

O-416-17

TRADE MARKS ACT 1994

IN THE MATTER OF
APPLICATION NO 3169410
IN THE NAME OF CHEUK CHUEN SIU
FOR REGISTRATION OF THE TRADE MARK



AND

OPPOSITION THERETO UNDER NO 407516
BY DELTA LIGHT N.V.

Background

1. On 10 June 2016, Cheuk Chuen Siu (“the applicant”) applied for registration of the mark shown on the front cover of this decision in respect of goods in classes 9 and 11, full details of which are set out in Annex A to this decision.

2. Following publication in the *Trade Marks Journal* on 1 July 2016, a notice of opposition was filed by Delta Light N.V. (“the opponent”). The opposition is brought on grounds under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) based on the following International (“IR”) and European Community (“EUTM”) trade mark registrations:

Mark	Dates	Specification
IR755606 LEDS GO ...	International registration date: 20 March 2001 Date of protection in the UK: 19 October 2001	Goods in Class 11 (see Annex A)
EUTM 8611592 LEDS GO	Filing date: 13 October 2009 Date of entry in register: 13 October 2011	Services in classes 35 and 42 (see Annex A)

3. The applicant filed a notice of defence and counterstatement admitting there is similarity between some of the respective goods and services but denying there is any likelihood of confusion between the respective marks.

4. Only the opponent filed evidence. Both parties filed written submissions. Matters came before me for a hearing on 18 July 2017 where the applicant was represented by Mr Ritvars Radvilavics, with whom he has a business relationship. The opponent was represented by Mr Graeme Murray of WP Thompson, its professional representative in these proceedings.

Decision

5. The opponent relies on the two trade marks shown above, both of which are earlier marks under the provisions of section 6(1) of the Act. As can be seen from the details given above, the IR had been protected for more than five years at the date the application was published. The applicant has put the opponent to proof of use of the IR. It is therefore subject to the provisions of section 6A of the Act which states:

“6A. - (1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

6. I note that no claim is made by the opponent that there are any proper reasons for non-use of its mark. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. summarised the case law on genuine use of trade marks. He said:

“I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of

the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

7. Section 100 of the Act is also relevant and states:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

8. Given the publication date of the application as set out above, the relevant period within which use of the IR must be proved is 2 July 2011 to 1 July 2016. The IR is protected for *Lighting apparatus and installations*.

9. The opponent’s evidence comes in the form of a witness statement of Graeme Murray dated 10 February 2017. Mr Murray is not an officer of the opponent company but, as indicated earlier, is its professional representative. He states he is authorised to make the witness statement on behalf of the opponent having been “asked ...to summarise the evidence of use”.

10. Mr Murray states the opponent has used its mark in the UK since (an unspecified date in) 2014. He states that the opponent “has sold its products into the UK in the

relevant period and has issued invoices to which the Trade Mark has been applied". He further states that the opponent "operates a .com website" and provides a link to it though I have not, of course, accessed that link. If the opponent had wanted to rely on the content of that website to any extent, it should have provided the relevant prints which the applicant would then have had the opportunity to review.

11. In support of his very vague claims, Mr Murray has provided two exhibits. At GRM1, are copies of some 19 invoices, all in identical form, though those at pages 11 to 16 of the exhibit are duplicates of those at pages 4 to 9. Addressed to two companies in Southampton and what appears to be an individual in Dartmouth, the invoices each list the various items supplied. Some of these items appear to be in what I take to be the Dutch language (e.g. Aansluitkable voor RGB-ledflex 4P-10 drade" (page 4) and Doorverbinding voor ledflex 2P-08 draden" (page 7)) and no translation is provided so I cannot be sure what may have been supplied. Other items appear to be in English (e.g. LED profile 9mm endcap (10 pcs) (page 7)). None of the items themselves listed on any of the invoices refer to the mark under which the items were sold. That said, the invoices each are on headed paper which includes the words **LEDsGO**. These words, however, are immediately followed by the letters BVBA which indicate it is a company name. Alongside this is what I take to be the company's address. Neither the company name nor the address is that of the opponent.

12. At the hearing, Mr Murray urged me to infer that the invoices exhibited were issued with the consent of the opponent. Whilst it is possible to infer consent if evidence has been presented to enable the Tribunal to do so, on the basis of the evidence filed in these proceedings, I decline to do so. No evidence has been provided which sets out what connection, if any, there might be between the opponent and the company issuing the invoices. In his witness statement, Mr Murray states that the evidence he has filed comes from his own knowledge or are the results of his own research. He does not say what research he may have carried out or the source of his knowledge and there is no indication of the source of the invoices.

13. At GRM2 Mr Murray has provided what he says are extracts from the opponent's website. He states that these extracts have been taken from the Internet archive, the Wayback Machine, with one showing how a particular webpage looked at 14 May 2007, three showing how it looked in April, June and August 2015 and two in February and March 2016. Despite what would be the almost 9 year gap between the earliest and latest, all of the pages appear identical and consist largely of a graphic. The very limited text on these pages shows the page relates to "Luminares" and has a heading: "The characteristics of the LEDS GO family" underneath which appears "Miniature fixtures: perfect for orientation and atmosphere lighting. Finished in anodised aluminium".

14. Mr Murray submits that "as the website is in English, it is accessed by and clearly directed towards UK consumers". No evidence has been provided which shows who or how many people may have accessed this website at any time or where they may have been located (many countries use English). In addition, I note that the earliest of the extracts pre-dates the claimed date of first use in the UK by some 7 years. In any event, the pages exhibited do not give any details of what specific goods or services may have been available nor do they show evidence of e.g. prices and they are not evidence of sales having been made under the earlier mark, whether in the UK or elsewhere.

15. At the hearing, I referred the parties to the decision of Mr Henry Carr Q.C. in *Healey Sports Cars Switzerland Limited v Jensen Cars Limited* [2014] EWHC 24 (Pat) where, sitting as Deputy High Court Judge, he commented:

"Some parties to Registry proceedings may consider that it is simpler, more efficient or more cost effective to have evidence of fact given by their legal representatives....However, this view is plainly misconceived. It is likely to lead, as in the present case, to such evidence being given little weight, on the basis that the person giving it has no knowledge of the relevant facts. There is no reason that such evidence should carry more weight in the Registry than in Court proceedings."

16. In *Plymouth Life Centre*, Mr Daniel Alexander Q.C. as the Appointed Person stated:

“20. Providing evidence of use is not unduly difficult. If an undertaking is sitting on a registered trade mark, it is good practice in any event from time to time to review the material that it has to prove use of it...

22. The burden lies on the registered proprietor to prove use... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

17. I note that the IR as registered consists of the words LEDS GO followed by an ellipsis. This is not a mark shown on any of the evidence filed by Mr Murray, however I do not need specifically to address the question of whether the evidence shows use of a mark which differs in elements which do not alter the distinctive character of the mark in the form in which it was registered as, taking the evidence as a whole, I find that it fails to show genuine use of either mark by the opponent or with its consent. I have already commented on the invoices exhibited. There is no evidence of e.g. the scale or frequency of use or evidence which puts any use into context in terms of the relevant market. Other than the webpage extract, which again I have already commented upon, there is no evidence to show any marketing which may have taken place in the UK. There is no evidence of sales by the opponent nor any

evidence which shows sales made with its consent. That being so, the opponent is not entitled to rely on the earlier IR.

18. The opponent also relies on its earlier EUTM. This mark is not subject to the proof of use provisions set out in section 6A of the Act. In its notice of opposition, the opponent indicates it relies on it in respect of all the services for which it is registered on the basis that each of them are similar to the goods of the application. This position was maintained in the skeleton argument which Mr Murray filed. Seeking clarification on the extent of this claim at the hearing, Mr Murray accepted that the opponent would proceed on the basis of those services as registered in class 35 which formed its strongest case. These are as follows:

Wholesale and retail services, including in shops, by mail order and retail services via electronic channels, all the aforesaid in connection with lighting and components therefore; providing information to customers and consultancy or assistance in the selection of lighting and components thereof.

19. The applicant accepts that these services “have at least some similarity” to its goods as set out in Annex A.

20. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe

the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are 'similar' to goods are not clear cut."

21. On the basis, however, of the European courts' judgments in *Sanco SA v OHIM*¹, and *Assembled Investments (Proprietary) Ltd v. OHIM*², upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*³, Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

¹ Case C-411/13P

² Case T-105/05, at paragraphs [30] to [35] of the judgment

³ Case C-398/07P

22. Taking the above case law into account, I proceed on the basis that the respective goods and services are similar to a reasonable degree.

The average consumer and the nature of the purchasing process

23. 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*.

24. 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.”

25. The goods included in the applicant's specification are wide-ranging. Some will be bought by the general public (e.g. LED light bulbs and Light bulbs for directional signals for vehicles), others by businesses (e.g. Light signboards and Laser measuring systems) or by the professional such as electricians or other specialists (e.g. Lighting installations, Lighting installations for air vehicles, Lamp posts). The average consumer of the opponent's services will also be the general public or the business or professional user. Both parties accepted at the hearing that the respective goods and services are primarily a visual purchase though the aural aspects must not be ignored. Whilst some of the goods are everyday ones bought on a fairly regular basis e.g. lightbulbs, others will be bought less regularly e.g. Lamps for festive decoration. Yet others will be a specialist purchase e.g. Laser measuring systems. The cost of the goods are similarly wide-ranging. The degree of care taken

over the purchase will vary with goods such as a lightbulb being a relatively casual one but, at best, each will be bought an average degree of care to ensure that they are of the correct size or power or with a view to their aesthetic appeal and are suitable for the application for which they are intended. The services will also be bought with an average degree of care.


Comparison of the respective marks

26. 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 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*:

“.....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.”

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

28. The marks to be compared are as follows:

The earlier mark	The applicant’s mark
LEDS GO	

29. The opponent’s earlier mark consists of the two words **LEDS GO** presented in plain block capitals. The word LEDS is the plural of LED, which is a well-known

abbreviation for the electronic component and light source which is a light emitting diode. Whilst this word is not distinctive of goods being or incorporating LEDs, it reads into and forms a unit with the word GO with the mark mostly likely to be seen as a play on the words “let’s go”. The applicant’s mark consists of a single word made up of five letters. The letters themselves are presented in a slightly stylised typeface. In the centre of the letter D is what I take to be the silhouette of a diode which appears to be “connected” to the other letters by a line in silhouette running through their centres. Whilst presented as a single word, the word naturally breaks down into its two component parts LED and CO both being well-known abbreviations.

30. Both marks begin with the letters LED. They both end in the letter O and have a circular, though different, letter as their penultimate letter. The letter S in the opponent’s mark has no equivalent in the applicant’s mark. The silhouetted presentation in the applicant’s mark has no equivalent in the earlier mark. When taken as wholes, there is a medium degree of visual similarity between the respective marks.

31. The sibilance of the letter S in the earlier mark is absent from the applicant’s mark. The difference between the letters G and C is unlikely to be noticed unless very carefully enunciated. Despite both marks beginning with the letters LED, which is a well-known abbreviation in the electrical field, I do not consider the respective marks will be pronounced other than as words. However pronounced, when taken as wholes, there is a fairly high degree of aural similarity between the respective marks.

32. As indicated above, the opponent’s mark is likely to be seen as a play on words whereas the applicant’s mark is likely to be seen as a company manufacturing or selling goods being or incorporating LEDs. The concepts of each mark differ when taken as wholes, despite both making reference to LEDs.

The distinctiveness of the earlier mark

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

“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).”

34. Absent evidence of use of the earlier mark, I have only its inherent distinctiveness to consider. As indicated above, whilst it consists of two words, the whole is likely to be seen as a play on words and introduces a suggestion or command to get on with something involving LEDs. I consider it is a mark with an average degree of inherent distinctive character.

Likelihood of confusion

35. 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 opponent’s 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.

36. Earlier in this decision I found:

- The applicant accepts that the respective goods and services have at least some similarity and I proceed on the basis that the respective goods and services are similar to a reasonable degree;
- The average consumer for the respective goods and services will be either a member of the general public, businesses or professionals;
- The goods and services are such that they will be primarily a visual purchase though the aural aspects must not be ignored. The goods and services are such as will be bought with an average degree of care;
- There is a medium degree of visual similarity and a fairly high degree of aural similarity. The respective marks differ conceptually, despite both making reference to LEDs;
- The earlier mark has an average degree of inherent distinctive character which has not been shown to have been enhanced through use.

37. I bear in mind that although conceptual differences may counteract visual and aural similarities (see the comments of the CJEU in *The Picasso Estate v OHIM* Case 361/40P at paragraph 20) they do not always do so (see the comments of the General Court in *Nokia Oyj v OHIM* T460/07 at paragraph 66) and that for there to be such a counteraction, at least one of the marks at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately (see also the comments of the CJEU *Mülhens GmbH & Co KG v OHIM* C-206/04P at paragraph 11 and *Phillips-Van-Heusen v OHIM Pash Textilvertrieb und Einzelhandel [Bass]* at paragraph 54).

38. I consider the earlier mark will be immediately recognised as a play on words with the meaning set out above and forms a strong conceptual hook which will

counteract imperfect recollection. Balancing all relevant factors, I do not consider there is a likelihood of confusion. For completeness, I should say that had the opponent shown genuine use of its IR, I would have reached the same decision even where identical goods are involved.

Summary

39. The opposition fails in its entirety.

Costs

40. The applicant has been successful and is entitled to an award of costs in his favour. Whilst he has filed a breakdown of his costs, that document has a number inconsistencies and is lacking in detail. For example, the applicant claims to have spent 1 hour on his notice of defence but elsewhere claims to have spent 2 hours on his counterstatement. As a notice of defence and counterstatement are one and the same document, there is clearly an inconsistency. In addition, he claims to have spent some 2 hours on “document preparation and sending post and email” in preparing for a hearing (he was neither required to, nor did he file, skeleton arguments) and 20 hours on “legal advice service and employee engagement” but no further details of either are provided. He claims a total of 32 hours’ work.

41. There is no doubt that the applicant would have taken time to consider both the notice of opposition and the evidence filed by the opponent though the basis of the opposition was limited to grounds under section 5(2)(b) of the Act, the evidence filed was not extensive and would not have taken long to review. Taking all matters into account, bearing in mind that an award of costs is not intended to be full recompense but a contribution towards the costs expended and in line with the Litigants in Person (Costs and Expenses) Act 1975 which sets the minimum level of compensation for litigants in person at £18 per hour, I make an award in the sum of £360. This equates to 20 hours work at the minimum rate.

42. I hereby order Delta Light N.V to pay Cheuk Chuen Siu the sum of £360. This sum is to be paid within fourteen days of the expiry of the appeal period or within

fourteen days of the final determination of this case should any appeal be unsuccessful.

Dated this 7th Day of September 2017

Ann Corbett

For the Registrar

The Comptroller-General

Annex A

The goods for which registration is applied.

Class 9

Light diodes; Light switches; Light-conducting filaments; Lighting ballasts; Light conductive rods; Light conductors; Light modulators; Light probes; Light sensitive relays; Light sensors; Light signboards; Light emitting diode displays; Light meters; Lighting dimmers; Lightning rods; Lightning arrester equipment; Lighting control apparatus; Lighting devices for taking pictures; Light dimmers [regulators], electric; Lighting (Batteries for -);Light-emitting electronic pointers; Light conducting filaments [optical fibers [fibres]];Light emitting diodes (LEDs);Light-emitting diodes [LED];Lightning conductors; Lightning conductors [rods];Lightning arresters; Light (Traffic- -) apparatus [signalling devices]; Light sources [flashlamps] for photographic use; Laser sensors; Lasers, not for medical purposes; Lasers not for medical use; Laser pointers; Laser diodes; Laser measuring systems; Lasers for non-medical purposes; Laser installations, other than for medical use; Laser range finders; Lasers for industrial use; Lasers for scientific use; Laser detectors; Lasers for measuring purposes; Tubes for electrical purposes; Lamps (Darkroom -) [photography];Lamps for use as warning beacons; Wall lights (fittings for-) [switches].

Class 11

LED lighting assemblies for illuminated signs; LED mood lights; LED flashlights; LED light bulbs; LED landscape lights; LED light machines; LED luminaires; LED underwater lights; Light reflectors; Light sources of electro luminescence; Lighting apparatus and installations; Lighting; Light-emitting diodes [LED] lighting apparatus; Light bulbs for directional signals for vehicles; Lighting devices for showcases; Lighting apparatus incorporating optical fibers; Lighting tracks [lighting apparatus]; Lighting installations for vehicles; Lightbulbs; Light emitting diode lights for automobiles; Light assemblies; Light bars; Light discharge tubes; Light filters [other than for medical or photographic use];Light projectors; Light shades; Light sources [other than for photographic or medical use];Light tubes being parts of insect killing apparatus; Lighting [other than for medical photographic use; Lighting armatures;

Lighting being for use with security systems; Lighting elements; Lighting for display purposes; Lighting for ponds; Lighting glasses; Lighting lamps; Lighting ornaments [fittings]; Lighting panels; Lighting transformers; Lighting tubes; Lighting units; Lights for external installation; Lights for festive decoration; Lights for track mounting; Lights for wall mounting; Lights, electric, for Christmas trees; Lighting installations for air vehicles; Lights for vehicles; Light bulbs; Light bulbs, electric; Lighting apparatus for vehicles; Lights for automobiles; Lights (Diving -); Lights (diving-); Lighting for aquariums; Light diffusers; Light installations; Lighting installations; Lighting apparatus; Lighting fittings; Light fittings; Light fixtures; Lighting louvres; Laser light projectors; Bulbs for lighting; Floodlights; Spotlights; Spot lamps; Spot lamps for household illumination; Spot lamps for use on vehicles; Spot lights; Spot lights for household illumination; Spot lights for use on vehicles; Downlights; Tubes (Luminous -) for lighting; Tubes (Discharge -), electric, for lighting; Street lamps; Lampshade holders; Lamps for directional signals of automobiles; Lamp glasses; Lamp bases; Lampshades; Lamps (Electric -); Lamp casings; Lamp reflectors; Lamp stands; Lamps for vehicle direction indicators; Lamp shades; Lamp globes; Lamps (Globes for -); Lamps for outdoor use; Lamps; Lamp finials; Lamps for vehicles; Lamp posts; Lamp fitments; Lamp fittings; Lamp holders; Lamp standards; Lamps fitted with extendible supports; Lamps for christmas trees; Lamps for electrical installations; Lamps for festive decoration; Lamps for lighting purposes; Lamps for motor land vehicles; Lamps for security lighting; Lamps for vehicle lighting; Lampstands; Ceiling lights; Ceiling illuminants; Ceiling light fittings; Filaments for electric lamps; Lighting fixtures for commercial use; Lighting fixtures for household use; Lighting fixtures; Wall lights; Wall lamps; Wall lights (fittings for-) [other than switches].

The goods for which the opponent's earlier IR 755606 is protected

Class 9

Lighting apparatus and installations

The services for which the opponent's earlier EUTM 8611592 is registered

Class 35

Wholesale and retail services, including in shops, by mail order and retail services via electronic channels, all the aforesaid in connection with lighting and components thereof; advertising; providing information to customers and consultancy or

assistance in the selection of lighting and components thereof; business administration; office functions; business management services.

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services.