

O/428/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATIONS NO. 3374687
BY CHADLINGTON BREWERY LIMITED
TO REGISTER THE FOLLOWING MARK:**

CAMBRIDGE BLUE

IN CLASS 32

AND

**IN THE MATTER OF OPPOSITIONS THERETO
UNDER NO. 417291
BY THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF
CAMBRIDGE**

BACKGROUND AND PLEADINGS

1. On 12 February 2019, Chadlington Brewery Limited (“the applicant”) applied to register the trade mark CAMBRIDGE BLUE in the UK. The application was accepted and published in the Trade Marks Journal on 10 May 2019 in respect of the following goods:

Class 32: *Beer; beers; craft beer; beer-based beverages.*

2. On 13 August 2019, the application was opposed by The Chancellor, Masters and Scholars of the University of Cambridge (“the opponent”). The opposition is based on Sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and concerns all the goods in the application.

3. For the purpose of its opposition based upon Section 5(2)(b) of the Act, the opponent relies upon the marks shown below:¹

1) UK no. 3015609

CAMBRIDGE

Filing date: 26 July 2013; date of registration: 04 September 2015.

Goods and services relied upon:

Class 16: *Paper, cardboard and goods made from these materials, not included in other classes; printed matter; photographs; plastic materials for packaging (not included in other classes); flyers; posters; stickers; parts and fittings for all the aforesaid goods.*

Class 41: *entertainment; sporting and cultural activities.*

2) EUTM no. 896449

UNIVERSITY OF CAMBRIDGE

¹ Although the UK has left the EU and the EUTM relied upon by the opponent now enjoy protection in the UK as a comparable trade mark, the EUTM remains the relevant rights in these proceedings. That is because the application was filed before the end of the Implementation Period and, under the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019, I am obliged to decide the oppositions on the basis of the law as it stood at the date of application.

Filing date: 04 August 1998; date of registration: 07 March 2000.

Services relied upon:

Class 41: *University education services, academic and vocational educational services; provision of courses of instruction, lectures and seminars all relating to academic or vocational subjects; arranging and conducting conferences and seminars; library services; publication of books, texts and journals; provision of correspondence courses; provision of recreational and sporting facilities; publication services.*

3) UK no. 3092555

NORTH WEST CAMBRIDGE

Filing date: 3 February 2015; date of registration: 13 November 2015.

Services relied upon:

Class 35: *retail services and online retail services connected with the sale of beers, other non-alcoholic beverages and alcoholic beverages*

Class 41: *entertainment; sporting and cultural activities.*

Class 43: *Services for providing food and drink; bar and bistro services; bar and restaurant services; catering services; business catering services; café and restaurant services; catering services for the provision of food and drink; coffee shop services; fast food and non-stop restaurant services; fast-food restaurant services; preparation and provision of food and drink for consumption in retail establishments; pubs; take-away food services; take-away food and drink services; wine bar services; restaurant services; self-service restaurant services; café services; snack bar services; preparation of take away food and drink and take away meals; catering services for the provision of food and drink to schools; cafeteria services; canteen services; food cooking services; catering, banqueting, bar, restaurant, bistro, tea room and cafe services; consultancy, information and advisory services relating to the aforesaid.*

4) UK no. 3146360



Filing date: 26 January 2016; date of registration: 22 April 2016

Goods relied upon:

Class 33: *Alcoholic beverages [except beers]; alcoholic essences; alcoholic extracts; bitters; cider; liqueurs; perry; spirits [beverages]; wine; fortified wine; sparkling wine.*

4. The opponent claims that because the marks are similar and the goods and services are identical or similar, there is a likelihood of confusion, including a likelihood of association.

5. Given their dates of filing, the opponent's marks qualify as earlier marks in accordance with Section 6 of the Act. Only the mark UNIVERSITY OF CAMBRIDGE had been registered for more than five years at the date the application was filed. However, as the applicant answered 'No' to the question "Do you want the opponent to provide "proof of use?" in its Form TM8, the proof of use provisions contained in Section 6A of the Act do not apply. The opponent may, therefore, rely upon all of the goods and services identified without showing that the marks have been used.

6. For the purpose of its opposition based upon Section 5(3) of the Act, the opponent relies on the marks CAMBRIDGE and UNIVERSITY OF CAMBRIDGE. In respect of the mark UNIVERSITY OF CAMBRIDGE, the opponent claims that the mark has a reputation for the same services which are relied upon under Section 5(2)(b), whereas the claim to reputation in respect of the mark CAMBRIDGE is not limited to the goods and services relied upon under Section 5(2)(b) but extends to all of the goods and services covered by that registration (as detailed in full in the annex to this decision). The opponent claims that it has developed a massive reputation in these marks throughout the world in relation to educational, publishing and research services and

related goods and in relation to sport and sporting events. The opponent argues that use of the applicant's mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character or repute of its marks. It is said that the relevant public will think that there is an economic connection between the users of the marks and that the applicant would gain an unfair advantage, even if consumers were not confused. It is also asserted that use of the applicant's mark in relation to inferior goods could diminish the reputation of the opponent, even if consumers were not confused. Lastly, it is asserted that the ability of the opponent's mark to identify the goods and services as coming from the opponent would be weakened and that the economic behaviour of the relevant public would be altered as they would cease to rely on the exclusivity of the opponent's marks to identify the goods and services of the opponent, even if consumers were not confused.

7. For the purpose of its opposition based upon Section 5(4)(a) of the Act, the opponent relies upon the sign CAMBRIDGE which it claims to have used throughout the UK since 13th century AD in relation to *printed matter; provision of training, teaching, examination and assessment services; education; provision of courses of instruction; lectures and seminars; arranging and conducting conferences and seminars; library services; publication services; provision of distance learning courses; provision of recreational and sporting facilities; sport activities; organisation, arranging and conducting of boat races; entertainment in the nature of sport events; entertainment in the nature of boat races; scientific research; academic research; downloadable publication; educational consultancy; educational information services.* The opponent claims that its goodwill entitles it to prevent the use of the applicant's mark under the law of passing off.

8. The applicant filed a counterstatement denying the claims made. It asserted that:

- The opponent is primarily involved in the provision of education and does not have a reputation for brewing, making or selling beer;
- The opponent's marks relate to a range of goods and services none of which includes beer;

- The opposition is based on use of the word CAMBRIDGE which, outside the educational services, is extremely generic;
- The applied for mark is sufficiently different in both the name and the products for confusion not to arise;
- CAMBRIDGE BLUE is already in use in various business sectors, which demonstrates that the term is not uniquely associated with Cambridge University;
- The applicant makes no claim to be part of Cambridge University and there is no risk of confusion.

9. Both parties filed evidence. I will refer to the evidence to the extent that it is considered necessary. A hearing took place before me on 23 March 2021 where the opponent was represented by Julius Stobbs from Stobbs (IP) Limited and the applicant by its own Mr Jason Chipchase.

The opponent's evidence

10. The opponent's evidence takes the form of a witness statement by Liam Carmichael, who is the Brand Protection and Trade Mark Administrator at the University of Cambridge.

11. As Mr Chipchase has accepted the reputation of Cambridge University in relation to its educational activities,² I do not need to refer to that part of the opponent's evidence in great details. Suffice to say that:

- The University traces its origin back to 1209. It is one of the oldest and most prominent institutions and is consistently ranked as one of the best universities in the world;
- Mr Carmichael claims that the University has always referred to itself simply as CAMBRIDGE and is known as such due to its fame and reputation. According to Mr Carmichael *"the public knows that in the contexts of education, publishing,*

² Skeleton argument paragraph 4 and reply to paragraphs 9 and 15

sport, academia and research the word Cambridge always refers to the University of Cambridge”;

- The University publishes books, journals and other educational resources through its department Cambridge University Press (CUP). CUP is the world’s oldest publisher starting in 1584;
- The University’s annual income increased from £1,190 million to £1,638 million between 2010 and 2015. This income was derived from the University’s teaching and research, assessment and publishing activities;
- The University is associated with a shade of light blue known as CAMBRIDGE BLUE. An extract from Wikipedia³ confirms that CAMBRIDGE BLUE is the colour commonly used by sport teams from the University of Cambridge and the Cambridge University official colour style guide defines CAMBRIDGE BLUE as Pantone 557; the relevant colour palette is shown below:



- CAMBRIDGE BLUE is believed to have first been adopted by the University’s rowing team for one of the earliest races against the University of Oxford in 1836 and has been used by the University’s boat club ever since. The University’s other sport clubs have also adopted CAMBRIDGE BLUE since then, and it is now the colour worn by the vast majority of the University’s sports teams when competing against other universities;
- The annual boat race and the rugby match against the University of Oxford are high profile sport events and receive press coverage.⁴ The annual boat race is also broadcast live on UK terrestrial television since 1938; the viewing figures relating to the boat race of 2013 -2017 are as follows: 7.3 million (2013), 10 million (2014), 4.8 million (2015), 6.2 million (2016) and more than 5 million (2017);

³ Exhibit LC20

⁴ Exhibit LC22

- The University of Cambridge’s first boat is known as CAMBRIDGE BLUE boat and for a number of years the boat race was promoted using the slogan “which blue are you?” inviting the public to show their support for one of the two sides in the contest by reference to the difference shades of blue which the teams wear in the race. Extracts from Twitter⁵ dated between 2011 and 2018 are provided in support;
- The University’s annual rugby match against the University of Oxford has been played since 1872; the University of Cambridge team always wear the light blue colour known as CAMBRIDGE BLUE;
- The colour CAMBRIDGE BLUE has become so closely associated with the University and its sport teams that they are referred simply as the ‘blues’ or the ‘light blues’;
- Blue is the highest colour that can be granted to a Cambridge University sports person. Blues are awarded to those who compete in a match against Oxford in one of a number of different sports. An extract from Wikipedia⁶ states that “A blue is an award of sporting colours earned by athletes at some universities and schools for competition at the highest level. The awarding of blues began at Oxford and Cambridge universities in England. They are now awarded at a number of other British universities” and “Athletes at the University of Cambridge may be awarded a full blue (or simply a blue), half blue, first team colours or second team colours for competing at the highest level of university sport, which must include being in a varsity match or race against the University of Oxford. A full blue is the highest honour that may be bestowed on a Cambridge athlete, and is a much coveted and prestigious prize.[...] History - Once light blue had been chosen as the colour of Cambridge's Boat Club, the other university sport clubs followed suit, though out of courtesy would request permission from the Boat Club before awarding such a "blue";
- The University’s licensee sells a range of CAMBRIDGE BLUE products largely in the pale blue colour and associated with the University and its sport clubs⁷.

⁵ Exhibit LC23

⁶ Exhibit LC24

⁷ Exhibit LC26

The applicant's evidence

12. The applicant's evidence takes the form of a witness statement by Jason Chipchase, who is the applicant's director.

13. Mr Chipchase states that the opponent has been using 'Cambridge Blue' as a mark since January 2020, *"initially to support retail establishments and rowing clubs along the route of the 2020 Boat Race"*. Due to COVID the boat race was cancelled, however, *"a promotion campaign and availability of the product had been in advanced planning stages with customers"*. Exhibited at EX1 is a photo of a CAMBRIDGE BLUE pump clip manufactured for the boat race:



14. Mr Chipchase states that the opponent is the owner of the trade mark OXFORD BLUE and has been selling OXFORD BLUE beer since 2018 without any objection from Oxford University. Finally, Mr Chipchase refers to other businesses using the word CAMBRIDGE BLUE including the following:

1. CAMBRIDGE BLUE pub trading in Cambridge;
2. CAMBRIDGE BLUE Cheese;
3. CAMBRIDGE BLUE Ltd;
4. CAMBRIDGE BLUE sandwiches;
5. CAMBRIDGE BLUE plant.

15. That concludes my summary of the evidence, to the extent I consider necessary.

DECISION

Section 5(2)(b)

16. Section 5(2)(b) of the Act is as follows:

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

[...]

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

17. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

18. 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 great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

19. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

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

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

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

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

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

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

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

21. In *Kurt Hesse v OHIM*, Case C-50/15 P, 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*, Case T-325/06, the General Court (“GC”) 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”.

22. In *Sanco SA v OHIM*, Case T-249/11, the GC 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* BL-0-255-13:

“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.”

23. Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

24. In *Sky v Skykick* [2020] EWHC 990 (Ch), 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 following summary of the correct approach to interpreting broad and/or vague terms:

“...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.”

25. The goods and services to be compared are set out below. In his skeleton argument, Mr Stobbs identified the terms that I have underlined as the those which are similar (or most similar):

The applicant’s goods	The opponent’s goods
<p>Class 32: <i>Beer; beers; craft beer; beer-based beverages.</i></p>	<p>CAMBRIDGE</p> <p>Class 16: <i>Paper, cardboard and goods made from these materials, not included in other classes; <u>printed matter</u>; photographs; plastic materials for packaging (not included in other classes); flyers; posters; stickers; parts and fittings for all the aforesaid goods.</i></p>

	<p>Class 41: <u>entertainment; sporting and cultural activities.</u></p>
	<p>UNIVERSITY OF CAMBRIDGE</p> <p>Class 41: <u>University education services, academic and vocational educational services;</u> provision of courses of instruction, lectures and seminars all relating to academic or vocational subjects; arranging and conducting conferences and seminars; library services; publication of books, texts and journals; provision of correspondence courses; <u>provision of recreational and sporting facilities;</u> publication services.</p>
	<p>NORTH WEST CAMBRIDGE</p> <p>Class 35: <u>retail services and online retail services connected with the sale of beers,</u> other non-alcoholic beverages and alcoholic beverages.</p> <p>Class 41: <u>entertainment; sporting and cultural activities.</u></p> <p>Class 43: <u>Services for providing food and drink; bar and bistro services; bar and restaurant services;</u> catering services; business catering services; café and restaurant services; catering services for the provision of food and drink; coffee shop services; fast food and non-stop restaurant services; fast-food</p>

	<p><i>restaurant services; preparation and provision of food and drink for consumption in retail establishments; <u>pubs</u>; take-away food services; take-away food and drink services; wine bar services; restaurant services; self-service restaurant services; café services; snack bar services; preparation of take away food and drink and take away meals; catering services for the provision of food and drink to schools; cafeteria services; canteen services; food cooking services; catering, banqueting, bar, restaurant, bistro, tea room and cafe services; consultancy, information and advisory services relating to the aforesaid.</i></p>
	<div data-bbox="831 1144 1106 1301" data-label="Image"> </div> <p>Class 33: <i><u>Alcoholic beverages [except beers]; alcoholic essences; alcoholic extracts; bitters; <u>cider</u>; liqueurs; <u>perry</u>; spirits [beverages]; wine; fortified wine; sparkling wine.</u></i></p>

My approach

26. The contested mark covers a range of beers in class 32 (for convenience, I will just refer to them as beer goods). In my view, *cider* in class 33 (in the mark



) and *retail services and online retail services connected with the sale of beers* in class 35 (in the mark NORTH WEST CAMBRIDGE) represent the opponent's strongest case in terms of similarity of goods and services. I will then consider the other specifications in order of closeness (the closest first).



The mark

27. This mark covers *Alcoholic beverages [except beers]; alcoholic essences; alcoholic extracts; bitters; cider; liqueurs; perry; spirits [beverages]; wine; fortified wine; sparkling wine* in class 33.

28. In the skeleton argument, Mr Stobbs referred to *Kavaklidere-Europe v OHMI - Yakult Honsha (Yakut)*, Case T-276/09, in which the GC upheld the Board of Appeal's finding that the term *alcoholic beverages (except beers)* includes cider and that cider and beer are similar. I agree with this submission. Both the contested beer and the opponent's cider are long drinks with a low alcohol content, there is therefore a degree of similarity in nature. The intended purpose of both is a pleasurable drinking experience, which may include the effects of alcohol. The users and methods of use are identical. The goods are likely to share channels of trade and in retail premises may be located not only in the same aisle but also on the same shelf. The goods may be in competition. Therefore, I considered the contested *beer* goods to be similar to a medium degree to the opponent's *cider*.

The mark NORTH WEST CAMBRIDGE

29. This mark covers, among others, *retail services and online retail services connected with the sale of beers* in class 35. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and

therefore similar to a degree. Here the opponent's retail services concern the sale of goods which are identical to the contested goods. Accordingly, I find that the contested beer goods and the opponent's *retail services connected with the sale of beers* are similar to a medium degree.

30. This mark also covers pubs and bar services in class 43. These establishments are places where the consumer would go to enjoy drinks and company. The physical nature of the goods and services is clearly different, but the trade channels overlap, and the users are the same. There is also some complementarity, as beer and other drinks are indispensable for the provision of pubs and bar services. The average consumer may assume a connection between the undertakings supplying the goods and services, particularly in the case of beer sold through pubs. In *Group Lottus Corp., SL v OHIM*, Case T-161/07, the GC held that in view of the complementarity, target audience and overlapping points of sale, there was a "lesser" [low] degree of similarity between beers and bar, nightclub and cocktail bar services. Accordingly, I find that there is a low degree of similarity between the contested beer goods and the opponent's *pubs* and *bar services*.

The marks CAMBRIDGE and UNIVERSITY OF CAMBRIDGE

31. As regards the remaining goods and services in the opponent's specifications, Mr Stobbs discussed the comparison with the contested goods in significant detail. He made the following submissions, which I hope I have summarised accurately:

32. Entertainment; sporting and cultural activities in class 41. These services are covered by the mark CAMBRIDGE (and the mark NORTH WEST CAMBRIDGE). Mr Stobbs argued that *entertainment* and *cultural activities* would cover courses about beer, professional training in relation to the making of beer and brewery tours, all of which, he states, are similar to a medium degree to the contested beer goods.

33. In *Advance Magazine Publishers, Inc. v OHIM*, Case T-229/12, the GC held that 'accessories' is a vague term and that the Board of Appeal erred in law in comparing it with 'umbrellas'. It therefore appears that where a term is not sufficiently precise to identify the characteristics of the goods (or services) at issue, that term cannot be the

subject of a finding that it covers goods/services which are similar to other goods/services.

34. The class heading for Class 41 is *education; providing of training; entertainment; sporting and cultural activities*. The opponent's registrations cover some of these general indications, namely *entertainment, sporting and cultural activities*. However, I do not accept that courses about beer, professional training in relation to the making of beer and brewery tours fall within the natural and ordinary or core meaning of *entertainment, sporting and cultural activities*. The services mentioned by Mr Stobbs involve courses, training and tours whereby users would learn about site and equipment and how beer is made and involve an educational element which is notably absent from the registered services (which do not include the class heading *education and providing of training*).

35. Mr Stobbs also argued that sporting, cultural and entertainment activities frequently take place in locations such as stadium, arenas and theatres which have their own bars for the provision of alcoholic beverages, including beer, and that the goods and services are similar because they are provided in the same places and are sold to the customers from the same provider. I disagree. Whilst I found that there is a low degree of similarity between the contested beer goods and the opponent's pubs and bar services, the services here are one step removed from the contested beer goods. However, to the extent that the term *entertainment* would cover *nightclub services*, I apply the same finding I made above, i.e. that there is a low degree of similarity between the respective goods and services.

36. Finally, Mr Stobbs argued that sporting activities are often sponsored by beer brands and beer is often heavily promoted at major sporting events and is frequently consumed whilst watching a sporting event. There is no evidence that sporting activities are often sponsored by beer brands, but even if there was, it could not be inferred from that fact alone that the goods and services are similar. Although beer may be provided incidentally at sporting events, the nature, purpose and function of beer is totally different from that of sporting activities. The respective goods and services are not normally provided by the same companies or through the same trade channels, and neither are they in competition, nor are they indispensable or important

for their use in such a way that customers may think that the responsibility for them lies with the same undertaking. Further, commercial sponsorship of sporting activities does not in itself establish similarity between the sporting activities and the sponsor's goods.

37. Printed matter in class 16. These goods are covered by the mark CAMBRIDGE. Mr Stobbs argued that printed matter would include publications about beer and that the goods would target the same consumers, i.e. beer drinkers and beer enthusiasts. He also argued that specialist beer shops might also sell books about beer, so there is a coincidence in trade channels. Even if the subject matter of the opponent's goods might cover beer, books (or any other printed matter) about beer are fundamentally different in nature, purpose and use from the applicant's beer, have different distribution channels and are neither complementary nor in competition. Further, even if Mr Stobbs had established (which he has not) that both sets of goods can be sold through the same specialist shops, consumers would not expect the publisher of books about beer to also manufacture beer. There is no similarity here.

38. University education services, academic and vocational educational services in class 41. These services are covered by the mark CAMBRIDGE. Mr Stobbs argued that the term covering education includes provision of education or courses of instruction relating to the brewing of beer, beer tasting, operation of pubs and other hospitality venues and the history of beer and brewing, and that these services are all complementary to the contested beer goods and would be expected to emanate from the same provider. I disagree. The term *university education* and *academic education* refers to education provided through universities, and colleges and universities, respectively. *Vocational education* is education that prepares students for work in a specific trade, a craft, as a technician, or in professional vocations such as engineering, accountancy, nursing, medicine, architecture, or law. Once again, Mr Stobbs' interpretation stretches the registered terms beyond what would be their natural and ordinary or core meaning. Taking the words *University education services, academic and vocational educational services* in their normally understood sense, provision of education or courses of instruction relating to the brewing of beer, beer tasting, operation of pubs and other hospitality venues, and the history of beer and

brewing, would not form part of a university, academic or vocational educational course. These services are dissimilar.

39. Provision of recreational and sporting facilities in class 41. These services are covered by the mark CAMBRIDGE. For similar reasons to those outlined in relation to *sporting activities*, I find that these services are dissimilar to the contested goods.

40. To summarise:

- There is a medium degree of similarity between the contested beer goods in class 32 and the opponent's *cider* in class 33 (covered by the mark



);

- There is a medium degree of similarity between the contested beer goods in class 32 and the opponent's *retail services and online retail services connected with the sale of beers* in class 35 (covered by the mark NORTH WEST CAMBRIDGE);
- There is a low degree of similarity between the contested beer goods in class 32 and the opponent's *pubs and bar services* in class 43 (covered by the mark NORTH WEST CAMBRIDGE). The same apply to the opponent's *Entertainment* in class 41 (covered by the marks CAMBRIDGE and NORTH WEST CAMBRIDGE);
- There is no similarity with any of the other goods and services relied upon by the opponent.

41. Since some similarity of goods and services is essential⁸ and since I found that there is no similarity between the contested goods and any of the services relied upon under the mark UNIVERSITY OF CAMBRIDGE, I will not consider the opponent's claim based on this mark any further.

⁸eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA

Average consumer

42. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

43. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

44. For the purposes of identifying the average consumer and the degree of attention they will be paying during the purchasing process, I will divide the goods and services into three groups: 1) entertainment (to the extent that it covers nightclub services), pubs and bar services; 2) beer goods and cider and 3) retailing of beer.

45. For all the goods and services, the average consumer is a member of the general public (over the age of 18).

46. The average consumer of entertainment, pubs and bar services will pay a degree of attention sufficient to assess whether the ambience of the nightclub, pub or bar pleases them, and whether the services are within their budget. These factors suggest to me that they will be paying a medium degree of attention. When choosing a service, they will see signage on the street and advertisements in printed publications or online, so the visual element will have a significant role to play. However, the aural element

will also be important, as these are services that are also likely to be recommended by word-of-mouth.

47. Beer and cider are sold through a variety of trade channels, including supermarkets and off-licences and their online equivalents. Here the consumer would select the goods themselves from a shelf or a website and would see the mark on the product. Where beer and cider are bought in a pub, bar or nightclub, the consumer will also see the mark on dispensers at the bar, on bottles, or on a drinks' menu. The visual element will therefore play a significant role in both these scenarios, however, as the goods will be ordered from a member of staff, the aural element will also be relevant, although to a lesser degree than the visual. The cost of the goods is relatively low, but the average consumer will still want to ensure that they are choosing the correct strength and flavour and they will pay a medium degree of attention.

48. When choosing a retailer of beer, the average consumer would see the mark in printed publications, online or in the street and the visual element is therefore the most important. However, I do not discount aural considerations, as there may be a role for word-of-mouth recommendations. The degree of attention they pay is, overall, medium.

Comparison of marks

49. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

50. 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.

51. The respective marks are shown below:

The applicant's mark	The opponent's earlier mark
CAMBRIDGE BLUE	CAMBRIDGE
	NORTH WEST CAMBRIDGE
	 The logo of the University of Cambridge, featuring a shield with a cross and four lions, surrounded by the text "UNIVERSITY OF" at the top, "Est. 1209" on either side, and "CAMBRIDGE" at the bottom.

Overall impression

The applicant's mark

52. The applicant's mark consists of the two words CAMBRIDGE and BLUE presented in capital letters. No part of the mark is highlighted or emphasised in any way, and the overall impression of the mark rests in the combination of these words.

The opponent's marks

53. The mark CAMBRIDGE consists of the single word CAMBRIDGE presented in capital letters. The mark has no other elements and the word is self-evidently the only distinctive part of the mark.

54. The mark NORTH WEST CAMBRIDGE consists of the three words NORTH, WEST and CAMBRIDGE. Once again, the overall impression of the mark rests in the combination of these words, with none of the words dominating.



55. The mark  CAMBRIDGE consists of a heraldic shield device placed above the word CAMBRIDGE and below the words UNIVERSITY OF with the words 'Est.' and '1209' positioned on the left- and right-hand side of the device. The device element is not negligible within the mark, however, taking into account the principle that words speak louder than devices, the words UNIVERSITY OF CAMBRIDGE make a more distinctive contribution to the overall impression of the mark. The words 'Est.' and '1209' are barely visible; insofar as they are visible, they will be perceived as descriptive because they will be understood as referring to the year the University was established, so they have little or no distinctive character.

'CAMBRIDGE BLUE' versus 'CAMBRIDGE'

56. Both marks share the word CAMBRIDGE, this creates an obvious point of similarity. In the applicant's mark the word CAMBRIDGE is followed by the word BLUE, which has no counterpart in the opponent's mark. However, the word BLUE is in the secondary position and is shorter than the word CAMBRIDGE (they consist of four and nine letters respectively) and consumers generally take more note of a mark's beginning than of its ending. Taking all of this into account, I conclude that the respective marks are visually and aurally similar to a medium to high degree.

57. Conceptually, the opponent's mark consists of the single word CAMBRIDGE which is the name of a city in the UK and will be seen as a geographical location. The opponent has claimed that the name CAMBRIDGE is well known as a university city and that "*the public knows that in the contexts of education, publishing, sport, academia and research the word Cambridge always refers to the University of Cambridge*". However, the only services in the specification of the mark CAMBRIDGE which I found to be similar to the contested beer goods are *entertainment* services in class 41 (to the extent that the term covers nightclub services), in respect of which consumers will not necessarily perceive a connection with the University.

58. The applicant's mark CAMBRIDGE BLUE forms a unit and will be perceived as a whole. In my view, the applicant's mark may be read in two ways. Firstly, for some consumers, who are aware of the use of the phrase CAMBRIDGE BLUE by sport teams from the University of Cambridge, the mark will be understood as a reference to the University. Secondly, for some consumers, who are not aware of such use, the word BLUE will be given its ordinary dictionary meaning, i.e. that of a colour, and, on a conceptual level, it will not alter the significance of the word CAMBRIDGE, in which case the mark as a whole will not carry any reference to the University of Cambridge.

59. For those who are aware of the use of term CAMBRIDGE BLUE by Cambridge University, the applicant's mark will convey a reference to the University of Cambridge that is not necessarily conveyed by the opponent's mark in the context of the nightclub services concerned, and the marks are conceptually similar to a low to medium degree. For those who see CAMBRIDGE BLUE simply as a reference to the town of Cambridge and the colour blue, the marks are similar to a medium to high degree.

'CAMBRIDGE BLUE' versus 'NORTH WEST CAMBRIDGE'

60. Visually and aurally, the words NORTH WEST in the opponent's mark add a further difference between the respective marks, which I consider to be similar, overall, to a low to medium degree. Conceptually, I must consider use of the mark NORTH WEST CAMBRIDGE in the context of the services which I found to be similar, namely, *retail services and online retail services connected with the sale of beers* in class 35, *entertainment* in class 41, and *pubs and bar services* in class 43. Similar

considerations to those spelt out in relation to the mark CAMBRIDGE apply to this mark in term of perception of the word CAMBRIDGE, the only difference being that the mark will be taken as a reference to the north-western part of CAMBRIDGE, rather than to the whole town.



61. Visually, the only common element between the marks is the word CAMBRIDGE. However, the other elements in the opponent's mark are either less distinctive, i.e. the device and the words 'Est. 1209', or visually less prominent, i.e. the words UNIVERSITY OF. Also, the other element in the applicant's mark, i.e. the word BLUE, is shorter and placed in a secondary position. Visually, I consider the marks to be similar to a low degree. Aurally, neither the device nor the words 'Est 1209' will be articulated, so the degree of aural similarity is higher than that I found on a visual level; I would pitch it as low to medium.

62. Conceptually, the opponent's mark will convey the concept of the University of Cambridge. Of those consumers who recognise the meaning of CAMBRIDGE BLUE as a reference to sport teams from the University of Cambridge, the marks are conceptually similar to a high degree. For those consumers who do not see any association between CAMBRIDGE BLUE and the University of Cambridge, the marks are conceptually similar to a degree between low and medium because they both reference the town of Cambridge.

Distinctive character of earlier mark

63. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the

goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

64. Mr Stobbs argued that the opponent has generated a significant reputation in the field of education, publishing and sporting activities in relation to its earlier marks and can rely on enhanced distinctiveness in relation to printed matter in class 16, and education, publishing and sporting activities in class 41. At the hearing Mr Chipchase accepted that Cambridge University has an excellent reputation for educational services, however, he also argued that the term CAMBRIDGE does not have a high degree of distinctiveness since it refers to a geographical location in the UK.

I also make the following comments:

- There is no evidence that the opponent has ever used any of the earlier marks in trade in the relation to the provision of sporting activities. Likewise, the use the opponent has made of the term CAMBRIDGE BLUE is not use as a trade mark or use in trade - as confirmed by the fact that the opponent has not pleaded goodwill in relation to that term. It follows that I do not accept that the distinctive character of the marks CAMBRIDGE and NORTH WEST

CAMBRIDGE (which cover sporting activities) has been enhanced in relation to sporting activities;

- CAMBRIDGE BLUE is the colour used by sport teams from Cambridge University and a sporting award, albeit one which is very well-known. In this connection, the dictionary definition of 'blue' includes the following *“a Cambridge blue or an Oxford blue is a man or woman who has played for Cambridge or Oxford University in a particular sport”*. Mr Chipchase also accepted in his skeleton argument that *“the ordinary consumer may create an association with the historic sporting heritage of the term Cambridge Blue but not necessarily [...] link that either economically with the opponent or indeed that they have endorsed the same”*;
- There is no evidence of any use which may have been made of the mark NORTH WEST CAMBRIDGE, so this mark cannot benefit from enhanced reputation;



- Even accepting that the marks CAMBRIDGE and  have acquired an enhanced degree of distinctiveness through use in relation to the opponent's core services, e.g. educational services and academic and scientific research, there are some issues with the opponent's claim to enhanced distinctiveness because:
 1. none of the specifications relied upon by the opponent's marks (with the exception of the UNIVERSITY OF CAMBRIDGE mark which I found cover dissimilar services and is therefore out of the picture) actually covers the opponent's core services;
 2. there is no evidence that any of the earlier marks have been used in relation to the goods and services that I found to be similar.

65. Although I find myself unable to conclude that the distinctiveness of the earlier marks has been enhanced for the goods for which they are registered (and which are relied upon in this opposition), the opponent's reputation can still be relevant, but only, I think, from a conceptual perspective, especially in relation to the mark



, because this mark is clearly associated with the University and its reputation. As regards the conceptual relevance of the opponent's reputation in relation to the CAMBRIDGE and NORTH WEST CAMBRIDGE marks, it will depend on how likely it is that use of the mark on the goods which I found to be similar will create an association with the University of Cambridge.

66. From an inherent prospective even considering the absence of any link between CAMBRIDGE as a geographical location and the services covered by the registration, i.e. entertainment services (to the extent that they cover nightclub services), I consider that the mark CAMBRIDGE has a moderate degree of distinctiveness because geographical locations do not make particularly distinctive marks. I also consider that to be the case for the mark NORTH WEST CAMBRIDGE in the context of retail services and online retail services connected with the sale of beers and pubs and bar services.



67. Finally, I consider that the mark CAMBRIDGE is inherently distinctive to a high degree in relation to cider, because of the reputation of Cambridge University to which that mark is clearly associated.

Likelihood of confusion

68. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and 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 marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

69. Confusion can be direct or indirect. The difference between these two types of confusion was explained in *L.A. Sugar Trade Mark*, BL O/375/10, where Iain Purvis Q.C. as the Appointed Person explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

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

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

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

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

80. Earlier in this decision I concluded that:

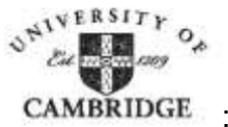
- in terms of similarity of the goods and services, the contested beer goods in class 32 are similar to a medium degree to the opponent’s *cider* in class 33



(covered by the mark) and *retail services and online retail services connected with the sale of beers* in class 35 (covered by the mark NORTH WEST CAMBRIDGE). They are also similar to a low degree to the opponent’s *pubs and bar services* in class 43 (also covered by the mark NORTH WEST CAMBRIDGE) and *Entertainment* (covering nightclub services) in class 41 (covered by the marks CAMBRIDGE and NORTH WEST CAMBRIDGE);

- the average consumer of the goods and services will select them with a medium degree of attention. The selection is primarily visual, but the aural element will also be relevant, although to a lesser degree than the visual;
- in terms of similarity of the marks, the contested CAMBRIDGE BLUE mark is 1) visually and aurally similar to a medium to high degree and conceptually similar to either a low to medium degree or a medium to high degree (depending on whether or not CAMBRIDGE BLUE links in the mind of the average consumers to the University of Cambridge as CAMBRIDGE solus does not for nightclub services) to the mark CAMBRIDGE; 2) visually and aurally similar to a low to medium degree and conceptually similar to either a low to medium degree or a medium to high degree to the mark NORTH WEST CAMBRIDGE; 3) visually similar to a low degree, aurally similar to a degree between low and medium and conceptually similar to either a high degree (for those consumers who recognise the meaning of CAMBRIDGE BLUE as a reference to sport teams from the University of Cambridge) or to a degree between low and medium (for those consumers who do not see any association between

CAMBRIDGE BLUE and the University of Cambridge) to the mark



- the earlier marks cannot benefit from enhanced distinctive character through use. However, the reputation of Cambridge University is still relevant from a conceptual perspective insofar as the mark is likely to be associated (either because of its nature or because of the goods and services in the context of which it is used) with the University. Inherently, the marks NORTH WEST CAMBRIDGE and CAMBRIDGE are distinctive to a moderate degree, whilst



the mark CAMBRIDGE is distinctive to a high degree.

81. Before I move on to assess the likelihood of confusion, I should address Mr Chipchase's arguments which centre on 1) the existence of other marks incorporating the word CAMBRIDGE in the marketplace and 2) his own use of the mark OXFORD BLUE in relation to beer. These arguments do not engage with the correct test for likelihood of confusion. As regards the use of the word Cambridge by other traders, there is no evidence from which any conclusion about the extent of such use (and its impact on the distinctive character of the word CAMBRIDGE) could be drawn. As regard the applicant's use of the mark OXFORD BLUE in relation to beer, it is irrelevant because it relates to a different mark and the decision of the University of Oxford not to pursue any opposition against that mark is not pertinent to the issue I need to decide.

82. Having considered all of the relevant factors, my conclusion is that there is a likelihood of confusion based on at least one of the earlier marks. I will explain now why I have reached this view.



83. The first scenario I consider is based on the earlier mark CAMBRIDGE. Here I must assume that the average consumer having purchased cider sold under the

opponent's mark, he later encounter beer sold under the mark CAMBRIDGE BLUE. In my view, those consumers who associate the term CAMBRIDGE BLUE with Cambridge University are likely to assume that beer sold under the contested mark originates from the opponent. Although the goods are not typically associated with the core services for which the opponent has a reputation, the marks themselves create a conceptual association with the University and the differences in the marks are not enough to avoid indirect confusion. There is a likelihood of indirect confusion based on this mark.

84. Alternatively, I consider the scenario based on the mark CAMBRIDGE. Here the opponent's mark does not create any association with Cambridge University in the context of the services at issue, i.e. *entertainment* insofar as the term covers nightclub services. Although I also found that a section of the public may not be aware of the link between the University of Cambridge and term CAMBRIDGE BLUE (in which case the conceptual similarity between the mark is medium to high, because both marks will create an association with Cambridge as a geographical location but not with the University), taking into account the moderate degree of distinctiveness of the earlier mark, the differences between the marks and the low degree of similarity of the goods and services concerned, I am not persuaded that consumers might misremember CAMBRIDGE for CAMBRIDGE BLUE or that having noted the differences between the marks and the goods and services, they might take one mark as a kind of "brand extension" or "sub-brand" of the other and believe that the respective goods or services come from the same or economically linked undertakings. There is no likelihood of confusion based on this mark.

85. Finally, I turn to the case based on the conflict between the mark CAMBRIDGE BLUE used in the context of *beer* goods and the mark NORTH WEST CAMBRIDGE used in the context of *pubs, bar services and retail services and online retail services connected with the sale of beers*. Although the goods and services are similar to a low to medium degree, again, the marks are not similar enough to be misremembered so there is no risk of direct confusion. As regards indirect confusion, the differences created by the elements 'NORTH WEST' and 'BLUE' in the respective marks, combined with the moderate degree of distinctive character of the earlier mark and the fact that the goods and services concerned are not particularly close, are such that it

makes in my view unlikely that the public would believe that the marks were associated, certainly in the context of goods and services for which the opponent's mark has no reputation. There is no likelihood of confusion based on this mark.

86. The opposition succeeds under Section 5(2)(b) for the reasons given in paragraph 83.

Section 5(4)

87. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa)

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

88. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

89. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon case* (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

90. There is no evidence that the applicant has made any use of the contested mark prior to the filing date of the application. The relevant date for assessing the passing off claim in respect of the application is therefore the filing date of the mark,⁹ i.e. 12 February 2019.

Goodwill

91. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates.”

⁹ *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11

92. Under Section 5(4)(a) the opponent claims goodwill in printed matter and a range of educational services as well as provision of recreational and sporting facilities, sport activities, organisation, arranging and conducting of boat races, entertainment in the nature of sport events and entertainment in the nature of boat races. I have already noted that the opponent has not used the term CAMBRIDGE BLUE in trade. Likewise, it has not provided any evidence of use of the mark CAMBRIDGE in the context of sport events – although it is clear that there is a tradition of students from Cambridge University competing against students from Oxford University in a well-known boat race, there is no evidence of the opponent carrying out a business in relation to (or generating any income from) the provision of sport activities and sport events.

93. The applicant conceded that the opponent has a highly regarded reputation as a University. I will therefore proceed on the basis that the opponent had the required goodwill at the relevant date and that that goodwill was associated with university and academic studies and research. I also accept that the sign CAMBRIDGE was distinctive of the opponent's goodwill at the relevant date.

Misrepresentation and damage

94. The relevant test was set out by Morritt LJ in *Neutrogena Corporation & Anor v Golden Limited & Anor* [1996] RPC 473:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 at page 407 the question on the issue of deception or confusion is:

‘is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants’ [product] in the belief that it is the respondents’ [product].

The same proposition is stated in *Halsbury's Laws of England* 4th Edition Vol. 48 para. 148. The necessity for a substantial number is brought out also in

Saville Perfumery Ltd v June Perfect Ltd (1941) 58 RPC 147 at page 175; and
Re Smith Hayden's Application (1945) 63 RPC 97 at page 101.”

95. Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

96. The strongest arguments advanced by Mr Stobbs on the part of the opponent were that 1) if I were against the opponent and found the goods and services to be dissimilar (as I have), there is no requirement in the context of Section 5(4)(a) that the competing goods and services must be similar¹⁰ and 2) if intent is proven, misrepresentation will be more readily inferred.

97. I agree with Mr Stobbs that the fact that the applicant has chosen both CAMBRIDGE BLUE and OXFORD BLUE makes it “*absolutely blatantly apparent*” that the names were chosen to create an association with Cambridge University and Oxford University. Further, Mr Chipchase has conceded that the applicant intends to use the contested mark “*to support retail establishments and rowing clubs along the route of the 2020 Boat Race*”, all of which points towards a deliberate association.

98. Although in *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] RPC 39 (HOL), Lord Simonds stated that “*if the intention to deceive is found, it will be readily inferred that deception will result*” I do not need to go as far as to say that deception is inferred. As it will be recalled, although the opponent has not used CAMBRIDGE BLUE in trade, the term is clearly associated with Cambridge University and the applicant has accepted this fact. Further, there is evidence of the opponent promoting the term CAMBRIDGE BLUE by way of clothing

¹⁰ *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA)

and accessories merchandising. Whilst there is no evidence of beer being associated with university merchandising, I find that use of the mark CAMBRIDGE BLUE by the applicant will give rise to a false message that the goods have been authorised, recommended or approved of by the opponent.¹¹ In my view, a substantial number of members of the public will naturally assume, contrary to the facts, that there is a material connection between the applicant and the University of Cambridge, that is to say, that the applicant's CAMBRIDGE BLUE beer products have been officially approved by the opponent or that the applicant has been officially licensed to sell CAMBRIDGE BLUE beer or authorised to manufacture and sell such beer.¹² This is especially so, given Mr Chipchase's declared intention to sell the goods in the context of the Boat Race between Cambridge University and Oxford University and the evidence about the choice by the applicant of the same colour as that used by Cambridge University - which Mr Stobb described as medium tone of spring green. Misrepresentation is made out.

99. Although this is not a case where the most obvious form of damage is applicable, i.e. a direct loss of sales, there is a danger that the opponent loses control over his own reputation. Damage is made out.

100. Consequent upon the findings I have made, the opposition succeeds under section 5(4)(a) of the Act.

Section 5(3)

101. Section 5(3) states:

“(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

¹¹ Irvine v Talksport Ltd [2003] F.S.R. 35

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 the repute of the earlier trade mark.

102. Section 5(3A) states:

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

103. The relevant case law can be found 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* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and*

Spencer v Interflora, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

104. The relevant date for the assessment under Section 5(3) is the dates of the application, namely 12 February 2019.

Reputation

105. In *General Motors*, Case C-375/97, 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 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.”

106. Under this ground the opponent relies on the two marks CAMBRIDGE and CAMBRIDGE UNIVERSITY. Although the opponent initially claimed reputation for a wide range of goods and services in class 9, 16 and 41, at the hearing Mr Stobbs reiterated that the opponent's reputation is in the field of publishing, education and sporting activities. For the purpose of this decision, I will proceed on the basis that the

opponent had a strong reputation for (at least) university and academic studies and research at the relevant date - a position accepted by the applicant – and its marks were known by a significant part of the public concerned with the services.

Link

107. Given what I have said in relation to the claim for passing off, I consider that a significant part of that relevant public who recognises the opponent's marks is also aware of the use of the term CAMBRIDGE BLUE by Cambridge University and will make the necessary link between the marks.

Damage

108. Given what I have said in relation to the applicant's mark giving rise to a false message that the goods have been authorised, recommended or approved of by the opponent, it will result in the applicant's goods being represented as being connected with the opponent in such a way as to lead people to accept them on the faith of the opponent's reputation. This, in my view, will give an unfair advantage to the applicant.

109. The opposition under Section 5(3) also succeeds.

Overall outcome

110. The opposition is successful. The contested mark will be refused registration.

Costs

111. The applicant having failed the opponent is entitled to a contribution towards its costs. I assess this as follows:

Filing a notice of opposition and considering a counterstatement:	£200
Filing evidence and considering the applicant's evidence:	£800
Attending a hearing:	£700
Official fees	£200

112. I therefore order Chadlington Brewery Limited to pay The Chancellor, Masters and Scholars of the University of Cambridge the sum of £1,900. This sum to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of any appeal proceedings.

Dated this 7th day of June 2021

T Perks

For the Registrar,

the Comptroller-General

Annex

UK00003015609

CAMBRIDGE

Class 9: *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; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, computer software for educational purposes; fire-extinguishing apparatus; audiovisual teaching apparatus; bags adapted for laptops; calculating machines; CDs; CD- ROMs; compact disc players; downloadable music files; downloadable image files; downloadable text files; downloadable video files; downloadable exam papers; downloadable quizzes; downloadable assessment criteria; downloadable educational materials; downloadable periodical publications; downloadable journals; downloadable dictionaries; downloadable reference books; downloadable lecture notes; downloadable educational worksheets; downloadable slide presentations; downloadable flashcards; downloadable vocabulary lists; DVDs; electronic publications, downloadable; electronic pocket translators; floppy disks; magnetic data media; magnetic tapes; magnetic disks; mouse pads; optical discs; optical data media; pocket calculators; portable telephones; mobile telephones; smartphones; handheld electronic devices for teaching and learning; portable electronic devices for teaching and learning; handheld electronic devices for examination and assessment; portable electronic devices for examination and assessment; handheld electronic devices for reading; portable electronic devices for reading; portable media players; projection screens; projection apparatus; sleeves for laptops; sleeves for tablet computers; sleeves for portable computers; cases for mobile phones, tablets or portable computers; sound transmitting apparatus; sound recording apparatus; sound reproduction apparatus; teaching apparatus; video cassettes; videotapes; non-printed publications; printed publications in electronically*

readable form; printed publications in optically recorded form; databases; podcasts; talking books; training manuals in the form of a computer program; educational software; computer programmes for interactive games or quizzes; computer software for communicating with users of hand-held computers; computer software in the field of electronic publishing; electronic whiteboards; satellite telephones; solar powered telephones; video communications apparatus; wireless telephony apparatus; stands for computer equipment; wearable computers; computer software for the provision of training, education, examination and assessment; computer software for the provision of training, education, examination and assessment for operation over computer networks; computer software for the provision of training, education, examination and assessment for operation by remote computer access; magnetic, optical and other disks, magnetic tape and other media for electronically recording data or software carrying computer data or computer software for the provision of training, education, examination and assessment; downloadable publications; downloadable educational materials including exam papers, course materials and lecture notes; downloadable computer software; abacuses; acidimeters for batteries; actinometers; adding machines; aerometers; electronic agendas; air analysis apparatus; alcoholmeters; alidades; altimeters; ammeters; amplifiers; amplifying tubes; anemometers; animated cartoons; anode batteries; anodes, anti-glare visors; anti-glare glasses; anti-interference devices [electricity]; anticathodes; apertometers [optics]; armatures [electricity]; apparatus and instruments for astronomy; azimuth instruments; barometers; batteries for lighting; electric batteries; battery jars; battery boxes; battery chargers; betatrons; binoculars; blueprint apparatus; boiler control instruments; breathing apparatus, except for artificial respiration; cabinets for loudspeakers; electric cables; calibrating rings; calipers; camcorders; cameras; capillary tubes; carriers for dark plates [photography]; cases especially made for photographic apparatus and instruments; cases fitted with dissecting instruments; cassette players; cathodes; cathodic anti-corrosion apparatus; cell phone straps; cell switches [electricity]; centering apparatus for photographic transparencies; chargers for electric batteries; choking coils [impedance]; chromatography apparatus for laboratory use; chronographs [time recording apparatus]; cinematographic film, exposed; cinematographic cameras; circuit breakers; circuit closers; clothing especially made for laboratories;

coaxial cables; electric coils; electric collectors; electric apparatus for commutation; commutators; comparators; directional compasses; compasses [measuring instruments]; capacitors; electric conductors; connections for electric lines; connectors [electricity]; contact lenses; electric contacts; containers for contact lenses; containers for microscope slides; control panels [electricity]; electric converters; insulated copper wire; correcting lenses [optics]; counters; meters; couplers [data processing equipment]; electric couplings; electric connections; covers for electric outlets; crucibles [laboratory]; cupels [laboratory]; current rectifiers; cyclotrons; darkroom lamps [photography]; darkrooms [photography]; decompression chambers; demagnetising apparatus for magnetic tapes; densimeters; densitometers; detectors; diaphragms [photography]; diaphragms [acoustics]; digital photo frames; electric discharge tubes, other than for lighting; distance measuring apparatus; distance recording apparatus; distillation apparatus for scientific purposes; distribution boards [electricity]; distribution boxes [electricity]; distribution consoles [electricity]; dog whistles; dosage dispensers; dosimeters; downloadable ring tones for mobile phones; drainers for use in photography; drying apparatus for photographic prints; ducts [electricity]; DVD players; dynamometers; apparatus for editing cinematographic film; hourglasses; egg-candlers; electric loss indicators; electricity conduits; electrified rails for mounting spot lights; electrified fences; electrolysers; electromagnetic coils; electronic notice boards; electronic pens [visual display units]; encoded magnetic cards; enlarging apparatus [photography]; ergometers; exposure meters; eyeglass chains; eyeglass cases; eyeglass cords; eyepieces; instruments containing eyepieces; facsimile machines; apparatus for fermentation [laboratory apparatus]; fibre optic cables; film cutting apparatus; films, exposed; filters [photography]; filters for ultraviolet rays, for photography; filters for respiratory masks; flash-bulbs [photography]; flashlights [photography]; frames for photographic transparencies; frequency meters; furnaces for laboratory use; ovens for laboratory use; furniture especially made for laboratories; fuse wire; fuses; galena crystals [detectors]; galvanic cells; galvanic batteries; galvanometers; gas testing instruments; petrol gauges; gasometers [measuring instruments]; gauges; glass covered with an electrical conductor; Global Position System [GPS] apparatus; grids for batteries; hands free kits for phones; head cleaning tapes [recording]; headphones; heat regulating high-frequency

apparatus; holders for electric coils; holograms; horns for loudspeakers; hydrometers; hygrometers; magnetic identity cards; electric apparatus for remote ignition; incubators for bacteria culture; inductors [electricity]; intercommunication apparatus; inverters [electricity]; ionisation apparatus not for the treatment of air or water; juke boxes for computers; musical juke boxes; junction sleeves for electric cables; junction boxes [electricity]; laboratory trays; laboratory centrifuges; lactodensimeters; lactometers; lasers, not for medical purposes; lens hoods; lenses for astrophotography; levelling staffs [surveying instruments]; levelling instruments; levels [instruments for determining the horizontal]; light-emitting electronic pointers; light- emitting diodes [LED]; lighting ballasts; lightning conductors; limiters [electricity]; logs [measuring instruments]; loudspeakers; magic lanterns; magnetic encoders; magnetic wires; magnets; decorative magnets; magnifying glasses [optics]; marine compasses; marine depth finders; graduated glassware; measuring glassware; measuring spoons; mercury levels; metal detectors for industrial or military purposes; meteorological balloons; meteorological instruments; metronomes; micrometer screws for optical instruments; micrometers; microphones; microprocessors; microscopes; microtomes; mirrors for inspecting work; mirrors [optics]; navigation apparatus for vehicles [on-board computers]; needles for record players; objectives [lenses] [optics]; observation instruments; octants; ohmmeters; optical character readers; optical fibres; optical lenses; optical glass; optical lamps; optical goods; optical apparatus and instruments; optical condensers; oscillographs; oxygen transvasing apparatus; ozonisers; pedometers; periscopes; personal stereos; petri dishes; sound recording discs; photocopiers; photometers; phototelegraphy apparatus; photovoltaic cells; apparatus and instruments for physics; pince-nez; eyeglasses; eyeglass frames; pipettes; pitot tubes; plane tables [surveying instruments]; planimeters; plates for batteries; plotters; plumb lines; plumb bobs; precision balances; precision measuring apparatus; pressure measuring apparatus; pressure gauges; pressure indicators; pressure indicator plugs for valves; prisms [optics]; protective helmets for sports; protective masks; protective suits for aviators; protractors [measuring instruments]; pyrometers; quantity indicators; radar apparatus; radio pagers; radios; radiotelegraphy sets; radiotelephony sets; telemeters; range finders; audio- and video-receivers; record players; electric regulating apparatus; electric relays; remote

control apparatus; electric resistances; respirators for filtering air; respiratory masks, other than for artificial respiration; respirators, other than for artificial respiration; resuscitation mannequins [teaching apparatus]; retorts; retorts' stands; revolution counters; rheostats; riding helmets; rulers [measuring instruments]; rules [measuring instruments]; satellite navigational apparatus; satellites for scientific purposes; scales; screens [photography] screw-tapping gauges; sextants; sheaths for electric cables; shutter releases [photography]; shutters [photography]; simulators for the steering and control of vehicles; slide projectors; slide calipers; slide-rules; inclinometers; smoke detectors; plugs, sockets and other contacts [electric connections]; socks, electrically heated; solar batteries, solderers' helmets; solenoid valves [electromagnetic switches]; sonars; sound transmitting apparatus; sound recording strips; sound recording carriers; sound locating instruments; sounding apparatus and machines; sounding lines; sounding leads; spark-guards; spectacle cases; spectacle frames; spectacle lenses; spectacles [optics]; spectrograph apparatus; spectrosopes; speed indicators; spherometers; stands for photographic apparatus; steering apparatus, automatic, for vehicles; step-up transformers; stereoscopes; stereoscopic apparatus; stills for laboratory experiments; stroboscopes; sulphitometers; sunglasses; surveying instruments; surveying apparatus and instruments; surveying chains; surveyors' levels; tachometers; tape recorders; taximeters; teeth protectors; telephone apparatus; telephone receivers; telephone transmitters; telephone wires; teleprinters; teleprompters; teleruptors; telescopes; television apparatus; temperature apparatus; temperature indicators; temperature indicator labels, not for medical purposes; terminals [electricity]; test tubes; testing apparatus not for medical purposes; theodolites; thermionic valves; thermometers, not for medical purposes; thermostats; totalizers, transformers [electricity]; transistors [electronic]; transmitters of electronic signals; transmitters [telecommunication]; transmitting sets [telecommunication]; transparencies [photography]; transponders; triodes; tripods for cameras; urinometers; vacuum gauges; variometers; vehicle radios; verniers; video telephones; video game cartridges; video recorders; video screens; videotapes; photographic viewfinders; viscosimeters; voltmeters; voting machines; walkie-talkies; water level indicators; wavemeters; weighing machines; wire connectors [electricity]; electric wires; wrist rests for use with computers; x-ray films,

exposed; x-ray photographs, other than for medical purposes; x-ray apparatus, not for medical purposes; x-ray tubes not for medical purposes; apparatus and installations for the production of x-rays, not for medical purposes; safety spectacles; frames for spectacles and sunglasses; anaerobic chambers for laboratory or scientific use; anatomical models for instructional purposes; beakers [laboratory glassware]; cell culture apparatus for laboratory use; centrifuge separators for laboratory use; centrifuges for laboratory use; chemical reactors; containers for microscope slides; culture plates; equatorial telescopes; filtering units for laboratory use; flight simulators; fume cupboards for laboratory use; gas mixers for laboratory use; gasifiers for laboratory use; geoseismic apparatus; glassware specifically adapted for scientific use; holders for test tubes; hollow glass containers for laboratory use; immunostaining instruments [for scientific purposes]; incubators for laboratory use; laboratory optical apparatus; science sets for children being instructional apparatus; separating apparatus for laboratory use; ultrasonic cleaning instruments for laboratory use; ultrasonic diagnostic apparatus for laboratory use; vacuum probes for scientific use; vials for laboratory use; zenith telescopes; parts and fittings for all the aforesaid goods.

Class 16: *Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks; adhesive tape dispensers [office requisites]; adhesive tapes for stationery or household purposes; adhesives [glues] for stationery or household purposes; albums/scrapbooks; almanacs; announcement cards [stationery]; arithmetical tables; atlases; binding strips [bookbinding]; biological samples for use in microscopy [teaching materials]; blackboards; blotters; bookbindings; bookends; booklets; bookmarkers; books; calendars; cards; charts; catalogues; charcoal pencils; clipboards; clips for offices; staples for offices; bookbinding cloth; comic books; compasses for drawing; composing frames [printing]; copying paper [stationery]; cords for bookbinding; correcting fluids [office requisites]; correcting tapes [office requisites]; diagrams; document laminators for*

office use; document files [stationery]; document holders [stationery]; drawing materials; drawing pads; drawing pens; drawing sets; drawing pins; elastic bands for offices; envelopes [stationery]; files [office requisites]; flyers; folders for papers; folders [stationery]; printed forms; fountain pens; geographical maps; handwriting specimens for copying; histological sections for teaching purposes; index cards [stationery]; indexes; ledgers [books]; magazines [periodicals]; manuals; handbooks; marking pens; newsletters; newspapers; note books; numbers [type]; pads [stationery]; pamphlets; paper; paper sheets [stationery]; paper-clips; paperweights; pencil leads; pencil sharpeners, electric or non-electric; pencils; pens [office requisites]; periodicals; pictures; postcards; posters; printed matter; printed publications; printing type; printing blocks; prospectuses; rubber erasers; school supplies [stationery]; song books; stationery; stickers; teaching materials [except apparatus]; terrestrial globes; writing instruments; writing pads; writing cases [sets]; writing materials; writing cases [stationery]; writing or drawing books; writing paper; exercise books; Bibles; printed awards; printed certificates; reference books; dictionaries; directories; manuals; reports; magazines; journals. periodicals; newspapers; newsletters; exam papers; lecture notes; worksheets; quizzes; printed puzzles; educational assessment criteria; flashcards; vocabulary lists; paper, books, booklets, documents, forms, brochures, cards, instructional and teaching materials in Class 16 all relating to the training, testing, examination and assessment of candidates for educational achievement, and to the provision of training, testing, examination and assessment services, including computer assisted, computer mediated services and on-line services and to the provision of distance learning programmes; parts and fittings for all the aforesaid goods.

Class 41: *Education; providing of training; entertainment; sporting and cultural activities; academies [education]; arranging and conducting of colloquiums; arranging and conducting of workshops [training]; arranging and conducting of congresses; arranging and conducting of conferences; arranging and conducting of seminars; arranging and conducting of symposiums; boarding schools; schools; club services [entertainment or education]; coaching [training]; correspondence courses; distance learning courses; education information; educational examination; electronic desktop publishing; game services provided on-line from a computer*

network; holiday camp services [entertainment]; holiday camp services [education]; publishing consultancy services; advisory services relating to publishing; publishing services; electronic publishing services; providing electronic publications; publication of printed matter and printed publications; language interpreter services; lending libraries; mobile library services; providing museum facilities; nursery schools; organisation of competitions [education or entertainment]; organisation of exhibitions for cultural or educational purposes; physical education; practical training; production of radio and television programmes; providing online electronic publications, not downloadable; publication of texts, other than publicity texts; publication of books; publication of reference books; publication of directories; publication of manuals; publication of reports; publication of magazines; publication of journals; publication of periodicals; publication of dictionaries; publication of exam papers; publication of lecture notes; publication of worksheets; publication of quizzes; publication of puzzles; publication of examination marking criteria; publication of pamphlets; publication of booklets; publication of flashcards; publication of vocabulary lists; publication of educational material; publication of electronic books online; publication of electronic journals online; publication of electronic reference books online; publication of directories online; publication of manuals online; publication of reports online; publication of magazines online; publication of periodicals online; publication of dictionaries online; publication of exam papers online; publication of lecture notes online; publication of educational worksheets online; publication of quizzes online; publication of puzzles online; publication of examination marking criteria online; publication of pamphlets online; publication of booklets online; publication of flashcards online; publication of vocabulary lists online; publication of educational material online; publishing; services of schools [education]; sport camp services; teaching services; educational services; instruction services; tuition; translation; vocational guidance [education or training advice]; vocational retraining; writing of texts, other than publicity texts; academic examination services; adult education services; analysing educational test scores and data for others; arrangement of training courses; arranging of festivals for educational purposes; bibliographic information; business educational services; business training; certification of education and training awards; computer assisted education services; computer assisted examination services; design of

educational courses, examinations and qualifications; development of educational material; educational assessment services; educational examination services; educational research; provision of educational examination facilities; setting of educational standards; university education services; university services; provision of training, teaching, examination and assessment services including such services being provided via computer assisted and computer mediated means and via on-line means; provision of distance learning programmes; information, advisory and consultancy services relating to the aforesaid services.