing before Mr Nathan Abraham, for the Registrar. The hearing officer concluded that the Mark was both non-distinctive and descriptive in relation to such goods and services and should therefore be refused pursuant to sections 3(1)(b) and 3(1)(c) of the Trade Marks Act 1994 ("**the Act**").
3. The Applicant presented its written and oral submissions through Julius Stobbs of Ipulse (IP) Limited. The Registrar was represented at the hearing by Dr Bill Trott, who also provided a skeleton argument.
4. I heard this appeal at the same hearing as the Applicant's appeal in respect of the partial refusal of application no. 2534126 to register THE WORKS across the same range of goods and services. The issues concerned are very similar, and the same hearing officer dealt with both cases. However, the marks are different; there were some differences in the hearing officer's conclusions; and the same is true of my own. Therefore, at risk of repeating myself, I set out my reasoning in full in both cases, and each decision stands alone.

Nature of this appeal

5. It is well established that this appeal should be a review rather than a rehearing, and that I should be reluctant to interfere with the hearing officer's decision unless I find that he has made an error of principle in reaching his conclusion: *REEF Trade Mark* [2003] RPC 5.
6. I agree with the observation of Mr Iain Purvis QC in *Re PUTTERSCOPE* (BL O-096-11, 8 March 2011) that the question of distinctiveness under section 3(1)(b) involves a consideration of fewer variables than are raised when evaluating the question of "likelihood of confusion" under section 5(2)(b) of the Act (which was the provision in issue in *REEF*). The same is true of the question of descriptiveness under section 3(1)(c). This somewhat limits the degree of reluctance that I should have as the appellate tribunal if I disagree with the hearing officer's conclusion, particularly in circumstances where no evidence has been presented.
7. Nevertheless, I am constrained in this case by the fact that the assessment was carried out by an experienced hearing officer, who had the benefit of oral argument by the Applicant's representative (as I did). Therefore, I would need to disagree reasonably strongly before I would substitute my own conclusion. And I am mindful of the warning by Simon Thorley QC in *Paypoint Network Limited v Coppelstons Stores (PARCELPOINT)* BL O-453-02 at [22] that an appellate tribunal should be slow to substitute its own judgment for that of the hearing officer in a borderline case, where no error of principle has been identified. In some respects, this is such a case.
8. I have not re-visited the registrability of the Mark in relation to the goods and services that were accepted by the Registrar. The Applicant has already succeeded in relation to those, and Dr Trott did not ask me to review the position. Therefore, I have restricted my analysis to the correctness or otherwise of the decision in relation to the goods and services for which the Mark has been refused.

Section 3(1)(c)

9. The hearing officer first dealt with section 3(1)(c) of the Act, which prohibits the registration of "*trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services*".
10. This provision corresponds with article 3(1)(c) of the Trade Marks Directive (Directive 2008/95/EC of 22 October 2008) and article 7(1)(c) the Community Trade Mark Regulation (Council Regulation 207/2009/EC of 26 February 2009), and case law under those provisions is equally applicable.

11. At paragraphs 10 and 11 of the decision, the hearing officer cited extracts from the General Court decision in Case T-80/07 *JanSport Apparel Corp v OHIM* and the Court of Justice of the European Union (“CJEU”) decision in Case C-363/99 *Koninklijke KPN Nederland NV and Benelux-Merkenbureau (POSTKANTOOR)*, which together summarise some of the key considerations to take into account in assessing whether a mark falls foul of section 3(1)(c). In particular:

- (1) The signs referred to in the section are those which may serve in normal usage from a consumer’s point of view to designate, either directly or by reference to one of their essential characteristics, goods or services such as those in respect of which registration is sought. Therefore, registrability has to be assessed in context, first by reference to the goods/services in respect of which registration is sought, and second by reference to the relevant public’s perception of the sign.
- (2) There must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the relevant consumer immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics.
- (3) It is irrelevant whether the characteristics concerned are commercially essential or merely ancillary.
- (4) The public interest behind this exclusion is that descriptive signs or indications relating to the characteristics of goods or services should be kept free for use by all.

12. Before assessing the characteristics of the Mark, the hearing officer considered the identity of the relevant consumer and their likely level of attention when presented with the Mark. He thought that most of the goods and services in the specification would be directed at a fairly non-specialist public, though for some of the items – such as telecommunications apparatus and services – the relatively high unit price meant that the consumer would be likely to have an above-average level of attention; and for others – such as electrical apparatus, and scientific and technological services – there would be a more specialist consumer base. He then said that he would assume across all of the goods and services that “the average consumer will apply an above-average level of attention” (paragraph 14).

13. The hearing officer’s substantive assessment of the application of section 3(1)(c) to the Mark was as follows:

15. Turning my assessment to the mark applied for, I refer to dictionary entries for the word 'basics' (as a noun) where it is defined follows:

basics (*noun*) informal the essential facts or principles of a subject or skill: *I learnt the basics of programming on a course / teachers are going back to basics to encourage pupils to learn English.* ■essential food and other supplies: *people are facing a shortage of basics like flour.*
(Taken from *New Oxford Dictionary of English* (Oxford University Press, 2001))

basics (*plural noun*) the simplest and most important facts, ideas or things connected with something
(Taken from Cambridge Dictionaries Online).

16. Although these definitions don [sic.] not specifically address the phrase applied for (i.e. 'the basics'), they nevertheless form the basis for use of that phrase in common parlance. In normal language, 'basics' has been expanded to 'the basics' where it is intended to denote any collection of essential facts, ideas or 'things'. The examples of use provided in these definitions (italicised) demonstrate how the term can be used to signify both tangible and intangible characteristics. In respect of the former, this might be where the term is used to denote physical and/or visible objects, articles and functions deemed as being essential to overall effectiveness, whilst in respect of the latter, the term might be used to denote those opinions, principles or assumptions which are considered fundamental to a particular subject. Both have relevance to this assessment.

17. For class 9, the section 3(1)(c) objection is based on the premise that the term 'the basics', used in respect of products such as mobile phones, computers, content carrying media and other electronic items, would be understood as a reference to the feature set and/or functionality of such items. For example, the basic features of a standard laptop computer might be recognised as being Wi-Fi connectivity, installation of the latest operating system to ensure compatibility with peripherals, and the presence of USB ports. Similarly, by general consensus, the basic features of a mobile phone are likely to be the ability to make domestic and international phone calls and send text messages. Such functions and features are as likely to be referred to by the phrase 'the basics' as they are via the more complete phrase 'the basic features'. In essence, the former (i.e. the mark applied for) is a natural abbreviation of the latter. To illustrate this point, I have included as part of my appendix to this decision a print taken from www.microsoft.com/windowsmobile/en-xm/help/v6-0/Basics.aspx which clearly shows use of the phrase 'the basics' in reference to the essential features of its mobile phone software.

18. In drawing these conclusions, the Registrar recognises that one's interpretation of what 'the basics' actually signifies is a largely subjective process depending on consumer expectation. Therefore, a mobile phone consumer accustomed to using smart phones may consider features such as web connectivity, high-definition video streaming, and a digital camera as being essential or basic features when considering a purchase, whilst a less frequent user of mobile phones may consider them to be unnecessary luxuries (and not, therefore, basics). It is acknowledged and accepted that the mark applied for may mean different things to different consumers. However, a trade mark's capacity for subjective interpretation does not render it distinctive (as confirmed by the ECJ in the *Doublemint* case - see paragraph 10 above - where that mark's capacity to describe multiple meanings did not assist its claim to inherent distinctiveness).

19. Given dictionary definitions, this mark's capacity to be used in trade for descriptive purposes is relatively broad. For the goods in class 9 other than those

used for the purposes of telecommunications, the mark may serve *inter alia* to designate products deemed essential for electrical maintenance (apparatus and instruments for conducting, switching and regulating electricity); for meeting safety requirements (fire extinguishing apparatus and protective clothing); or for creating a home entertainment system (MP3 players, CDs and DVDs). Via similar reasoning, the services in class 38 are equally subject to a 3(1)(c) objection given that providers of broadband, digital television and email services normally provide a range of service options dependent on the consumer's need and budget, and are likely to present - possibly as their cheapest option - a *basic* package. In this context (and referring back to the dictionary definitions provided above), the term 'the basics' may describe either the product itself, or a set of principles, rules or instructions allowing the customer to make full use that product (see Internet use taken from www.radioandtelly.co.uk/satellitety.html included in the appendix).

20. For the services in classes 41 and 42, the mark is more likely to be used in order to denote intangible characteristics such as any basic principles or facts relating to a particular subject. Therefore, an educational facility may provide courses on the basics of anything from Shakespeare to motor mechanics and, in accordance with the public policy underlying section 3(1)(c), the phrase 'the basics' should therefore remain free for other traders to use. Similarly, a personal trainer (as covered by the application's claim to 'sporting activities' at large) may use the phrase in order to convey the basics of cardio-vascular exercise (see www.channel4.com/4beauty/wellbeing/getting-fit/pilates-the-basics included in the appendix), whilst technical consultancies providing services such as those claimed in class 42 may use the term 'the basics' to denote a particular level of expertise on offer (particularly where that expertise focuses on basic or essential principles).

14. The hearing officer had earlier (at paragraph 4) summarised the items for which the objection was maintained as being:

- those goods and services for which the relevant consumer would understand the sign as being a denotation of type or characteristic i.e. those likely to possess a basic range of functions;
- those goods which represent the simplest or most fundamental of their type; and
- those services which focus on providing basic facts or principles about something.

15. The Applicant claimed in the Notice of Appeal that the Hearing Officer had erred in the following ways:

- (1) by failing to take account of the fact that the mark has no specific meaning, but means different things to different people;
- (2) by mis-applying the CJEU's decision in Case C-191/01 *OHIM v Wrigley (DOUBLEMINT)*, which only applies to marks that have one or more specific meanings;

- (3) by making the assumption that the average consumer for all of the goods and services was the same;
- (4) by mis-applying the General Court decisions in *JanSport* (see above) and Case T-19/04 *Metso Paper Automation v OHIM (PAPERLAB)* [2005] ECR II-2383 at [25], as referred to in *JanSport*.
16. Mr Stobbs did not pursue the third ground listed either in his skeleton argument or in oral submission in relation to the Mark. However, there was some discussion of it at the hearing because we were at the same time considering the Registrar's partial rejection of another mark, THE WORKS (application no. 2534126), in relation to which Mr Stobbs raised the point. Since his position was that the more specialist the goods and services involved, the more likely the Mark was to be perceived as having trade origin, it seems to me that the hearing officer's assumption that the consumers for all of the items listed would have an above average level of attention was in the Applicant's favour. Thus nothing would be achieved by challenging that aspect of the decision.
17. Although one has to be careful about grouping together goods/services and their respective consumers when assessing the applicability of any absolute grounds of refusal, I believe that the hearing officer did so appropriately, for the sake of procedural economy, in relation to the average consumer for the purpose of this decision.
18. The other three grounds all essentially boil down to one overall point, which was stated by Mr Stobbs in the hearing to be that THE BASICS functions as a trade mark because it is not in the true sense a descriptor, but it is unusual, in the context of the goods and services in issue.
19. He conceded that THE BASICS is used and has an obvious meaning in relation to some services, such as instruction or education (on the basis that a course might be provided on "the basics in ..."). But, for the other goods and services remaining in issue, he submitted that the term has no specific meaning to a consumer, but means something different to every different person. It carries information of a general type that alludes to the nature of the goods and services, but does not go as far as being a descriptor.
20. This proposition was tested at the hearing by reference to the provision of broadband services, which is of key interest to the Applicant. Mr Stobbs explained that, although a potential consumer offered a broadband package called THE BASICS might assume from the name that the offering included a basic level of service, they would have no idea what exactly was included. Thus, contrary to the position in *DOUBLEMINT*, where the mark was held to have two specific and alternative

meanings, THE BASICS simply alludes to a general characteristic, but people would be unable to pin down a specific meaning in relation to the goods and services concerned. Thus, the *DOUBLEMINT* decision was irrelevant, and the requirement repeated in *PAPERLAB* and *JanSport* of “a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics” was not satisfied.

21. As far as broadband services are concerned, I am unpersuaded. Like the hearing officer, I believe that the use of THE BASICS in relation to such services would lead the average consumer – whether a regular member of the public or a more specialist consumer – to believe that the service on offer was at a basic level, being the most simple or fundamental. I do not read the European authorities as teaching that the meaning understood has to be so specific as to describe the minutiae of the service on offer, such as the download speed, or limitations on the volume of data, or the period of use.
22. The same is true of most of the other services listed in the Class 38 specification. They are the sorts of services where consumers would understand use of the Mark to refer to a basic package or level of service. For those services in Class 38 which relate to expert advice, planning, information and advisory services, the average consumer may be more likely to assume that the services on offer focus on providing basic facts or principles about their subject matter. Again, this is because of one of the ordinary meanings of the term “the basics”. Therefore, I see no mistake in the hearing officer’s approach to the Class 38 services under section 3(1)(c).
23. Turning to Class 41, the only services refused were “education; providing of training” and “sporting and cultural activities”. In relation to the first two, Mr Stobbs effectively conceded in his submissions that the average consumer would assume that the use of the Mark in the context of education and training referred to an introductory course. Similarly, the Mark would denote a basic level of activity for sporting and cultural activities. Again, I agree with the hearing officer’s omission of these services from the accepted specification.
24. In relation to Class 42, I believe that the hearing officer took the correct approach by trying to identify those services where the term “the basics” would be taken to denote a particular level of expertise on offer or to denote a basic service package. I had some difficulty in determining exactly how he had drawn the dividing line between those services accepted and those rejected, particularly the acceptance of “technical consulting” but refusal of “consultancy services relating to information technology”. However, I am not asked to re-assess those services that have been accepted for registration; and I agree with the overall approach taken by the hearing

officer. I therefore do not think that it would be appropriate for me to conduct the assessment anew and to reject additional services from the specification.

25. I have left the goods in Class 9 until last, as this is where I diverge from the hearing officer. His rationale for excluding most of the goods in the list was that “the mark may serve *inter alia* to designate products deemed essential for electrical maintenance (...); for meeting safety requirements (...); or for creating a home entertainment system (...)”. I think this goes too far away from saying that the Mark would be understood to designate an essential characteristic of the goods themselves. The fact that MP3 players, CDs and DVDs are basic elements of a home entertainment system does not mean that the use of THE BASICS in relation to such goods would be taken by relevant consumers as being intended to convey this information. Similar points can be made for the other examples that he has given.
26. It seems to me that there is a real difference between how relevant consumers would perceive the use of THE BASICS in relation to the Class 9 goods in issue as compared to the services that have been refused. While they would still recognise the term as an ordinary everyday expression, it is much harder than in the case of the services that have been discussed to understand how the term would be taken as having a directly descriptive meaning. I think that the hearing officer’s approach strained the applicability of section 3(1)(c) beyond its proper bounds, and on that basis, I believe that I am entitled to overturn that aspect of his decision so as to say that none of the Class 9 goods should be refused under this section. Unfortunately, this makes no difference to the overall outcome in the light of my consideration of section 3(1)(b) which I now go on to deal with.

Section 3(1)(b)

27. Section 3(1)(b) of the Act provides that “*trade marks which are devoid of any distinctive character*” may not be registered. This provision corresponds with article 3(1)(b) of the Trade Marks Directive and article 7(1)(b) of the Community Trade Mark Regulation, and the same case law applies to each.
28. The hearing officer set out his objections under section 3(1)(b) as follows:

22. In relation to section 3(1)(b), the ECJ held in *Postkantoor* (cited above) that:

“86. In particular, a word mark which is descriptive of characteristics of goods or services for the purposes of Article 3(1)(c) of the Directive is, on that account, necessarily devoid of any distinctive character with regard to the same goods or services within the meaning of Article 3(1)(b) of the Directive. A mark may none the less be devoid of any distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive.”

23. I approach this ground of objection on the basis of the following principles derived from the ECJ cases referred to below:

- An objection under section 3(1)(b) operates independently of objections under section 3(1)(c) – (*Linde AG (and others) v Deutsches Patent-und Markenamt*, Joined Cases C-53/01 to C-55/01, paragraphs 67 to 68);
- For a mark to possess a distinctive character it must identify the product (or service) in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product (or service) from the products (or services) of other undertakings (*Linde* paragraphs 40-41 and 47);
- A mark may be devoid of distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive (*Postkantoor*, paragraph 86);
- A trade mark’s distinctiveness is not to be considered in the abstract but rather by reference to the goods or services in respect of which registration is sought and by reference to the relevant public’s perception of that mark (*Libertel Group BV v Benelux Merkenbureau*, Case C-104/01 paragraphs 72-77);
- The relevant public must be deemed to be composed of the average consumer who is reasonably well-informed and reasonably observant and circumspect (*Libertel* paragraph 46 referring to Case C-342/97 *Lloyd Schuhfabrik Meyer*).

24. Taking all of the above into account, the Registrar is obliged to reject a trade mark pursuant to section 3(1)(b) where, although it may be considered too imprecise a term to indicate a direct and specific relationship with the goods or services at issue without further thought, the mark remains generally non-distinctive. For reasons already given, the Registrar clearly does consider the sign to be descriptive of specific characteristics. However, in the context of 3(1)(b), the mark is also clearly non-distinctive. The agent’s submissions in respect of subjective interpretation on the part of the consumer may have more weight in respect of this provision, than in relation to section 3(1)(c) i.e. one might argue that a mark with the capacity to convey multiple subjective meanings renders it less capable of being found to denote one dominant meaning. If that is the case, and it is found that the sign is not descriptive, I still believe that the sign would not perform the essential function of a trade mark. The Registrar is obliged to consider notional and fair use, including use of the mark on promotional literature, advertising materials and, in the context of goods, packaging. Given the general and broad range of meanings conveyed by the phrase ‘the basics’, the relevant consumer would not attach it with any trade origin signification when viewed in the normal manner. He or she would not consider the mark to be that of any particular supplier of electronic goods, telecommunications, education, or technical consultancy services; it could properly be at home on such goods and services provided by any supplier.

29. He concluded that the Mark would not be identified as a trade mark without first educating the public to that effect, so it was devoid of any distinctive character and should therefore be refused to the extent of the goods and services shown in the Schedule to this decision.

30. The Applicant claimed in the Notice of Appeal and at the hearing that the Hearing Officer had erred in the following ways:

- (1) by drawing from his incorrect finding that the Mark was descriptive, with the result that the errors relied on in relation to section 3(1)(c) also applied here;

- (2) by treating the Mark, which merely “alludes to a particular meaning”, as if it were a mark that has “a direct and clear meaning”; and
- (3) by failing to take into account CJEU case law indicating that the bar to distinctive character is set at a low level, and that a mark with such a general meaning as “the basics” would be considered unusual and thus to have some distinctive character.
31. Insofar as I have upheld the hearing officer’s objection under section 3(1)(c), the Mark will also fall foul of section 3(1)(b), since a mark rejected for descriptiveness will be inherently non-distinctive by virtue of that descriptive meaning in relation to the services in issue. That deals with the first two grounds of appeal and takes away the need to deal with the third ground in relation to the services in Classes 38, 41 and 42, but not in relation to the goods in Class 9 which I have found should not have been rejected under section 3(1)(c). However, since the hearing officer also considered the application of section 3(1)(b) separately from section 3(1)(c) (in case his conclusion on descriptiveness was wrong), I shall do the same.
32. I set out quite a full analysis of the authorities in relation to the requirement of distinctiveness in my decision earlier this year in *Crocodilio Ltd’s Trade Mark Application* BL O-185-12 (“*FEEDBACK MATTERS*”). The critical feature is that, for a trade mark to have distinctive character, it must serve to identify the goods or services in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish the goods or services from those of other undertakings: Case C-329/02P *SAT.1 v OHIM* [2004] ECR I-8317 (“*SAT.2*”) at [23]; Case C-37/03 P *BioID AG v OHIM* [2005] ECR I-7975 (ECJ) at [27].
33. This test must be satisfied by reference to, first, the goods or services in respect of which registration is applied for and, second, the perception of the average consumer of those goods or services, who is deemed to be reasonably well-informed and reasonably observant and circumspect: Joined Cases C-53/01 to C-55/01 *Linde AG* (above) at [41]; Case C-24/05 P *August Storck v OHIM* at [23]; Case C-238/06 P *Develey Holding GmbH & Co. Beteiligungs KG v OHIM* [2007] ECR I-09375 at [79].
34. The Applicant relies on the CJEU’s statement in Case C-329/02P *SAT.2* at [40] - [41] to the effect that, to be distinctive, a mark does not need to have a particularly high degree of inventiveness, linguistic creativity or imaginativeness. That is true, but the question here is whether the everyday words and ordinary expression, “the basics”, would enable the relevant public to identify the origin of the goods and services that have so far been rejected by the Registrar and to distinguish them from those of other undertakings, without the benefit of prior use that educates the consumers as to their trade mark significance.

35. The hearing officer concluded that it would not, and I agree. It seems to me that the expression would be understood to be origin neutral when used in relation to any of the refused goods or services. It is an everyday expression which, even if not understood to have a specific meaning in relation to the goods or services in question, does not have the capacity to individualise them to a single undertaking without first having been used in a way designed to educate the average consumer that the expression should be uniquely associated with the Applicant's goods or services.
36. Mr Stobbs argued the case for the Applicant very eloquently. He fairly accepted that this was not the easiest of cases, and that it involved a tricky area around the registrability of everyday words and expressions as trade marks. His arguments were sufficient to persuade me that the hearing officer had wrongly refused the Mark for certain goods in Class 9 under section 3(1)(c), but they were not enough to persuade me that the same was true for any of the services that had been refused. As far as section 3(1)(b) is concerned, I suspect that I was even less susceptible than the hearing officer to the arguments against the finding of lack of distinctive character and I am satisfied that he did not make a mistake when he rejected the mark under that provision for the goods and services in issue.

Conclusion

37. I therefore dismiss the appeal and uphold the Registrar's partial refusal of the Mark. Insofar as this relates to goods in Class 9, the objection is upheld pursuant to section 3(1)(b) of the Act. In relation to services in Classes 38, 41 and 42, the objection is upheld under both sections 3(1)(b) and 3(1)(c). The result is that the Mark may proceed to registration in relation to those goods and services for which the Registrar accepted the Mark.
38. In accordance with the usual practice in ex parte appeals against the refusal (in this case, partial refusal) of registration, I make no order as to costs.



ANNA CARBONI

4 September 2012

Mr Julius Stobbs of Ipulse (IP) Limited appeared for the Applicant (Appellant).
Dr Bill Trott appeared for the Registrar.

SCHEDULE

Specification for Application No. 2534124 (“THE BASICS”) showing items refused/accepted by the hearing officer

Notes:

- the goods/services shown in strikethrough (~~strikethrough~~) were refused
- the goods/services shown in **bold underline** were accepted
- specific explanations are given in the footnotes for the services shown in square brackets ([])

Class 9	<p>Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; <u>automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines.</u> data-processing equipment and computers; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; computer software recorded onto CD Rom; SD-Cards (secure digital cards); <u>glasses, spectacle glasses, sunglasses, protective glasses and cases therefor;</u> contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); <u>mouse mats; magnets; mobile telephone covers, mobile telephone cases;</u> magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.</p>
Class 38	<p>Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text</p>

	<p>messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; support services relating to telecommunications and apparatus; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on line from a computer database or the Internet; information and advisory services provided over a telecommunications network.</p>
Class 41	<p>Education; providing of training; <u>entertainment</u>; sporting and cultural activities; <u>interactive entertainment services</u>; <u>electronic games services provided by means of any communications network</u>; <u>entertainment and information services provided by means of telecommunication networks</u>; <u>provision of news information</u>; <u>television services</u>; <u>Internet protocol television services</u>; <u>provision of entertainment by means of television and Internet protocol television</u>; <u>provision of musical events</u>; <u>entertainment club services</u>; <u>discotheque services</u>; <u>presentation of live performances</u>; <u>night clubs</u>; <u>rental of music venues and stadiums</u>; <u>casino services</u>; <u>information and advisory services relating to the aforesaid</u>; <u>information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet</u>; <u>information and advisory services [relating to the aforesaid services]¹ provided over a telecommunications network.</u></p>
Class 42	<p>Scientific and technological services and research and design relating thereto; industrial analysis and research services; <u>design and development of computer hardware and software</u>; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information technology; information services relating to information technology; technical</p>

¹ Note that, although the words in square brackets do not appear in the original specification, the hearing officer included “information and advisory services provided over a telecommunications network” in both the list of refused services and accepted services. It is plain that his intention was to permit such services to the extent that they related to the services that he had already accepted in Class 38, but not insofar as they related to services that he had rejected.

consultancy services relating to information technology; **computer programming services; programming of data processing apparatus and equipment; recovery of computer data;** consultancy in the field of computer hardware; **computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software;** maintenance of computer software; **updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis;** consultancy in the field of computer software; **conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites) of others;** engineering services relating to telecommunications; **technical consulting; rental of computers; monitoring of telecommunications network systems;** services of information brokers and providers, namely product research for others; **weather forecasting;** research relating to telecommunications; research of field telecommunication technology; expert advice and opinion relating to technology; **[information and advisory services relating to the aforesaid;]² information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services [relating to the aforesaid services]³ provided over a telecommunications network.**

² In view of the hearing officer's general approach, I believe that he intended the words in square brackets to be included here, and that their omission from the list of accepted services was an oversight.

³ See the explanation at footnote 1. The same applies here.