

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 2534126
("THE WORKS")**

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 23 FEBRUARY 2011**

DECISION

Introduction

1. This is an appeal by O2 Holdings Limited against the partial refusal of its application to register THE WORKS (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. 2534124 to register THE BASICS 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 phrase 'the works' (as a noun) where it is defined - in the context of definitions for the word 'work' as follows:

the works *informal* everything needed, desired, or expected: *the heavens put on a show: sheet lighting, hailstones, the works.*
(Taken from New Oxford Dictionary of English (Oxford University Press, 2001))

the works *plural* everything possessed, available, or belonging: *the whole works, rod reel, tackle box, went overboard; ordered pizza with the works.*
(Taken from Merriam-Webster Online Dictionary).

16. Both of these dictionary definitions demonstrate that the phrase 'the works' not only possesses a consistent and recognisable meaning likely to be understood by the average English speaking consumer, but also that its suitability to act a descriptor is not especially limited to a small number of contexts or scenarios. In the example text used in the definitions provided, the phrase is used in relation to meteorological phenomena, fishing tackle, and pizzas. Furthermore, in each case, it is used to convey the scale, quantity or degree of something which is either being *witnessed* (in the case of the weather), *misplaced* (in the case of fishing tackle), or - of greatest relevance to this decision - *provided* (in the case of pizzas).

17. In determining the mark's suitability for acceptance and registration under section 3(1)(c), the Registrar is obliged to consider the semantic content of the sign and consider, in the context of the goods and/or services claimed, whether or not the relevant consumer is likely to perceive it as being a denotation of a particular characteristic. Given the dictionary definitions provided above, the Registrar finds it likely that the relevant consumer would recognise the sign as conveying a particular message, and that the message conveyed would be understood as having a functional (rather than a distinctive) role to play in respect of goods or services it is used upon.

18. For class 9, the section 3(1)(c) objection is based on the premise that the term 'the works' used in respect of products such as mobile phones, computers, content carrying media and other electronic items would be understood as reference to the feature set of the product, its effectiveness, or simply the quantity and breadth of goods provided for sale. For example, a smart phone which provides the user with a comprehensive range of features such as web connectivity, high definition video streaming, and a high resolution digital camera could be marketed as something which provides 'the works' in terms of modern-day digital communications. Similarly, where the latest laptops are now commonly configurable and customisable in terms of features such as processing speed and memory capacity (dependent upon the customer's requirements), the phrase 'the works' might reasonably be used by the trader to describe that option which provides the ultimate level of performance i.e. where all of those custom features are maximised. In terms of quantity, the phrase may also perform a descriptive function where a range or package of products is offered for sale. Therefore, in respect of computers, peripherals and software, where the consumer is often able to choose between a range of complimentary products to suit budget and personal requirements, 'the works' may be used to denote that package which contains more 'product' than any other package offered for sale.

19. In drawing these conclusions, the Registrar recognises that one's interpretation of what the phrase 'the works' actually signifies is a largely subjective process dependent on consumer expectation. Therefore, a consumer accustomed to using smart phones may consider the type of features listed in the previous paragraph as being nothing more than the industry standard. Conversely, a consumer with little experience of using computers may consider industry-standard features such as email and the Internet as being - in the words of the dictionary definition provided above - 'everything one might need or expect'. It is therefore acknowledged and accepted by the Registrar that the mark may mean different things to different

consumers. However, a trade mark's capacity for subjective interpretation does not render it distinctive (confirmed by the ECJ in case C-191/01 P *Wm. Wrigley Jr. Company v OHIM (Doublemint)* where, at paragraph 32, it confirmed that "...a sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned").

20. For the service classes, the reasoning which underpins the section 3(1)(c) objection is essentially the same. In respect of telecommunications, the differentiation between various product packages is often characterised by the amount, degree, or extent of the service provided. One might wish to purchase a limited service package which provides a predetermined amount of call minutes, texts, download capacity, or television channels. Equally, one might wish to purchase a more premium package without restrictions, for example, one which provides unlimited talk time, the largest available download capacity, and/or the full range of television channels. Used in these scenarios, the relevant consumer would not perceive the phrase 'the works' as anything other than a reference to the extent or breadth of service being provided, and registration of such a phrase would clearly serve to inconvenience other parties seeking to use it in the course of their trade. In essence, any service with the capacity to be provided in an incremental fashion - which would apply to all of the services identified in classes 38, 41 and 42 and listed at paragraph 4 above - might be described as being 'the works' where that service is being provided to its fullest extent.

21. At the *ex parte* hearing, the agent sought substantiation from the Registrar to demonstrate that the phrase is used in contexts which apply to the goods and services subject to an objection. In response, I sought to emphasise that the objection was based on the phrase's established (and dictionary-defined) meaning, and the descriptive message it would likely convey when used in the normal course of trade. The Registrar maintains that position in this decision, which reflects our published practice in respect of onus during examination. As was confirmed by Geoffrey Hobbs QC sitting as The Appointed Person in the EUROLAMB case (1997, RPC 279), section 37 of the Trade Marks Act 1994 (dealing with registration procedure) is neutral, with no presumption in favour of or against registration; and there is nothing in the nature of a burden for the Registrar to discharge in order to justify his decision to refuse an application.

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 products (including service 'products') capable of being presented as a complete or comprehensive package.

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

- (1) by finding that THE WORKS has a specific meaning that will be understood as descriptive in relation to the goods and services in issue;
- (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, rather than (as acknowledged by the hearing officer in this case) meaning different things to different people;

- (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. The third ground logically falls to be considered first. Mr Stobbs' objection here was really that the hearing officer's appreciation, when initially considering the nature of the average consumer, that there were differences between the average consumers for the various goods and services, should have been carried through to his assessment of descriptiveness and non-distinctiveness of the Mark. As Mr Stobbs said, the more technical the products and services concerned, the less likely that a term like "the works" would be used (or expected to be used) in a descriptive sense.
 17. While this might have been a legitimate ground of attack if the hearing officer had chosen the lowest common denominator for the nature of the consumer to be considered (i.e. the average member of the public), he in fact chose to assess the Mark from the perspective of the more discerning consumer with an above average level of attention. Since his position was that the more specialist the goods and services involved, and the more discerning the average consumer, the more likely the Mark was to be perceived as having trade origin, it seems to me that the assumption made by the hearing officer for the sake of procedural economy, that the consumers for all of the items listed would have an above average level of attention, operated in the Applicant's favour.
 18. The other three grounds all essentially boil down to one overall point, which is that THE WORKS functions as a trade mark because it would only be perceived to have a descriptive meaning in narrow circumstances, and it is unusual, ambiguous and thus distinctive in the context of the goods and services in issue.
 19. The basic premise of the hearing officer's objection to the Mark in relation to various goods in Class 9 is that it would be used to denote the comprehensive nature of the features of the goods concerned, or their ultimate level of performance. While I can appreciate that a technical product marketed by reference to a promotional statement to the effect that it has "the works" (as in "the full works") would be understood in those terms (particularly if juxtaposed to another product promoted by reference to the term "the basics"), I am not convinced that the use of THE WORKS as a product name, without additional promotional wording, would be perceived in that way. Indeed, Dr Trott recognised at the hearing that the term was not used particularly widely, and there were no examples presented of use by third parties in relation to the products in issue.

20. Therefore, while I do have concerns about the inherent distinctiveness of the Mark, which are dealt with below, I would not have rejected the Mark for any of the goods in Class 9 pursuant to section 3(1)(c).
21. Turning to some of the services of particular interest to the Applicant, we had some discussion at the hearing as to whether a consumer faced with two broadband packages, one called THE BASICS (the subject of the Applicant's other trade mark application that was under review at the hearing) and another called THE WORKS, would naturally expect the latter to have a fuller specification or a better range of services within the package than the former. Mr Stobbs accepted that this would be the case, but submitted that this would not be enough to make either mark descriptive or "exclusively designatory" in the sense intended by section 3(1)(c). I think he was right to discourage me from pursuing the route of comparing the two expressions. Every mark has to be considered on its own merits, rather than by reference to other marks which may be used by the Applicant. But the discussion did nevertheless highlight the fact that THE WORKS can be perceived as designating a characteristic of the services concerned, albeit one that does not give the consumer precise information about their make-up (for example, the applicable download speed, data volume limits and time limitations of the relevant broadband service).
22. Does that matter? I do not think that it does. Neither the legislation nor any of the cases talk of "a precise characteristic" having to be designated by a sign before being rejected under section 3(1)(c). When one considers the purpose of the provision, being to keep descriptive signs free for use by all traders, it would be an over-narrow interpretation to restrict it in this way. The question to be considered is whether the relevant average consumer would perceive the sign as being descriptive of (though not merely alluding to) some or other characteristic of the services; not whether he or she would understand precisely every characteristic of the services concerned.
23. Although "the works" is a readily understandable expression when used in certain contexts, I do find it quite difficult to decide if these words would naturally be taken to denote characteristics of the services concerned, as described by the hearing officer, across all of the various services that he rejected in Classes 38, 41 and 42. Since most of the services concerned are such that they may be offered to consumers at different levels, from basic to comprehensive, I can appreciate how "the works" could be understood in the terms suggested by the hearing officer, but I do retain some uncertainty as to how likely it is that the average consumer would perceive the use of the Mark in this way.
24. In the end, I cannot identify an error by the hearing officer in his approach. He has clearly tried to rely on his experience in relation to the registrability of trade marks to determine the acceptability of THE WORKS, and has cited appropriate case law

to help him to do this, in deciding to reject some of the goods and services under this provision. This is a borderline case, where I believe that it would be appropriate to uphold the hearing officer's decision on the point if it were to be determinative. However, in the end, I have decided that I do not need to reach a conclusion in relation to the rejected services under section 3(1)(c), since the consideration under section 3(1)(b) is determinative of this appeal. I now go on to deal with that.

Section 3(1)(b)

25. 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.

26. The hearing officer set out his objections under section 3(1)(b) as follows:

23. 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.”

24. 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*).

25. 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 works', 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.

27. 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.
28. 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 works" would be considered unusual and thus to have some distinctive character.
29. 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].
30. 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].

31. 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 expression, "the works", 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.
32. 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.
33. 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. He did persuade me that the hearing officer had wrongly refused the Mark for certain goods in Class 9 under section 3(1)(c) and gave me cause to doubt (though not overturn) the applicability of that provision to the various services that were rejected. As far as section 3(1)(b) is concerned, however, I suspect that I was even less susceptible than the hearing officer to the arguments against a 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

34. I therefore dismiss the appeal and uphold the Registrar's partial refusal of the Mark pursuant to section 3(1)(b) of the Act. In relation to the Registrar's objection under section 3(1)(c), I have overturned this in relation to the Class 9 goods and expressed some doubts in relation to the rejected services in Classes 38, 41 and 42, but this has no effect on the outcome. The result is that the Mark may proceed to registration in relation to those goods and services for which the Registrar accepted the Mark.

35. 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. 2534126 (“THE WORKS”) 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 <u>conducting, switching, transforming, accumulating, regulating or controlling electricity</u>; apparatus for recording, transmission or reproduction of sound or images; <u>magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines</u>; data processing equipment and computers; <u>fire-extinguishing apparatus</u>; 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; <u>protective clothing; protective helmets</u>; computer software recorded onto CD Rom; <u>SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses</u>; cameras; <u>camera lenses</u>; MP3 players; <u>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); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.</u></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</p>

	<p>access to Internet protocol TV; Internet access services; email and text 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; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; <u>provision of news information</u>; television services; Internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; <u>rental of music venues and stadiums</u>; casino services; <u>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 [relating to the aforesaid services]</u>¹ <u>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; design and development of computer hardware and software; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information technology;</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.

information services relating to information technology; technical 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; 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.