

O-068-09

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 876252
IN THE NAME OF
A BELTRÓNICA – COMPANHIA DE COMUNICAÇÕES, LDA
OF THE TRADE MARK

BELCOMCENTER

IN CLASSES 9, 38 and 42

AND

THE OPPOSITIONS THERETO
UNDER NO 71495
BY
BELL IP HOLDING, L.L.C.

Trade Marks Act 1994

In the matter of
international registration no. 876252
in the name of A Beltrónica – Companhia De Comunicações, Lda
of the trade mark:

BELCOMCENTER

in classes 9, 38 and 42
and the opposition thereto
under no. 71495
by Bell IP Holding, L.L.C.

Introduction

1. A Beltrónica – Companhia De Comunicações, Lda, which I will refer to as Beltrónica, is the holder of the above international registration. Protection in the United Kingdom is sought from 21 September 2005, claiming a priority date of 21 March 2005 (Portugal). The request for protection was published in the United Kingdom, for opposition purposes, in *The Trade Marks Journal* on 18 May 2007. Protection is sought in respect of the following goods and services, classified according to the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended:

- Class 9: *Electric and electronic apparatus and instruments, namely telephone exchanges and telephones; computers;*
- Class 38: *Telephone services; communications by computer terminals;*
- Class 42: *Computer support services provided by telephone line; computer programming, consulting services in the field of computing; designing of software for third parties; development (designing) of software, engineering project studies in information technology.*

2. On 16 August 2007, Bell IP Holding, L.L.C., which I will refer to as Bell, filed notice of opposition to the protection of the entire international registration. The single ground of opposition is section 5(2)(b) of the Trade Marks Act 1994. To support this ground, Bell relies upon the following goods and services for which its earlier Community trade mark registrations (CTMs) 3356061 and 1141332 are registered:

CTM 3356061:

BELL

- Class 9: *Telecommunications installations, apparatus and equipment; telephones; telephone apparatus and equipment; magnetically encoded telephone calling cards and SIM (subscriber identity module) cards; computer programs for delivering and receiving messages over telephone lines; apparatus for transmitting cable and wireless signals;*
- Class 16: *Telephone directories and classified directories; calling cards without magnetic coding; instructional books, brochures, and pamphlets for use of telecommunications equipment and services and development of telecommunications skills;*
- Class 36: *Clearing house services, namely collection, exchange and settlement of roaming and billing information for wireless telecommunication carriers;*
- Class 38: *Telecommunications services; local and long distance telephone transmission services; voice, data, image and video communications transmission services (digital and analog) via computer, television, and telecommunications networks; voice messaging services; providing communications access and gateway services to global computer networks; television broadcasting and entertainment services; providing high-speed internet transmission services and exchange points in telecommunications centres; wireline and wireless communication transmission services; voice and video conferencing services; provision of access to databases; rental and leasing of access and/or access time to databases; provision of online access and gateway services to computer networks; provision of online access and gateway services to the Internet; providing online multiple user access to computer information networks for dissemination of business, entertainment, education and consumer information on range of topics and classified directory information;*
- Class 41: *Transmission of computer games over wireless signals, telephone lines, modems and global computer networks;*
- Class 42: *Hosting the web sites of others on a computer server for global computer network; designing web sites for others; cellular telephone fraud prevention and security services for wireless telecommunication carriers.*

CTM 3356061 was applied for on 17 September 2003 and the date of completion of its registration process was 29 November 2005. It is an earlier trade mark and is not

subject to proof of its use because at the date of publication of 876252 it had been registered for less than five years.

CTM 1141332:



- Class 9: *Telecommunications installations, apparatus and equipment; telephones; telephone apparatus and equipment; smart cards; magnetically encoded telephone calling cards and SIM (Subscriber Identity Module) cards;*
- Class 16: *Telephone directories and classified advertising directories; calling cards without magnetic coding;*
- Class 35: *Clearing house services, namely, collection, exchange and settlement of roaming and billing information for wireless telecommunications carriers; cellular telephone fraud prevention and security services for wireless telecommunications carriers;*
- Class 38: *Telecommunications services; voice, data, image and video communications transmission services (digital and analog); providing communications access and gateway services to global computer networks for information, electronic mail and bulletin board services (internet); long distance telephone services; wireless roaming transmission services;*
- Class 42: *Provision of access to databases; rental and leasing of access and/or access time to databases; provision of online access and gateway services to computer networks; provision of online access and gateway services to the Internet; providing online multiple user access to computer information networks for dissemination of business, entertainment, education and consumer information on range of topics and classified directory information.*

CTM 1141332 was applied for on 16 April 1999 and the date of completion of its registration process was 10 July 2002. It is an earlier trade mark and is not subject to proof of its use because at the date of publication of 876252 it had been registered for less than five years.

3. Beltrónica filed a counterstatement, denying that the marks are similar, denying the opponent's claim that all of the goods and services are similar or identical, and denying that there exists a likelihood of confusion between its international registration and Bell's CTM registrations.

4. Only Bell filed evidence. The parties were advised that they had a right to a hearing and that if neither side requested a hearing a decision would be made from the papers and from any written submissions. Neither side requested a hearing and whilst only Bell filed written submissions, I have borne in mind Beltrónica's counterstatement in reaching my decision.

Evidence

5. Bell's evidence consists of a witness statement by Benjamin Britter, a trade mark attorney at Keltie, acting for Bell. Mr Britter's witness statement brings into the proceedings a single exhibit, which comprises copies of the details of each of the marks upon which it relies, taken from the online database of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM).

Decision

6. The relevant part of section 5(2)(b) of the Act is as follows:

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

(a) –

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

Section 6(1)(a) of the Act defines an earlier mark as:

“a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks”.

Bell's trade marks upon which it relies are earlier marks as per section 6(1)(a).

7. The leading authorities which guide me in this ground are from the European Court of Justice (ECJ): *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) C-334/05 P (LIMONCELLO)*. It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,

(b) the matter must be judged through the eyes of the average consumer for the goods/services in question; *Sabel BV v Puma AG*, 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; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,

(i) further, 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; *Marca Mode CV v Adidas AG and Adidas Benelux BV*,

(j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*.

Comparison of goods and services

8. Following the established tests in *Canon* and in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281, I must consider the nature of the goods and services, their intended purpose, their method of use, whether the goods or services are in competition with or complementary to each other and also the nature of the users and the channels of trade. The criteria identified in the *Treat* case for assessing similarity between goods and services 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, taking into account how goods/services are classified in trade.

9. I also bear in mind that in *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16 Jacob J held that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

Neither should specifications be given an unnaturally narrow meaning, as per *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000]. In *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32, although in the context of a non-use issue, the court considered interpretation of specifications:

“In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied

by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use”.

Neither of Bell’s two earlier marks upon which it relies is subject to proof of its use; I must, therefore, compare the goods and services covered by the international registration (IR) with all those goods and services relied upon for opposition in the two registered CTMs. The IR seeks protection in the UK for:

Class 9: *Electric and electronic apparatus and instruments, namely telephone exchanges and telephones; computers;*

Class 38: *Telephone services; communications by computer terminals;*

Class 42: *Computer support services provided by telephone line; computer programming, consulting services in the field of computing; designing of software for third parties; development (designing) of software, engineering project studies in information technology.*

The specification in Class 9 uses the qualification ‘namely’. It has long been the Registrar’s practice¹ to interpret ‘namely’ as performing a limiting function in relation to a wider term. The goods or services which follow ‘namely’ are those for which there is cover, rather than the wider term which precedes ‘namely’. In this case, the portmanteau term ‘electric and electronic apparatus and instruments’ is limited to ‘telephone exchanges and telephones’ by virtue of the limiting effect of ‘namely’. However, even if I were found to be wrong in my interpretation of the limiting effect of ‘namely’, as described above, the result would be the same. It is well established that goods can be considered identical when those covered by an earlier mark are included in a wider term by a later mark (and vice versa); see *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-133/05*.²

¹ Chapter 2 “Classification” : “Note that specifications including “namely” should be interpreted as only covering the named goods . Thus, in the above “dairy products namely cheese and butter” would only be interpreted as meaning “cheese and butter” and not “dairy products” at large. This is consistent with the definitions provided in Collins English Dictionary which states “namely” to mean “that is to say” and the Cambridge International Dictionary of English which states “which is or are”.

² “29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

10. There are a number of instances across the specifications where identical or similar goods and services are involved. The comparison below gives the strongest result:

- IR: “telephone exchanges and telephones”

This term is encompassed by the wider terms telecommunications installations, apparatus and equipment; telephones; telephone apparatus and equipment; apparatus for transmitting cable and wireless signals of CTMs 3356061 and 1141332 and is therefore identical to those goods of the earlier marks.

- IR: “computers”

This term is similar to telecommunications installations, apparatus and equipment since this general term could include telecommunications computers. Computers would also seem highly similar to computer programs and therefore similar to computer programs for delivering and receiving messages over telephone lines of CTMs 3356061 and 1141332.

- IR: “telephone services; communication by computer terminals”

These terms are identical to telecommunications services; voice, data, image and video communications transmission services (digital and analog) via computer, television, and telecommunications networks of CTMs 3356061 and 1141332.

- IR: “computer support services provided by telephone line”

This term is essentially ‘computer support services’, rather than a telecommunications service. It is similar to computer programs for delivering and receiving messages over telephone lines of CTM 3356061, and similar to providing communications access and gateway services to global computer networks of CTMs 3356061 and 1141332 since the service could provide complementary support for the operation of computer software and telecommunication access.

- IR: “computer programming, consulting services in the field of computing; designing of software for third parties; development (designing) of software”

The design of bespoke software would appear similar to computer programs themselves; the computing consultancy and design is not limited to a particular field and could therefore encompass the design of computer programs for delivering and receiving messages over telephone lines of CTM 3356061. Designing websites for others (CTM 3356061) shares a similarity with computer consultancy and software design since websites rely upon software for their operation, for example, if the website contains search and retrieval functionality. The above IR services are similar to computer programs for delivering and receiving messages over telephone lines and designing websites for others (CTM 3356061).

11. This leaves 'engineering project studies in information technology'. This service could mean more than one thing; it could be a service which would be commissioned on an individual, bespoke basis or it could be the provision of information technology engineering information in the form of project studies. I conclude that there is a measure of similarity between this service and "providing online multiple user access to computer information networks for dissemination of business, education and consumer information on a range of topics" because 'topics' is unlimited and includes information on information technology engineering .

12. I have noted that provision of access to databases; rental and leasing of access and/or access time to databases; provision of online access and gateway services to computer networks; provision of online access and gateway services to the Internet; providing online multiple user access to computer information networks for dissemination of business, entertainment, education and consumer information on range of topics and classified directory information appears in Class 38 in CTM 3356061 but in Class 42 of CTM 1141332 (along with a change between classes 35 and 36 for 'clearing house services') but this change of class does not affect my assessment of the level of similarity of services.

13. In summary, all of the goods and services of the IR are either identical or similar to those covered by the earlier marks.

The average consumer and the purchasing process

14. The goods and services which I have identified as identical or similar are technological in nature. In the field of telecommunications there is a diverse range of consumer groups, ranging from the householder who requires a new land-line or mobile telephone, to large and small corporate customers, and to national and international telecommunications providers. These groups will have differing levels of expertise, technical requirements and budgets. The same is true of computers and computer services. Telecommunication and computing equipment and services are considered purchases, with a close degree of attention paid, particularly so at corporate procurement level. Exposure to the goods and services is likely to be visual rather than aural, whether through a physical shop, website, leaflet, periodical or corporate tender/contract document. Oral use may play a part, but I consider that visual selection will be the more usual mode of purchase.

Comparison of marks

15. The authorities direct that, in making a comparison between the marks, I must have regard to each mark's visual, aural and conceptual characteristics. I have to decide which, if any, of their components I consider to be distinctive and dominant. The likelihood of confusion must be appreciated globally by evaluating the importance to be attached to those different elements, taking into account the degree of similarity in the goods and services, the category of goods and services in question and how they are marketed. However, I should guard against dissecting the marks so as to distort the average consumer's perception of them; the average consumer perceives trade marks as wholes and rarely has the opportunity to compare marks side by side, relying instead upon the imperfect picture he has of them in his mind.

16. Bell's two marks have no common element: CTM 3356061 is the word BELL and CTM 1141332 is a device comprising the encircled outline of a bell. The opponent submits that this device mark would be known as a 'Bell logo' and that it should be considered aurally and conceptually similar to the IR in the same way as BELL. I have not found any goods or services covered by CTM 1141332 which are not also identical or similar as covered by CTM 3356061. The common element in the application is 'BEL'. It therefore seems to me that Bell's best case lies with CTM 3356061 for the word mark BELL and I therefore propose to confine my decision to a comparison between the IR and CTM 3356061 BELL.

17. Bell submits that, aurally, the average consumer will perceive BelcomCenter as comprising three distinct elements, Bel, Com and Center. Further, the average consumer will also perceive the three elements independently of each other as they are distinct recognisable words. Bell contends that, visually and conceptually, BEL is practically indistinguishable from BELL. In its counterstatement, Beltrónica rejects the notion that the average consumer would perceive three separate elements; submits that only 'center' is a recognisable word (and it is the US English spelling); and points out that the law states that one must compare trade marks as wholes, not dissect them. With reference to Bell's submission that BEL and BELL are practically indistinguishable, Beltrónica submits that BEL has no meaning, and is unlikely to be perceived as meaning BELL, particularly so when BEL is the prefix of a longer invented word. Beltrónica claims that the average consumer will perceive its mark either as consisting of a single word, BELCOMCENTER, or alternatively as two words, BELCOM and CENTER. The enlarged B and C of Belcom and Center increase the likelihood that the mark will be perceived as those two elements. Beltrónica also submits that it is likely that consumers will appreciate that BELCOM derives from the holder's name, A Beltrónica – Companhia De Comunicações, Lda.

18. The marks to be compared are:

Bell's	Beltrónica's
BELL	<i>BELCOMCENTER</i>

Visually, it can readily be seen that Beltrónica's mark is italicized, a commonplace style of font whilst Bell's is in plain typeface. The first three letters of BELCOMCENTER are also the first three letters in BELL. Beyond this, there is no visual similarity. Bell submits that the initial part of the mark is important since it is the first part which catches the consumer's attention. The importance of BEL is heightened, it says, because the remainder of the mark is non-distinctive: COM is the shortened form of 'communication' or 'company' and CENTER is a place where a particular activity or service is concentrated. While acknowledging that the additional COM and CENTER cannot be dismissed, Bell submits that their presence in the mark cannot escape a finding of similarity between the marks.

19. I agree that COM and CENTER cannot be dismissed in the visual comparison; on a simple level, they contribute to a mark which is twelve letters in length compared to one which is four letters long. Whilst the first three letters are the same, the effect of the enlarged 'C' of CENTER is to separate the mark into two conjoined elements: BELCOM (and) CENTER. The 'c' in BELCOM is not enlarged and does not highlight the COM element of BELCOM or highlight BEL as a separate entity. BEL is not a recognisable word in the English language; the visual impression of the mark is not BELLCOM CENTER or BELL COM CENTER but that it consists of BELCOM and CENTER, with only the latter being a recognisable dictionary word. There is a degree of visual similarity owing to the same first three letters, but this similarity is offset by the split appearance of the IR into the invented word BELCOM and CENTER, compared to the earlier mark, which is the dictionary word BELL. In my view, the invented element BELCOM is the dominant and distinctive visual component of the IR.

20. BELL and BEL are phonetically identical. I have considered where the stress or emphasis on the syllables will lie when the IR is referenced aurally. In my view, there is likely to be an equal measure of stress applied to the first three syllables, with the 'ter' of center tailing off. The effect of the aural similarity is to an extent dependent upon the conceptual identity of the marks, which may alter depending on whether the marks are seen or only heard. When encountered visually, the IR represents the invented word BELCOM and the word CENTER, but a different perception may result from an aural encounter where BEL, COM and CENTER may be picked out (the US English spelling of CENTER being indistinguishable aurally from the conventional English spelling of 'centre'). There is no conceptual similarity between BELCOMCENTER and the dictionary word BELL when seen; the message conveyed will be a center/centre provided by an undertaking called BELCOM. However, when heard, the consumer may alternatively perceive the IR as BEL(L) COM CENTER. The conceptual identity of the IR may then be a 'com center' provided by an undertaking named BEL or BELL. Since BELL is a recognisable English word, it is more likely that BELL, rather than BEL, will predominate as the conceptual hook which identifies the 'com center'. It follows that the degree of conceptual similarity or dissimilarity could alter depending on whether the marks are seen or are only heard, without also being seen simultaneously. Bell has provided no evidence that 'com center' is a natural expression in trade and I approach with caution the extrapolation of BELCOMCENTER as similar conceptually to a BELL communication centre.

21. Overall, my assessment of the similarity of the marks is that visually they are not similar; that there may be a degree similar of aural and conceptual similarity if the mark is only heard, but that this is unlikely if the mark is seen as well as heard.

Likelihood of confusion

22. Bell submits that there is a real likelihood that BELCOMCENTER would be seen as a sub-brand of Bell or, alternatively, that it indicates an economically linked undertaking. Bell considers that the close proximity of the goods and services elevates the likelihood of confusion.

23. In considering the likelihood of confusion, I have to bear in mind the nature of the goods and services, the purchasing process and the relevant consumer, which have been dealt with above. I have to weigh the proximity of the goods and services against the relative distance between the marks - the interdependency principle – whereby a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa (*Canon*). I must consider the relative importance that the phonetic and visual similarities have in relation to the goods and services during the purchasing process. I must also appraise the distinctive character of the earlier mark, because the more distinctive it is (either *per se* or by reputation), the greater will be the likelihood of confusion (*Sabel*). The distinctive character of a mark must be assessed by reference to the particular goods or services to which it is attached and by reference to the relevant consumer's perception of the mark. BELL is a common surname and a device which enables an audio signal has no meaning in relation to the goods and services (the days when telephone systems used bells are long past). It lies towards the higher end of the distinctiveness scale. Bell argues that the IR would be seen as a sub-brand or belonging to an economically linked undertaking because com and center are non-distinctive for the goods and services and because BEL is indistinguishable from BELL.

24. I consider that there is no likelihood of confusion resulting from encountering the marks visually, either directly or, as Bell suggests, indirectly. However, I have found the assessment less straightforward on the basis of aural comparison, which may influence the average consumer's conceptual understanding of the mark. The ECJ cautions against approaching an assessment of a likelihood of confusion on the basis of aural similarity alone in *Mülhens GmbH & Co KG v OHIM* Case C-206/04 P:

“21 It is conceivable that the marks' phonetic similarity alone could create a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (see, in respect of Directive 89/104, *Lloyd Schuhfabrik Meyer*, paragraph 28). However, it must be noted that the existence of such likelihood must be established as part of a global assessment as regards the conceptual, visual and aural similarities between the signs at issue. In that regard, the assessment of any aural similarity is but one of the relevant factors for the purpose of that global assessment.

22 Therefore, one cannot deduce from paragraph 28 of the judgment in *Lloyd Schuhfabrik Meyer* that there is necessarily a likelihood of confusion each time that mere phonetic similarity between two signs is established.”

In *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)* Joined cases T-117/03 to T-119/03 and T-171/03 the CFI stated:

“49 However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs

are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”

As indicated earlier, the level of attention paid to the purchase of the goods and services, which I have found to be identical or similar, is likely to be high. It is also likely to be made on a visual basis, or a combination of visual and aural selection. I have considered, in particular, whether this is so for Beltrónica’s “computer support services provided by telephone”, but conclude that it is unlikely that the caller will have obtained the service details without research and exposure to the mark visually. I do not know if ‘com center’ means ‘communication center’; equally, I have nothing before me which enables me to draw a conclusion that ‘com center’ is a trade term which is used customarily to follow a primary trade mark and so cannot find a likelihood of confusion on a premise that the average consumer will interpret aurally BELCOMCENTER to mean BELL Communication Center.

25. Balancing the similarities between the goods and services with the low level of similarity between the marks, my overall conclusion is that there is not a likelihood of confusion. The opposition therefore fails.

Costs

26. The opposition having been failed, Beltronica is entitled to a contribution towards its costs.

Considering notice of opposition	£200
Statement of case in reply	£300
Total	£500

Accordingly, I order Bell IP Holding, L.L.C to pay to A Beltrónica – Companhia De Comunicações, Lda the sum of £500. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of March 2009

**Judi Pike
For the Registrar,
the Comptroller-General**