

O-053-15

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION 3024638  
BY IFX (UK) LIMITED  
TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 36**



**AND**

**AN OPPOSITION THERETO (NO. 401745) BY  
CITY INDEX LIMITED**

## **Background and pleadings**

1. This dispute concerns trade mark application 3024638 which was filed by IFX (UK) Limited (“the applicant”) on 3 October 2013 and was published for opposition purposes on 20 December 2013. The mark and the class 36 services for which registration is sought are:



Foreign currency brokerage services; on line foreign currency brokerage services; exchanging money; electronic fund transfer and securities brokerage

2. City Index Limited (the opponent”) opposes the registration of the mark under sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). It relies upon the following two trade marks:

- i) UK Registration 2359546A which was filed on 26 March 2004 and which completed its registration process on 24 December 2004. The mark and the services on which the opponent relies are:



**Class 36:** Financial services; financial services provided on the Internet; financial trading services; provision of information, consultancy and advisory services relating to the aforesaid.

Given the date on which this mark was registered, the proof of use provisions contained in Section 6A of the Act are applicable. In this respect, the opponent made a statement of use that the mark has been used in respect of all the services relied on. The opponent opposes all of the applicant’s services. It considers that the “distinctive and dominant part of both marks is identical, namely the letters IFX. The services are identical and similar because they are financial services.”

- ii) UK registration 2551903 which was filed on 2 July 2010 and which completed its registration process on 26 November 2010. The mark and the services on which the opponent relies are:



**Class 36:** Financial services relating to financial trading; financial trading services; investment services; foreign exchange trading, betting, wagering; provision of information relating to the aforesaid.

**Class 41:** Spreadbetting services; gaming, betting, gambling, bookmaking and wagering services; on-line spreadbetting, gaming, betting, gambling, bookmaking and wagering services; training and education; arranging of seminars, workshops, conferences and symposiums relating to spreadbetting, gaming, betting, gambling, bookmaking and wagering; consultancy, information and advisory services relating to all the aforesaid.

Given the date on which this mark was registered, it is not subject to the proof of use provisions and, consequently, may be relied upon to the above extent. The opponent opposes all of the applicant's services. It considers that "the earlier mark is comprised of the letters IFX in a slightly stylised format. The opposed application is comprised of the letters IFX and the descriptive words International Foreign Exchange. The distinctive and dominant element in both marks is the letters IFX. The services in Class 36 are identical or similar".

3. Under section 5(4)(a) the opponent relies on the use throughout the UK of the sign IFX since 1 January 2002. Such use is said to be in relation to financial trading services.

4. The applicant filed a counterstatement with a set of basic denials. The opponent filed evidence. The applicant did not file evidence in the period permitted for it to do so, but it did request an extension of that period. However, the request for an extension of time was refused at a case-management conference<sup>1</sup> ("CMC") due to an insufficiency of reasons. Furthermore, the evidence for which the extension was sought focused on the applicant's use of its mark which, in any event, is not highly pertinent, at least when it comes to the section 5(2)(b) grounds of opposition (as per TPN 4/2009). It was common ground at the CMC that section 5(2)(b) was likely to be determinative and, therefore, the proceedings would be dealt with on those grounds only. Neither party requested a hearing on the substantive proceedings. The applicant filed written submissions in lieu of a hearing, the opponent did not.

### **The evidence**

5. The opponent filed two witness statements. One is from its Chief Market Strategist and Group Head, Mr Joshua Raymond. His evidence is about the use made of the first of the earlier marks identified above ("the '546A mark"). He specifically states that the purpose of his evidence is to show that it has been put to use in the five year period 6 December 2007 to 6 December 2012. For reasons that will become apparent, I will only provide a brief summary of his evidence. Mr Joshua states that the mark has been used by the opponent since 2006 and by its predecessor in title since 2003. It provides foreign trading services through spread betting, contracts for difference and margined foreign exchange. Over the years, the value of its trades has been in the hundreds of millions. It does not advertise

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<sup>1</sup> The CMC was taken by a fellow hearing officer, Ms Ann Corbett.

significantly, relying instead on its client list and website presence. Various exhibits are provided showing use of a mark albeit, as the applicant points out in its written submissions, not in the exact form the 546A mark is registered.

6. The applicant's other witness statement is provided by its Director and Group Financial Officer, Mr Nigel Rose. He states that the purpose of his evidence is to provide turnover figures relating to the provision of foreign exchange trading services under the 546A mark. The overall income in the period March 2011 to June 2013 was just over £857k.

### **Section 5(2)(b)**

7. Section 5(2)(b) of the Act states that:

“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.”

8. The following principles are gleaned from the judgments 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

9. Two earlier marks have been pleaded under section 5(2)(b). However, as the second mark identified at paragraph 2 above (“the ‘903 mark””) does not have to meet the genuine use test, I will begin my assessment with this mark. I will, of course, return to the other earlier mark if it becomes necessary to do so.

### **Comparison of services**

10. When making a comparison, all relevant factors relating to the services should be taken into account. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU stated at paragraph 23 of its judgment:

“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.”

11. Guidance on this issue has also come from Jacob J In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 where the following factors were highlighted as being relevant when making the comparison:

“(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.”

12. In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T- 325/06 it was stated:

“It is true that goods are complementary if 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 (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48).”

13. In relation to complementarity, I also bear in mind the guidance given by Mr Daniel Alexander QC, sitting as the Appointed Person, in case B/L O/255/13 *LOVE* where he warned against applying too rigid a test:

“20. In my judgment, the reference to “legal definition” suggests almost that the guidance in *Boston* is providing an alternative quasi-statutory approach to evaluating similarity, which I do not consider to be warranted. It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, 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. I therefore think that in this respect, the Hearing Officer was taking too rigid an approach to *Boston*.”

14. I also bear in mind the principle that derives from the judgment of the General Court in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T-133/05 – “*Meric*”) in that, when comparing goods/services, if a term clearly falls within the ambit of a term in the competing specification then identical goods/services must be considered to be in play.

15. In relation to understanding what terms used in specifications mean/cover, the case-law informs me that “in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade”<sup>2</sup> and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning<sup>3</sup>. I also note the judgment of Mr Justice Floyd in *YouView TV Limited v Total Limited* where he stated:

“..... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IPTRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of "dessert sauce" did not include jam, or because the ordinary and natural description of jam was not "a dessert sauce". Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

16. The comparison to be made here involves just services, so I keep in mind the words of Jacob J in *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16 where he stated:

“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.”

17. The applicant seeks registration of its mark in relation to:

**Class 36:** Foreign currency brokerage services; on line foreign currency brokerage services; exchanging money; electronic fund transfer and securities brokerage

18. The opponent relies on the following of its services:

**Class 36:** Financial services relating to financial trading; financial trading services; investment services; foreign exchange trading, betting, wagering; provision of information relating to the aforesaid.

**Class 41:** Spreadbetting services; gaming, betting, gambling, bookmaking and wagering services; on-line spreadbetting, gaming, betting, gambling, bookmaking and wagering services; training and education; arranging of

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<sup>2</sup> See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281

<sup>3</sup> See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

seminars, workshops, conferences and symposiums relating to spreadbetting, gaming, betting, gambling, bookmaking and wagering; consultancy, information and advisory services relating to all the aforesaid.

19. In its written submissions the applicant says this in relation to the comparison of services:

“The Applicant's services relate to the provision of foreign currency and concern securing favourable rates and can for example provide services in offering customers foreign currency required to settle accounts in other currencies. The Opponents services do not relate to the transfer of currency but is a trading system. As such, the respective parties have different customers. The Opponent is effectively gambling on currency, and the other is providing the actual currency. Although they are both financial services they are not offered to the same people and do not have the same function in terms of the purposes of the services offered. The Opponent deals with large transactions as shown by their evidence and the services are offered to trading professionals, whereas the Applicant has single customers or companies requiring foreign exchange services. As such, there will be no likelihood of confusion between the respective services given the nature of the services differ, as do their purposes, uses, users and trading channels.”

20. Other than its claim that the services are identical and similar, and that they are all financial services, the opponent provides no submission on the comparison. I will make the comparison with reference to the terms sought by the applicant, albeit not in the order as applied for:

*Foreign currency brokerage services; on line foreign currency brokerage services*

21. Brokerage in any financial setting would be the act of bringing a buyer and seller together in order that some form of financial transaction can take place between them. In the context of foreign currency, the service would, therefore, bring together a buyer and seller of an amount (one would expect a fairly large amount) of foreign currency. I accept that this would be for the purpose of obtaining a good deal (for both sides of the transaction), although I do not think that the purpose of the service should be limited to things such as the settling of accounts in foreign currencies, the purpose could go wider than that. This is an important point because it is logical to assume that a potential use of acquiring a large amount of foreign currency through a broker could be for speculative purposes, in other words speculation on the rise and fall of the value of that currency on the exchange market. There is, therefore, some similarity in purpose with the opponent's foreign exchange trading and its financial trading services more generally. Both services involve the use of foreign currency, either brokering a deal or making a trade. Indeed, the currency trading could even be undertaken via a brokerage service which creates a degree of complementarity. There could also be an element of competition in that one may go to a foreign currency trading service to speculate on the currency market or, alternatively, one may go to a foreign currency broker to obtain the foreign currency directly in order to speculate on its value, selling it on at the right time. It would not



surprise the average consumer in the slightest if the services were provided under the same umbrella. Despite the applicant's submissions, I consider that both services could be used by both individuals and businesses. I consider there to be a good deal of similarity between the services I have identified.

### Securities brokerage

22. Securities brokerage is a term suggestive of a service which facilitates the purchase of securities such as stocks, shares and bonds. The opponent's services cover "financial services relating to financial trading" which could potentially involve stocks, shares and bonds. By parity of reasoning with the above, there is some similarity between brokerage and trading. There is a good deal of similarity between the services I have identified.

### Exchanging money

23. It could be argued that the word "exchange" is equivalent to "trading" so meaning that "exchanging money" is simply another way of expressing "financial trading" or "foreign exchange trading". However, this would be taking things out of context. The service provider for "exchanging money" will provide the customer with a certain amount of currency in exchange for a certain amount of another currency. This may include over the counter services such as a bureaux de change or a bank counter but would also include services for exchanging larger sums of money, similar in way to foreign currency brokerage, albeit one is now obtaining the money (be it in physical notes or electronic amounts in bank accounts) direct as opposed to a working through a middleman. The consequence of this is that the service could be used for a whole range of purposes so meaning, by parity of reasoning with paragraph 21 above, that there is a good deal of similarity here also.

### Electronic fund transfer

24. This is the type of service that plays a complementary role with many financial services, particularly those that involve the movement of money (including foreign money) from one place to another. Such a complementary relationship could exist with the services provided by the opponent (including "financial services relating to financial trading" and "foreign exchange trading") and is the sort of relationship where the average consumer would assume a shared economic connection. There is a reasonable (but not high) degree of similarity here.

### **Average consumer and the purchasing act**

25. 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*. 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.”

26. The average consumer for all the services could, in my view, be a member of the public or a business. For services such as the opponent’s financial trading and for the applicant’s foreign currency brokerage, a degree of care and attention higher than the norm is likely to be deployed. The choice of an appropriate supplier in this field will be well considered. For the applicants “exchanging money” service, the same would apply if the customer is looking to exchange a large amount of currency. However, even for smaller amounts there will still be at least a reasonable degree of consideration deployed. For fund transfer services, this will, again, be at least a reasonably considered process as the security of one’s money will be important to a would-be user of the service.

27. The marks will be encountered visually on brochures, websites, visual media advertisements and signage etc. However, the aural impact will not be ignored as the services could be accessed over the phone as well.

#### **Distinctive character of the earlier trade mark**

28. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). 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).”

29. The earlier mark consists of the following:



30. There is no evidence to show that IFX has a known meaning for the services of the earlier mark. There is nothing to suggest that the average consumer will make an immediate assumption that it has a particular meaning. However, there are a number of references in the opponent's evidence which show that FX is a term used descriptively in the field to indicate foreign exchange. This matches my own knowledge of the term. This has an impact on distinctiveness because the combination is not made up of three completely random letters and, therefore, gives the mark a suggestive quality, particularly bearing in mind the different shading of FX compared to the letter I. However, I still consider that the mark as a whole will be read through as IFX and that it still has at least a moderate level of inherent distinctive character.

31. The distinctiveness of a mark can be enhanced through use. However, the evidence provided by the opponent is directed at the 546A mark and there is nothing to show that the above mark is in use. In any event, the evidence itself is not particularly significant. Whilst the opponent is clearly trading, there is insufficient evidence to meet the sorts of test discussed in the case-law above.

### **Comparison of marks**

32. 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.”

33. 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. The marks are:



and

34. In the applicant's mark the words INTERNATIONAL FOREIGN EXCHANGE are simply descriptive. The consequence of this is that the stylised letters IFX have a greater relative weight in the mark. I will, though, bear in mind the presence of the words in the mark as they cannot be ignored completely given that it is a whole mark comparison that is to be made. The opponent's mark has only one element, but as part of the overall impression made on the average consumer, the contrasting colours of the letter I and FX will be noticed, but it will still be seen as the letters IFX.

35. Given that both marks clearly contain, in a prominent manner, the capital letters IFX, there is some visual and aural similarity. The stylisation of the letters is borne in mind (particularly the elongated X in the applicant's mark and the contrasting I/FX in the opponent's mark) which reduces the visual (but not aural) similarity. However, I do not consider that these differences significantly outweigh the similarities. The presence/absence of INTERNATIONAL FOREIGN EXCHANGE is borne in mind, but as stated already, this element is descriptive, so the significance of this difference should not be overplayed when it comes to assessing whether there is a likelihood of confusion. I consider that the marks are aurally similar to a reasonably high degree. There is slightly less visual similarity (on account of the stylistic differences) but there is still a reasonable level of visual similarity.

36. Conceptually, the applicant's mark has the concept of indicating that the service relates to international foreign exchange. There is a suggestive concept behind the opponent's mark, indicating some form of FX (foreign exchange) service. However, even though this creates some conceptual similarity, this should not be overplayed when considering whether there exists a likelihood of confusion because such a concept is descriptive. Additionally, both marks have a concept based upon the letters IFX. Although it could be argued that the letters IFX in the applicant's mark take on the meaning of international foreign exchange (they could be seen as an abbreviation for the words that follow), in my view the average consumer will not break the mark down and analyse it in such a way and the letters are still distinctive in their own right and will be remembered for what they are, the letters IFX.

### **Likelihood of confusion**

37. The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

38. I come to the view that there is a likelihood of confusion. Whilst there are some differences between the marks, such differences are not overly significant in terms of

distinguishing the marks from one another (either directly or indirectly) given that they consist either of what I consider to be forms of presentation which (whilst not negligible) do not have huge impacts upon the marks, or the addition of descriptive words. I consider that the relationship between the various services is one where the consumer would well expect the same provider to offer the competing services. As stated earlier, for most of the services a degree of care and consideration higher than the norm will be adopted. Sometimes this can mitigate against a likelihood of confusion, however, weighing the similarities between the marks and the services, I do not believe that even after a careful selection process a likelihood of confusion is avoided. The central theme and most memorable parts of the marks is IFX. Even if the average consumer noticed the differences I have identified, the common presence in both marks of the letters IFX would indicate a same stable service. This applies even to the service where I have found just a reasonable (but not high) level of similarity. There is a likelihood of confusion. In view of this it is not necessary to consider the opponent's other earlier mark/ground.

### **Costs**

39. The opponent has been successful and is entitled to a contribution towards its costs. I award the opponent the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

*Preparing a statement and considering the other side's statement - £300*

*Filing evidence - £200<sup>4</sup>*

*Opposition fee - £200*

40. I therefore order IFX (UK) Limited to pay City Index Limited the sum of £700. The above sum should 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 3rd day of February 2015**

**Oliver Morris  
For the Registrar,  
The Comptroller-General**

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<sup>4</sup> This is below the scale minima on account of the fact that the opponent did not have to consider any evidence from the applicant and given the limited significance the evidence has played.