

O-219-15

TRADE MARKS ACT 1994

IN THE MATTER OF CONSOLIDATED OPPOSITION PROCEEDINGS
UNDER NOS 402516 AND 402517
BY GRUNER +JAHR AG & CO KG

AGAINST

APPLICATION NOS 3042162 AND 3042163
BY GEONOMICS GLOBAL GAMES LIMITED

Background

1. On 12 February 2014, Geonomics Global Games Limited (“the applicant”) filed the following applications:

No: 3042162
Mark: GEOLOTTO

No: 3042163
Mark: GEOWIN

In each case, the specification of goods and services applied for is:

Class 9

Computer software for the creation, development, design, provision and management of on-line games including games involving gambling or competitions; computer software for betting, gaming and gambling, including for lotteries; electronic and computer games including games involving gambling or competitions.

Class 28

Games; games involving gambling; games in the nature of competitions.

Class 38

Telecommunication services, namely, distribution of interactive educational and entertainment products, programs and of computer games; transmission of information on-line via the Internet and/or by means of telecommunications; transmission and/or distribution of data, text, images, graphics, sound and/or audio-visual material; providing access to websites to enable users to participate in and edit content; providing access to software to enable users to participate in and edit website content; all of the aforesaid services in relation to gambling, gaming, competitions and lotteries.

Class 41

Arranging, organising, provision, management and administration of gambling, gaming, lottery, casino services; gambling, gaming and casino services; lottery services; arranging, organising, provision, management and administration of competitions including lotteries; provision of the aforesaid services in electronic or computerised form; provision of the aforesaid services on-line from a computer database, the Internet or other telecommunications; provision of information relating to gambling, gaming and lottery services accessible via the Internet or other telecommunications; provision of information on line from a computer database or from the Internet in relation to gambling, gaming, lottery, amusement and entertainment services.

2. Following publication of the applications in *Trade Marks Journal* 2014/015 on 11 April 2014, notices of opposition were filed by Gruner + Jahr AG & Co KG (“the opponent”). The opposition proceedings were consolidated and are based on a single ground under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following trade mark:

International trade mark no: 863134
International registration date: 22 December 2004
Date of Designation of the EU: 16 March 2011
Date Protection granted in EU: 28 March 2012
Priority Date: 20 July 2004 (Germany)
Specification relied upon: Goods and services in classes 9, 38, 41 and 42
Mark:



3. The opponent claims that the respective goods and services are identical or similar and that the marks are similar such that there is a likelihood of confusion. The applicant filed a counterstatement essentially denying the ground of opposition. Neither party filed evidence, both filed written submissions and neither sought to be heard. I therefore give this decision after a review of all the material before me.

4. Sections 5(2)(b) of the Act states:

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

5. The opponent relies on its International Registration no 863134. As can be seen from the details set out in paragraph 2 above, whilst it is an earlier mark as defined in Section 6A of the Act, it is not subject to a requirement for proof of its use to be shown as it had not been protected for five years at the date of publication of the application. The opponent is therefore entitled to rely on it in respect of each of the goods and services as set out above.

6. In reaching my decision, I look to the following principles which 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.

The principles

(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 the respective goods and services

7. 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 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”.

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services
- c) The respective trade channels through which the goods or services reach the market
- d) 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;
- e) 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.

9. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. stated 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.”

10. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated:

“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 trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Whilst, in *Meric*, the GC was referring to ‘goods’ the same holds true, by analogy, in respect of ‘services’.

11. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the 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”.

12. 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 when sitting 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.”

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.”

13. For ease of reference, the goods and services to be compared are as follows:

Opponent’s goods and services	Applicant’s goods and services
<p>Class 9 Magnetic, optical, magneto-optical and electronic sound and image recording carriers and data memories, in particular CDs, CD ROMs, CD-Is, DVDs, floppy disks, video tapes, recording discs and microfilm, for on and off-line use; tape recorders, equipment for receiving, as well as for recording, transmission and reproduction of sound and images; hardware, in particular data processing apparatus, computers and computer peripheral devices; software; data processing programs, computer operating programs.</p> <p>Class 38 Services in the field of telecommunications; transmission of information to third parties on the Internet; dissemination of information on wireless or cable networks; online content provider services, namely providing user access to a global computer network and information about the Internet; broadcasting of radio and (cable) television programmes.</p>	<p>Class 9 Computer software for the creation, development, design, provision and management of on-line games including games involving gambling or competitions; computer software for betting, gaming and gambling, including for lotteries; electronic and computer games including games involving gambling or competitions.</p> <p>Class 28 Games; games involving gambling; games in the nature of competitions.</p> <p>Class 38 Telecommunication services, namely, distribution of interactive educational and entertainment products, programs and of computer games; transmission of information on-line via the Internet and/or by means of telecommunications; transmission and/or distribution of data, text, images, graphics, sound and/or audio-visual material; providing access to websites to enable users to participate in and edit content; providing access to software to enable users to participate in</p>

<p>Class 41 Education, providing of training, entertainment, in particular radio and television entertainment; services of a publisher (except printing); publication and issuing of texts in printed and electronic form as an off-line and online publisher, included in this class; sporting and cultural activities.</p> <p>Class 42 Computer programming; design and development of database programs; exploitation and management of intellectual property.</p>	<p>and edit website content; all of the aforesaid services in relation to gambling, gaming, competitions and lotteries.</p> <p>Class 41 Arranging, organising, provision, management and administration of gambling, gaming, lottery, casino services; gambling, gaming and casino services; lottery services; arranging, organising, provision, management and administration of competitions including lotteries; provision of the aforesaid services in electronic or computerised form; provision of the aforesaid services on-line from a computer database, the Internet or other telecommunications; provision of information relating to gambling, gaming and lottery services accessible via the Internet or other telecommunications; provision of information on line from a computer database or from the Internet in relation to gambling, gaming, lottery, amusement and entertainment services.</p>
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14. I note that the above specifications include the use of the word “namely” and the formulation “in particular”. The word “namely” must be approached, as indicated in the Trade Mark Registry’s classification guidance, on the basis shown below:

“Note that specifications including “namely” should be interpreted as only covering the named goods, that is, the specification is limited to those 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.”

Despite the applicant’s submissions to the contrary, the use of the formulation “in particular” has no such limiting effect; it merely gives examples of what is included within the wider term. With all of the above in mind, I go on to carry out the comparison of the respective goods and services.

15. *Computer software for the creation, development, design, provision and management of on-line games including games involving gambling or competitions and computer software for betting, gaming and gambling, including for lotteries* as are included within the applicant’s specification in class 9 are themselves included within and therefore identical to *software* as is included within the opponent’s

specification in this class. *Electronic and computer games including games involving gambling or competitions* as are included within the applicant's specification may be e.g. hand held gaming devices or programmes for playing games etc. and are therefore included within and so identical to *hardware, in particular data processing apparatus, computers and computer peripheral devices* and *software* as is included within the opponent's specification.

16. *Games; games involving gambling; games in the nature of competitions* as are included in the applicant's specification in class 28 are alternative goods to games provided via electronic devices or in the virtual world. They are goods which are directed to the same users and for the same purpose and so are in competition with and therefore similar to *hardware in particular data processing apparatus, computer peripheral devices; software* as is included within the opponent's specification of goods in class 9. They are also similar to *entertainment services* as are included in the opponent's specification in class 41 on the basis that the average consumer would see the apparatus for playing a game, whether as registered in class 9 or class 28, as being supplied as part of an entertainment service and therefore complementary to them.

17. The applicant's *Telecommunication services, namely, distribution of interactive educational and entertainment products, programs and of computer games* are included within, and therefore identical to *Services in the field of telecommunications* as is included within the opponent's specification.

18. The applicant's *Transmission of information on-line via the Internet and/or by means of telecommunications and transmission and/or distribution of data, text, images, graphics, sound and/or audio-visual material* are included within, and therefore identical to, the opponent's *Services in the field of telecommunications and transmission of information to third parties on the Internet and dissemination of information on wireless or cable networks*.

19. The applicant's *providing access to websites to enable users to participate in and edit content; providing access to software to enable users to participate in and edit website content* are included within, and therefore identical to the opponent's *Services in the field of telecommunications and online content provider services, namely providing user access to a global computer network and information about the Internet*.

20. Each of the applicant's services in class 41 is included within, and therefore identical to, the opponent's *Education, providing of training, entertainment; or sporting and cultural activities*.

The average consumer and the nature of the purchasing process

21. 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*.

22. 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.”

23. Each of the respective goods and services is such as is likely to be bought by the general public though I am aware that certain of them, e.g. gambling services are age restricted. The purchase of the goods and services is, predominantly, a visual one as they will be bought by self-selection whether from a shelf in a store or from an online outlet and may have come to the average consumer’s attention via written promotional material though this is not to the exclusion of the other considerations. They are goods and services which are widely available and an average degree of care will be taken over their purchase.

Comparison of the respective marks

24. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, 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.”

It would be wrong, therefore, artificially to dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of them and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by them.

25. For ease of reference, the marks to be compared are:

Opponent’s earlier mark	Applicant’s marks
	GEOLOTTO
	GEOWIN

26. The applicant submits that the respective marks are visually, phonetically and conceptually different. It submits:

“It is clear that visually, the marks are different. The respective marks differ in length and overall impression... The Applicant’s Marks contain the very different endings “LOTTO” and “WIN” which have no equivalent in the Opponent’s Mark...

Aurally, the Applicant’s Marks GEOLOTTO and GEOWIN and the Opponent’s Mark GEO sound different in their entirety and end with very different word elements...

Conceptually, the Applicant’s Marks GEOLOTTO and GEOWIN have a different meaning to the Opponent’s Mark GEO. The Applicant’s Marks allude to a “lottery” and the concept of “winning” whereas the Opponent’s Mark refers to geography.

...it is clear that it is the combination of both the prefix “GEO” and the suffixes “LOTTO” and “WIN” in the Applicant’s Marks, alongside stylisation on the part of the Opponent’s Mark, which gives the respective marks their distinctive character.”

27. The opponent’s earlier mark consists of the word GEO presented in upper case. In its submissions, the applicant states “It is worth noting that the Opponent’s mark is stylised and so more than just the element “GEO””, however, in my view the stylisation is slight and the font used, unremarkable. As a single word, no part of which is highlighted in any way, its distinctiveness rests in its whole. Each of the applicant’s marks is presented in plain block capitals. Whilst they are presented as single words, and as the applicant states in its submissions, they each naturally break down into the component parts GEO and LOTTO/WIN. The words LOTTO/WIN are not distinctive of goods or services which relate to lotteries or winning.

28. The fact that the competing trade marks consist of or start with the word GEO as an identifiable element inevitably leads to a reasonable degree of visual and aural similarity between them. The applicant submits that GEO could be seen “as an abbreviation of the words “geographic” or “geographical”, however, I do not consider the average consumer will give the mark this meaning. Many other words in Standard English begin with the letters GEO and I am not aware, and have no evidence, that the particular words mentioned by the applicant are abbreviated in this way. That said, I am aware that GEO- is used as a combining form indicating earth, and so, from the conceptual viewpoint, the word GEO may bring this to mind for some in each of the respective marks whilst the words LOTTO/WIN within the applicant’s marks bring to mind a lottery or winning which is absent from the opponent’s mark. If there is an image brought to mind by the word GEO, it is likely to be the same in each mark which would lead to a reasonable degree of similarity.

The distinctive character of the earlier mark

29. 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).”

30. As the opponent has not filed any evidence, I have only the inherent characteristics of the earlier mark to consider. Whether seen as a word meaning earth (a word with no particular meaning in relation to the goods or services concerned) or as an invented word, it is a mark with a fairly high degree of inherent distinctiveness.

Likelihood of confusion

31. In determining whether there is a likelihood of confusion, 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 trade 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 also necessary for me to keep in mind the distinctive character of the opponents' trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

32. Earlier in this decision I found:

- Each of the applicant's goods and services in classes 9, 38 and 41 are identical to those of the opponent in the same classes; the applicant's goods

as applied for in class 28 are similar to those of the opponent in classes 9 and 41;

- Noting that some services may be age restricted, the average consumer for each of the goods and services is a member of the general public, who will take an average degree of care over his purchase;
- The purchase of the goods and services is predominantly a visual one though not to the exclusion of the aural and conceptual considerations;
- There is a reasonable degree of visual, aural and, where accorded a meaning by the average consumer, conceptual similarity between the respective marks;
- The earlier mark has a fairly high degree of inherent distinctive character which has not been shown to have been enhanced through its use.

33. The applicant submits:

“It is ...clear that the differences in the ending of the Applicant’s Marks and the Opponent’s Mark, namely the elements “LOTTO” and “WIN” outweighs any similarity of the start of the marks and furthermore, due weight should be given to the endings of the marks and the marks as a combination, rather than basing an analysis on one single element in the marks, particularly when considering that the marks should be considered as a whole and not broken down into their component parts.

It goes on to submit:

“The Applicant notes the Opponent’s contention that consumers pay more attention to the start of marks but this cannot be the case in every instance, particularly where the endings of the marks are different.”

34. It is true that there is a general rule of thumb that the beginning of a mark is likely to have more visual and aural impact than the remainder (the comments of the GC in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 refer), however, as indicated above, I have to consider the marks as wholes and bear in mind their dominant and distinctive components. I have found that the words LOTTO/WIN are not distinctive for goods and services relating to lotteries or winning.

35. I have to consider both direct and indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, Mr Iain Purvis Q.C. as the Appointed Person noted 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.

17. 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)."

36. The differences between the respective marks (the additional words LOTTO/WIN) will not go unnoticed by the average consumer and I consider there will be no direct confusion. The differences, however, are in respect of elements which are non-distinctive and I consider there will be indirect confusion, with the average consumer seeing each of the applicant's marks as a sub-brand or brand extension as in (b) above. The opposition under section 5(2)(b) succeeds.

Revised specification

37. In its written submissions, the applicant proposed a limitation of its specification of goods and services. The specification proposed is as follows:

Class 9

Electronic and computer games including games involving gambling or competitions

Class 28

Games; games involving gambling; games in the nature of competitions

Class 41:

Arranging, organising, management and administration of gambling, gaming, lottery, casino services; gambling, gaming and casino services; lottery services; arranging, organising, management and administration of competitions including lotteries; provision of the aforesaid services in electronic or computerised form; provision of information relating to gambling, gaming and lottery services accessible via the Internet or other telecommunications; provision of information online from a

computer database or from the Internet in relation to gambling, gaming and lottery services.

38. The applicant submits that the proposed specification “limit[s] the goods and services to relate to the very specific activities “gambling, gaming, competitions and lotteries”. It further submits that there is no equivalent with the opponent’s specification to its goods as now sought in classes 9 and 28. In respect of the services in class 41 it submits that:

“the Opponent has incorrectly stated that [its] mark covers the broad term “entertainment” when in fact [it] actually covers “entertainment, in particular radio and television entertainment”. This difference is crucial as it serves to limit the scope of the entertainment covered to the fields of radio and television, which are not similar to the goods and services covered by the Applicant’s Marks, which are clearly lottery, gambling and gaming goods and associated services”.

39. As I have already indicated above, the use of “in particular” within a specification does not limit that specification in the way the applicant suggests (or at all). As can be seen, the amendment takes the form of a simple deletion of various goods and services from the specification as published. I have already found all of the goods and services as are subject of the proposed amendment to be either identical or similar to goods and services within the opponent’s specification. For this reason, the proposed amendment does not assist the applicant’s case.

Summary

40. The opposition under section 5(2)(b) succeeds in full.

Costs

41. The opponent having succeeded, it is entitled to an award of costs in its favour. I take into account that the notices of opposition and counterstatement were brief and largely identical, the proceedings were consolidated, whilst no evidence was filed by either party, written submissions were filed by both and that the decision was reached from the papers and without a hearing. I make the award on the following basis:

Preparing a statement and considering the other party’s statement:	£200
Fees (£100 x 2)	£200
Preparation of written submissions:	£500
Total	£900

42. I order Geonomics Global Games Ltd to pay Gruner + Jahr AG & Co KG the sum of £900 as a contribution towards its costs. 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 19th day of May 2015

**Ann Corbett
For the registrar
The Comptroller-General**