

**O/149/20**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3347738 BY  
KNOWLEDGE WELL LIMITED  
TO REGISTER:**

The logo for UKCAS, featuring the letters 'UK' in red, a stylized blue and white flag icon, and the letters 'CAS' in red.

**AS A TRADE MARK IN CLASS 41**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO  
UNDER NO. 415397 BY  
THE UNIVERSITIES AND COLLEGES ADMISSIONS SERVICE**

## BACKGROUND AND PLEADINGS

1. On 23 October 2018, Knowledge Well Limited (“the applicant”) applied to register the trade mark shown on the front cover of this decision in the United Kingdom for the following services:

### Class 41

*Academy education services; Adult education services; Advisory services relating to education; Arrangement of conferences for educational purposes; Arrangement of conventions for educational purposes; Arrangement of seminars for educational purposes; Arranging and conducting conferences and seminars; Arranging and conducting educational conferences; Arranging and conducting of day school courses for adults; all of the aforementioned being in connection with International and EU students.*

2. The application was opposed on 8 February 2019 by The Universities and Colleges Admissions Service (UCAS) (“the opponent”). The opposition is based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and concerns all the services in the application.

3. With regards to its claims under sections 5(2)(b) and 5(3), the opponent is relying on the earlier trade marks shown below. The goods and services on which it seeks to rely are listed in the Annex to this decision.

a) EU Trade Mark No. 4385894 (“the 894 mark”)

UCAS

Filing date: 4 April 2005

Registration date: 10 November 2006

Registered for goods and services in Classes 9, 16, 35, 36, 41 and 42.

b) EU Trade Mark No. 12078581 (“the 581 mark”)

UCAS

Filing date: 20 August 2013

Registration date: 22 May 2014

Registered for goods and services in Classes 9, 16, 35, 41 and 42

c) UK Trade Mark No. 3198880 (“the 880 mark”)

UCAS

Filing date: 25 November 2016

Registration date: 7 April 2017

Registered for goods and services in Classes 9, 16, 18, 19, 26, 35, 36, 38, 39, 41, 42, 43, 44 and 45.

4. Under section 5(2)(b) of the Act, the opponent claims that the contested mark is visually and aurally highly similar to the earlier marks and the applicant’s services are identical, or at least highly similar, to the services for which the earlier marks are registered and which are relied upon, and that, as a result, there is a likelihood of confusion.

5. Under section 5(3) of the Act, the opponent claims that, because of the reputation and enhanced distinctiveness of the earlier marks and the high degree of similarity or identity between the goods and services, it is highly likely that the average consumer would make a link between the marks. The opponent claims that damage would occur in the following ways:

- Use of the contested mark, without due cause, would enable the applicant to ride on the coat-tails of the opponent and take advantage of the reputation of the opponent’s earlier marks, gained through significant financial investment;

- There would be detriment to the opponent's reputation in the event of any negative publicity or poor consumer feedback arising from the quality of the applicant's services; and/or
- Use of the contested mark would dilute the attractive power of the opponent's earlier marks and be detrimental to their distinctive character. This may lead to a loss of custom.

6. Under section 5(4)(a) of the Act, the opponent claims that use of the contested mark is liable to be prevented under the law of passing off, owing to its goodwill attached to the sign **UCAS**, which it claims to have used throughout the UK since 1993 in respect of the following goods and services:

*Administration services; admission services relating to applications for admission to educational establishments including universities and/or colleges; education services; coordinating and processing of applications for admission to educational establishments; providing events, information, advisory and consultancy services relating to the aforesaid.*

7. The applicant filed a defence and counterstatement, denying all the grounds and putting the opponent to proof of use of the 894 mark for all the services relied upon.

8. The opponent filed evidence in these proceedings. This will be summarised to the extent that I consider necessary.

9. Neither party requested a hearing. The applicant filed written submissions on 12 October 2019, and the opponent filed written submissions in lieu of a hearing on 15 November 2019. These will not be summarised but will be referred to as and where appropriate during this decision, which I have taken following a careful consideration of the papers.

10. In these proceedings, the opponent is represented by Wiggin LLP and the applicant represents itself.

## **PRELIMINARY ISSUES**

11. In its counterstatement and written submissions, the applicant emphasises that its target market is overseas students, while the opponent's services are designed for UK-based students. I must, however, base my assessment on the specifications of the earlier marks, two of which are, in any case, not subject to the proof of use requirements of section 6A of the Act. These specifications do not limit any services to UK consumers.

12. The applicant also refers to attempts to settle the dispute and makes allegations as to the motivation of the opponent in pursuing this action. This is not relevant for the purposes of deciding this opposition, so I shall disregard these comments.

## **EVIDENCE**

13. The opponent's evidence comes from Mr Matthew Springham, Principal Legal Counsel at UCAS. It is dated 2 August 2019.

14. UCAS was incorporated in 1993 and Mr Springham describes it as

“an independent UK based charity providing information, advice, and admissions services in relation to higher education, careers and/or recruitment. Its services are principally provided to prospective students in the UK, EU and internationally who are looking to gain a place at, or information on, a UK based education and training provider, university or college.”<sup>1</sup>

15. The number of applicants using UCAS's higher education admission services can be seen in the table below:<sup>2</sup>

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<sup>1</sup> Paragraph 4.

<sup>2</sup> The figures are taken from Exhibit MS03, page 2.

	UK	EU	Non-EU
2013	561,985	44,835	70,555
2014	578,290	46,830	74,560
2015	592,025	50,705	75,750
2016	590,505	53,560	74,290
2017	572,285	51,185	76,380
2018	561,615	52,620	81,325

16. Mr Springham states that the proportion of applicants accepted into higher education through the UCAS system, as opposed to any other route, indicates the opponent's market share. He explains that these figures are calculated from data provided by higher education providers:<sup>3</sup>

Cycle	Acceptances (%)
2013	96.2
2014	96.1
2015	95.8
2016	96.0
2017	95.2
2018	93.6

17. The fees generated by these applications, together with the capitation fees charged to an education provider when they accept and enrol an applicant through the UCAS process, are the major source of income for the opponent, as shown in the table below:<sup>4</sup>

	Institutional and applicant fees (£'000)	Total group income (£,000)
2013	22,466	35,999
2014	24,060	37,885
2015	24,325	40,824

<sup>3</sup> Exhibit MS06.

<sup>4</sup> Figures taken from Exhibit MS05.

	<b>Institutional and applicant fees (£'000)</b>	<b>Total group income (£,000)</b>
2016	24,591	42,383
2017	25,893	44,766
2018	27,270	47,758

18. Other income is generated by marketing services supplied to education and training providers, employers and brand owners to help them reach students, under the name UCAS Media. Its clients include companies (in sectors such as telecommunications) that want to target student customers, educational establishments, banks offering student accounts, and private accommodation providers. Mr Springham explains that UCAS Media

“... offers everything from research-based insights to advertising and creative services, including online advertising, digital platforms, email marketing, social media, print advertising, direct mail, student events, and data insight. Its services are very in-demand and it contributes significantly to UCAS annual income. ... The income highlighted as coming from ‘UCAS Media Ltd’ services, in each year 2013-2018, is at least £12,000,000 - £19,000,000 and rises year-on-year to the latter.”<sup>5</sup>

19. Figures for marketing spend are also provided:<sup>6</sup>

	<b>Marketing (£'000)</b>	<b>Activity</b>	<b>Print/Promotional (£'000)</b>	<b>Events (£'000)</b>
2012/13		700	1,193	1,959
2013/14		568	919	1,968
2014/15		693	791	1,867
2015/16		503	876	1,950
2016/17		418	813	2,231
2017/18		297	924	2,337

<sup>5</sup> Paragraph 45.

<sup>6</sup> Exhibit MS08.

20. Mr Springham states that UCAS organises a number of different types of event:

- Exhibitions, aimed at education providers, as well as parents and students. Potential employers and apprenticeship organisations may also attend.
- Conferences, aimed at teachers and/or higher education providers.

21. He says that these are “seen as the ‘go-to’ events in these sectors for young people or prospective students of any age, or people working in the education sector and representing the education providers”.<sup>7</sup> The largest of the events is the annual UCAS Higher Education Exhibition, held in London and Manchester. Mr Springham states that over 20,000 people attend each location every year. It appears from the tables provided in Exhibit MS08 that this figure relates to bookings, rather than attendances, which are recorded as being lower, although still into five-figure numbers.

22. The figures for non-event spend for the last three years are broken down as follows:

	2015/16 (£'000)		2016/17 (£'000)		2017/18 (£'000)	
	Charity	Media	Charity	Media	Charity	Media
Marketing	220	148	38	61	27	64
Digital marketing	33	6	101	9	125	23
Sponsorship	-	85	-	26	-	27
Promotional costs	8	3	14	169	6	24
Printing	110	17	51	18	63	35
Direct marketing campaigns	91	658	45	699	29	797
<b>TOTAL</b>	462	917	249	982	251	970
<b>COMBINED TOTAL</b>	1,379		1,231		1,221	

23. The evidence also contains a collection of news articles dating from 2013 to 2018 from sources such as the BBC website and *The Guardian*, and examples of UCAS's

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<sup>7</sup> Paragraph 33.



activities on Facebook and Twitter.<sup>8</sup> The news articles focus on the announcement of A-level results and what applicants need to do if their results are not what they expected. The tweets and Facebook posts provide links to advice on aspects of the application process and publicise events.

## **DECISION**

### **Proof of Use**

24. Section 6A of the Act states that:

“(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 relevant period.

(1A) In this section ‘the relevant period’ means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(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 –

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<sup>8</sup> Exhibit MS013.

(a) within the relevant period 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 (the ‘variant form’) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), 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.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(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.”

25. Section 100 of the Act states that:

“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.”

26. The 894 mark completed its registration procedure on 10 November 2006 and so the above provisions apply to it. The applicant has requested that the opponent provide proof of use of this mark for all the services relied upon. These services are listed in paragraph [38]. The relevant period in which use must be shown is the five years ending with the date of application: 24 October 2013 to 23 October 2018.

27. The 581 and 880 marks completed their registration procedures less than five years before the date of application for the contested mark. The opponent may therefore rely on all the goods and services for which they are registered.

28. In *Walton International Ltd & Anor v Verweij Fashion BV* [2016] EWHC 1608 (Ch), Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114. ... The CJEU has considered what amounts to ‘genuine use’ of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundersvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W. F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principle established by these cases may be summarised 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* 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]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(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] and [22]. 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]; *Reber* at [29].

(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 or 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]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(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] and [76]-[77]; *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].”

29. As the 894 mark is an EUTM, I bear in mind the decision of the Court of Justice of the European Union (CJEU) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, where it held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

30. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Anor*, [2016] EWHC 52, Arnold J. (as he was then) reviewed the case law since *Leno* and concluded as follows:

“228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

31. The General Court (GC) restated its interpretation of *Leno Merken* in Case T-398/13, *TVR Automotive Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM. This applies even where there are no special factors, such as the market for the goods/services being limited to that area of the Union. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the Union during the relevant five-year period.

### ***The mark used***

32. Section 6A(4)(a) of the Act states that:

“use of a trade mark includes use in a form (the ‘variant form’) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor)”.

33. In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was), sitting as the Appointed Person, summarised the test as follows:

"33. .... The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period...

34. The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter’s distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the



registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all."

34. The 894 mark is shown below:

UCAS

35. In my view, the average consumer will read this mark as "UCAS", as the third symbol resembles the capital letter A, missing only the horizontal bar. It is the same size as the letters, which, I consider, will increase the chances of it being seen as another letter in the word. Consequently, I find that the distinctiveness of the mark lies in the word "UCAS". It is not a word that is in the dictionary, apart from in connection with the opponent.<sup>9</sup> The average consumer may see it as an abbreviation but, to my mind, they will not think about what the letters might stand for. I find that the 894 mark has a high level of inherent distinctiveness.

36. I have reproduced below two examples of how the mark is used in the evidence. They come from Exhibits MS04 and MS09 respectively.

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<sup>9</sup> Exhibit MS02 contains a definition from the Oxford online dictionary.



UCAS Undergraduate Admissions Guide

For entry to university or college in 2017

# UCAS Undergraduate Admissions Guide

For entry to university or college in 2017

This booklet provides essential information for admissions staff involved in processing applications for courses included in the UCAS Undergraduate system. It describes the procedures used and lays out 'the rules' and timetable.

UCAS



**your future**

# Visitor guide **2017**

ExCeL London

**UCAS**

17 – 18 October

37. What I found to be the third letter of the mark appears to be in a different colour, and this is a consistent presentation of the mark throughout the rest of the evidence. In its written submissions, the opponent makes reference to the use of red in its colour scheme. The evidence I have before me is in black and white so all I can see is that two colours are used, not what those colours are. To my mind, on seeing this mark, the average consumer will recognise the word “UCAS” as the distinctive element of the mark. It follows that this sign does not alter the distinctive character of the registered mark. Consequently, I find that this is an acceptable variant form of the registered mark.

### ***Use of the mark***

38. The services at issue are as follows:

#### *Class 41*

*Advisory services relating to applications for admission to educational establishments; coordination and processing of applications for admission to educational establishments; evaluation services for evaluating candidates for entry to higher educational establishments and for evaluating higher educational establishments to ascertain their suitability for one another; information, consultancy and advisory services relating to all of the aforesaid services.*

39. I shall focus here on the services provided by the charitable arm of the opponent, as these are the ones that are the closest to the services listed above.

40. The evidence shows that throughout the relevant period the opponent has been providing a system that enables prospective students to apply for courses of higher education. Exhibit MS03 contains a print-out of the application form and application numbers can be found in paragraph [15] above. Mr Springham quotes figures from the July 2018 report<sup>10</sup> which states that UCAS supports “386 higher education providers, and nine conservatoires, with undergraduate and postgraduate student recruitment,

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<sup>10</sup> Exhibit MS05.

and 1,121 universities, colleges, and schools with initial teacher training recruitment.”<sup>11</sup> He also says that the number of institutions has varied very little over the relevant period. Income from the fees is shown in the table in paragraph [17]. This ranged from £22.466m in 2013 to £27.27m in 2018. During this period, the system was used by both UK, EU and non-EU students.<sup>12</sup> Admittedly, the number of EU students is considerably lower than the number of UK students, but given that the opponent’s system covers UK institutions of higher education, it seems to me that the numbers of UK applicants, combined with the number of those from the EU, is sufficient to show use of the mark in the EU in relation to the application system.

41. The opponent also provides advisory services to prospective students, their parents, teachers and advisors, and higher education admissions departments. These are in the form of events and exhibitions, newsletters (first in print and now digital)<sup>13</sup> and the website. Mr Springham draws attention to page 5 of Exhibit MS10, which states that each year around 250,000 attendees visit over 50 events organised by the opponent. Exhibit MS09 contains details of events aimed at teachers and student advisors, including one in 2015 entitled “Competitive Admissions” which promised to help “Sharpen your students’ competitive edge” by leaning “how a wide range of universities select for their most competitive subjects”.<sup>14</sup>

42. There is also some evidence of the opponent providing advice overseas, through attending British Council-organised exhibitions in 2013 in Greece, Northern Cyprus and Bulgaria.<sup>15</sup> There is no later evidence. I am unable to ascertain whether EU-based students accessed the opponent’s website as the data on website traffic in Exhibit MS13 does not specify the location of the users.<sup>16</sup> Nevertheless, it seems to me that the use in the UK is sufficient to create or maintain a market for the advisory services in the EU, particularly as the institutions to which students can apply through the opponent’s system are all based in the UK.

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<sup>11</sup> Paragraph 25.

<sup>12</sup> See paragraph [15].

<sup>13</sup> Exhibit MS12

<sup>14</sup> Page 14.

<sup>15</sup> Exhibit MS13, pages 37 and 43.

<sup>16</sup> Pages 44-47.

## ***Fair specification***

43. I must now consider what constitutes a fair specification. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, summed up the law as follows:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”<sup>17</sup>

44. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme

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<sup>17</sup> Page 10, line 22 – Page 11, line 4.

Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."<sup>18</sup>

45. The case law I have quoted warns against taking too narrow an approach. It seems to me that the average consumer, who, as a prospective student is a member of the general public, would not necessarily distinguish between higher education and other types of post-school educational establishment when considering the opponent's services. I also take note of the passage I have already quoted in paragraph [40] above, which states that the opponent also supports colleges and schools that provide initial teacher training. It seems to me therefore that to restrict the specification to higher education institutions would be too fussy and so I find that the opponent has shown use for *advisory services relating to applications for admission to educational*

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<sup>18</sup> Paragraph 47.

*establishments and coordination and processing of applications for admission to educational establishments.*

46. I turn now to *Evaluation services for evaluating candidates for entry to higher education establishments and for evaluating educational establishments to ascertain their suitability*. To my mind, the phrase “evaluation service” suggests that the opponent would be involved in comparing candidates either to each other or to certain criteria, and providing a similar service whereby educational establishments could be compared. This suggests a more “value-added” service than simply providing a search function for a website, the ability to set preferences in a personal profile, or the development of a points system for qualifications, all of which are shown in the evidence. What I cannot see from the evidence is that the opponent evaluates candidates itself, rather than provides the infrastructure to enable candidates to apply and higher education admissions departments to assess the applications and make offers. I find that the opponent has not shown use of the mark for *Evaluation services for evaluating candidates for entry to higher education establishments and for evaluating educational establishments to ascertain their suitability*.

47. I consider that a fair specification for the services relied on under the 894 mark is:

*Class 41*

*Advisory services relating to applications for admission to educational establishments; coordination and processing of applications for admission to educational establishments; information, consultancy and advisory services relating to all of the aforesaid services.*

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

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

“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.”

49. Section 5A of the Act states that:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

50. In considering the opposition under this section, I am guided by the following principles, gleaned from the decisions of the CJEU 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 BV* (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-334/05 P) and *Bimbo SA v OHIM* (Case C-529/12 P):

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 greater 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.

## ***Comparison of goods and services***

51. When comparing the goods and services, all relevant factors should be taken into account, per *Canon*:

“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 complementary.”<sup>19</sup>

52. Guidance was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

- “(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

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<sup>19</sup> Paragraph 23.

instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

53. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06:

“... 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.”<sup>20</sup>

54. While making my comparison, I bear in mind the comments of Floyd J (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

“... 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) (IP TRANSLATOR)* [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.”<sup>21</sup>

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<sup>20</sup> Paragraph 82.

<sup>21</sup> Paragraph 12.

55. In *FIL Limited & Anor v Fidelis Underwriting Limited & Ors* [2018] EWHC 1097 (Pat), Arnold J (as he then was) considered how this principle should be applied in the case of services:

“... terms in specifications of goods and services should be given their ordinary and natural meaning, but this is subject to two overlapping qualifications: first, specifications of services are inherently less precise than specifications of goods, and therefore should be interpreted in a manner which confines them to the core of the ordinary and natural meaning rather than more broadly; and secondly, terms should not be interpreted so liberally that they become unclear and imprecise.”<sup>22</sup>

56. I also bear in mind the judgment of the GC in *Gérard Meric v OHIM*, Case T-133/05, where it stated that:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00) *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”<sup>23</sup>

#### *The 581 and 880 marks*

57. In my view, all the applicant’s services are included within the opponent’s broader categories of *Education, instruction ... services* and *Providing information, advice and guidance in the field of education, instruction, training ...*, in line with the *Meric* principle. It is the 880 mark that is registered for these services.

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<sup>22</sup> Paragraph 86.

<sup>23</sup> Paragraph 29.

58. The 581 mark is identical to the 880 mark. If there is no likelihood of confusion with the 880 mark where the services are identical, the 581 mark will put the opponent in no better position.

*The 894 mark*

59. I turn now to the comparison with the 894 mark. The services to be compared are listed in the table below:

Opponent's services	Applicant's services
<p><u>Class 41</u>  <i>Advisory services relating to applications for admission to educational establishments; coordination and processing of applications for admission to educational establishments; information, consultancy and advisory services relating to all of the aforesaid services.</i></p>	<p><u>Class 41</u>  <i>Academy education services; Adult education services; Advisory services relating to education; Arrangement of conferences for educational purposes; Arrangement of conventions for educational purposes; Arrangement of seminars for educational purposes; Arranging and conducting conferences and seminars; Arranging and conducting educational conferences; Arranging and conducting of day school courses for adults; all of the aforementioned being in connection with International and EU students.</i></p>

60. Under the *Meric* principle, the applicant's *Advisory services relating to education* would encompass the opponent's *Advisory services relating to applications for admission to educational establishments*. Consequently, I find these services to be identical.

61. It is not clear what the applicant means by the term *Academy education services*. The *Oxford Dictionary of English* gives several definitions of the word "academy", most

of which refer to an educational establishment. The other definition is “a society or institution of distinguished scholars and artists or scientists that aims to promote and maintain standards in its particular field”. Given the combination of “academy” and “education services”. I consider it more likely that the average consumer will take the term to mean an educational establishment. The users of these services will be people who want to take a course of study or learn a skill, and they may also be employers who wish to train their workers. The education may be delivered at the physical premises of the educational establishment itself, at an employer’s offices or plant, or by distance learning, which could include online delivery of educational material. There will be some overlap with the users of the opponent’s *Coordination and processing of applications for admission to educational establishments*. The purpose will be slightly different, as the aim of the opponent’s services is to handle the application process, rather than provide the education, but there will be an overlap in the method of accessing the services. Applications can be made on paper but in the present time the average consumer would expect the process to be available online. The services are not in competition. There may be a degree of complementarity. The average consumer would not be surprised to see the same – or a connected – organisation coordinating the applications for a number of educational establishments within the same group; equally, though, they would be unsurprised if this task were carried out by an independent provider. I find any complementarity to be low. Consequently, I find the similarity of the services also to be low.

62. In my view, the same reasoning applies in the case of *Adult education services*, and so I also find a low degree of similarity.

63. I shall consider the rest of the services as a group. In *SEPARODE Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the

same reasons, the decision taker may address them collectively in his or her decision.”<sup>24</sup>

64. The applicant’s *Arrangement of conferences for educational purposes, Arrangement of conventions for educational purposes, Arrangement of seminars for educational purposes, Arranging and conducting conferences and seminars, Arranging and conducting educational conferences* and *Arranging and conducting of day school courses for adults* all relate to short-term educational opportunities, lasting from an hour or two to several days. The purpose of these will be to provide focused knowledge or training and the users will be the same as the users of *academy education services*. The purpose is therefore different from the purpose of the opponent’s services, which is to handle the admissions process or provide advisory services relating to that process. The users will overlap. The services are not in competition, but I consider that there is a degree of complementarity, as the average consumer may expect a provider of *advisory services relating to applications for admission to educational establishments* to deliver those services through conferences, seminars, conventions or short courses. I find there to be a medium degree of similarity between the opponent’s and the applicant’s services.

### ***The average consumer and the purchasing process***

65. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors* [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”<sup>25</sup>

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<sup>24</sup> Paragraph 5.

<sup>25</sup> Paragraph 60.



66. For the purpose of assessing the likelihood of confusion, I must bear in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: see *Lloyd Schuhfabrik Meyer*.

67. The opponent submits that:

"In relation to the Contested Services and the goods and services relied upon in the earlier UCAS marks, which may be directed at a combination of undergraduate students, postgraduate students, parents of students (all of which will be from a wide range of different social demographics, backgrounds, areas of the UK and even based outside of the UK), higher education providers, conservatoires, colleges and/or schools, we submit that the relevant consumer will be the broad public at large, and that as a result the degree of attention paid on a comparison of the respective marks will be an average degree."<sup>26</sup>

68. I agree with the opponent's submissions on the identity of the average consumer and it seems to me that the average consumer will be paying at least an average degree of attention to the marks when selecting the services. Applying to educational institutions is an important decision, particularly where the student has to pay fees for the education received. The average consumer will want to ensure that any coordination services cover the range of institutions that interest them, or – from the perspective of a provider – that the services have access to a wide range of potential applicants. They will also want to seek advice from organisations that appear credible. In the case of conference providers, I consider that the attention paid will be no more than average, as the consumer is likely to be more attentive to the content and speakers than the arranger. The services will be selected from websites or brochures so the visual element will be of most importance, although word-of-mouth recommendations will mean that the aural element also has a role in the selection process.

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<sup>26</sup> Written submissions in lieu of a hearing, paragraph 17.


### **Comparison of marks**

69. It is clear from *SABEL v Puma* (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 in *Bimbo* that:

“... it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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 of all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”<sup>27</sup>

70. It would be wrong, therefore, artificially to dissect the 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 the marks.

71. The respective marks are shown below:

Earlier marks	Contested mark
<p style="text-align: center;">UCAS</p>  <p style="text-align: center;">UCAS</p>	 The logo for UKCAS, featuring the letters 'UK' in red, a stylized blue and white flag icon, and the letters 'CAS' in red.

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<sup>27</sup> Paragraph 34.

### *Overall impression of the marks*

72. The 880 mark consists of the word “UCAS” in capital letters and a standard font. The overall impression of the mark lies in the word itself.

73. In my view, the 894 mark consists of the word “UCAS” in a standard font, with the third letter replaced by an upside-down V. I have already considered this mark earlier in my decision and I found that the average consumer would assume that this represented the letter A. The overall impression of the mark lies in the word “UCAS”.

74. The contested mark consists of the capital letters “UKCAS” presented in red in a standard font. The triangular area to the right of the letter K contains a device in red, white and blue, consisting of two blue triangles and red and white lines. The opponent submits that:

“The additional stylisation in the Union Jack will obstruct the additional letter ‘K’ and reduce its impact as the only point of visual difference, particularly if the Application is viewed by the relevant public at even a short distance, with imperfect recollection and/or without the luxury of a side by side comparison. The shared ‘UCAS’ element will be more likely to catch and maintain the attention of the consumer and have a significant impact on the overall impression of the Mark. Indeed, the Mark is dominated by its shared UCAS element.”<sup>28</sup>

75. In my view, the letter K is discernible and the Union Flag device will reinforce the impression that the first two letters signify the location of the services. I find that the more distinctive element of the mark is the letters “CAS”. The device will make a lesser contribution to the overall impression of the mark than the verbal element.

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<sup>28</sup> Written submissions in lieu of a hearing, paragraph 23.

### *Visual comparison*

76. The more distinctive element of the contested mark is reproduced at the end of the 880 mark, which, as a word mark, would cover the word “UCAS” in any standard font, case or colour. The initial letter of the mark is also identical, although the stylised K is a point of difference, with the contested mark having 25% more letters. In my view, the marks are visually similar to a medium degree.

77. To my mind, the stylised A of the 894 mark results in a very slightly lower degree of similarity to the contested mark. Nevertheless, as I found that the average consumer would see this as a letter A, the similarity is not significantly below medium.

### *Aural comparison*

78. Both of the earlier marks would be pronounced “YOO-CAS”. The applicant submits that the contested mark would “sound like two separate words, UK is one word and CAS is another”. I agree with the applicant that the contested mark is likely to be pronounced “YOO-KAY-CAS”, given my finding that the first two letters will be seen as the location of the services. The contested mark has three syllables, and the first and third of these are identical to the two syllables of the earlier marks. I find the marks to be aurally similar to a medium degree.

### *Conceptual comparison*

79. The opponent submits that:

“... inherently, none of the marks under comparison has any overall concept or meaning to the relevant public.”

80. The marks are likely to be seen as acronyms, as they have no inherent meaning as words. The opponent’s marks are conceptually neutral, while the applicant’s mark will suggest goods or services that have a connection with the UK and nothing more than that. Their conceptual impact of the marks is neutral.

### ***Distinctiveness of the earlier mark***

81. There is, as has already been noted, a greater likelihood of confusion if the earlier mark is highly distinctive. The CJEU provided guidance on assessing a mark's distinctive character in *Lloyd Schuhfabrik Meyer*:

“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).

82. I agree with the opponent that the earlier marks have a high degree of inherent distinctiveness. “UCAS” is not a dictionary word, except in the context of the opponent. The opponent also submits that the distinctiveness of the marks has been enhanced through use. The number of applicants each year, market share, turnover and attendance at events in my view are supportive of an enhanced level of distinctiveness in relation to university and college admissions and advisory services concerning higher education. I am not persuaded that enhanced distinctiveness has been shown in relation to education services, and related advisory services, more generally.

### ***Conclusions on likelihood of confusion***

83. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred in paragraph [50] of this decision. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa: see *Canon*, paragraph 17. The distinctiveness of the earlier mark must also be taken into account.

84. Such a global assessment does not imply an arithmetical exercise, where the factors are scored and combined to reveal the likelihood of confusion. I must keep in mind the average consumer of the goods and the nature of the purchasing process. I note that it is generally accepted that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture they have kept in their mind: see *Lloyd Schuhfabrik Meyer*, paragraph 27.

85. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised 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)."

86. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor QC, sitting as the Appointed Person, commented on the passage above, stressing that the examples given by Mr Purvis were not exhaustive and should not be taken as akin to a statutory test:

"81.2 ... the reason why the CJEU stressed the importance of the global assessment is, in my view, because it is supposed to emulate what happens in the mind of the average consumer on encountering, for example, the later mark applied for with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.

81.3 ... when a tribunal is considering whether a likelihood of confusion exists, it should recognise that there are four options:

81.3.1 The average consumer mistakes one mark for the other (direct confusion);

81.3.2 The average consumer makes a connection between the marks and assumes that the goods or services in question are from the same or economically linked undertakings (indirect confusion);

81.3.3 The various factors considered in the global assessment lead to the conclusion that, in the mind of the average consumer, the later mark merely calls to mind the earlier mark (mere association);

81.3.4 For completeness, the conclusion that the various factors result in the average consumer making no link at all between the marks, but this will only be the case where either there is no or very low similarity between the marks and/or significant distance between the respective goods or services;

81.3.5 Accordingly, in most cases, it is not necessary to explicitly set out this fourth option, but I would regard it as a good discipline to set out the first three options, particularly in a case where a likelihood of indirect confusion is under consideration.

81.4 ... I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: 'Taking account of the common element in the context of the later mark as a whole.' (my emphasis)."

87. I shall consider the 880 mark first and return to the 894 mark if necessary. My findings, in summary, were as follows:



- The services are identical per *Meric*;
- The average consumer would be a member of the general public who would be paying at least an average degree of attention. The visual element of the mark would be most important, although the aural would also play a part;
- The marks are visually and aurally similar to a medium;
- The earlier mark has a high degree of inherent distinctiveness which has been enhanced through use in relation to higher education admissions services and advice. However, in the case of this earlier mark, the relevant services are *Education, instruction ... services* and *Providing information, advice and guidance in the field of education, instruction, training*. I found that the distinctiveness of the mark had not been enhanced through use in relation to these services.

88. A high degree of inherent distinctiveness does not rule out imperfect recollection of the earlier mark. The average consumer is unlikely to see the marks side-by-side. It seems to me that the conceptual neutrality of the earlier mark will be important there. It has no meaning that can be readily grasped by the average consumer. Earlier in this decision, I found that both marks are likely to be perceived as acronyms but I think it unlikely that the average consumer will know what the initials stand for. On seeing the contested mark, the average consumer will imperfectly remember the earlier mark and mistake the two, even bearing in mind the shortness of their lengths, given the identity of the services. I find there is a likelihood of direct confusion.

89. In case I am wrong in this, I shall consider whether there is a likelihood of indirect confusion. As the services are identical, it is my view that the average consumer will assume that the marks belong to the same undertaking, with the contested mark being a rebrand (either on a permanent or temporary basis) to promote the UK provenance of its goods and services. I find there is a likelihood of indirect confusion.

90. The section 5(2)(b) opposition based on the 880 mark succeeds and there is no need for me to consider the opposition based on the 894 mark.

### **Section 5(3)**

91. The opposition has succeeded under section 5(2)(b). However, for the sake of completeness, I shall briefly consider the remaining grounds.

92. Section 5(3) of the Act states that a trade mark which is identical with or similar to an earlier trade mark

“shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC) in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

93. Section 5(3A) of the Act states that:

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

94. The conditions of section 5(3) are cumulative:

- i) The opponent must show that the earlier mark has a reputation;
- ii) The level of reputation and the similarities between the marks must be such as to cause the public to make a link between the marks; and
- iii) One or more of three types of damage (unfair advantage, detriment to distinctive character, or detriment to repute) will occur.

95. It is not necessary for the goods and/or services to be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

96. Reputation is a knowledge test: see *General Motors Corporation v Yplon SA*, Case C-375/97, paragraph 23. The figures I have quoted earlier in this decision, together with the news articles and social media activity, in my view show that the opponent has a strong reputation for coordinating and processing applications to higher education institutions within the UK and advisory services relating to applications for admission to higher education. These services are covered by both the 894 and 581 marks (the latter being identical to the 880 mark). I recall that I found that the average consumer would see the stylised 894 mark as “UCAS”, and that would be the distinctive element of both marks. Although the number of EU and international applicants is lower than the number of UK applicants, I consider that the earlier marks would have a reputation in the eyes of potential foreign students, if perhaps not so strong a reputation as it has in the eyes of UK-based students.

97. The factors that I must take into account when considering whether the public would make the link between the marks include the degree of similarity between the respective marks and between the goods and/or services, the extent of the overlap between the relevant consumers for those goods and/or services, and the strength of the earlier mark’s reputation and distinctiveness: see *Intel Corporation Inc v CPM United Kingdom Ltd*, Case C-408/01, paragraph 42.

98. I found the marks to have a medium degree of visual and aural similarity. The services I must consider here are restricted to those for which I find the opponent to have a reputation, namely *coordination and processing of applications for admission to establishments of higher education and advisory services relating to applications for admission to establishments of higher education*. There is some overlap between the relevant consumers for the opponent’s and the applicant’s services. The applicant’s services are specifically connected to EU and international students, but the evidence shows that it is not only UK-based students that use the opponent’s services. I found that the opponent’s mark had a high level of distinctiveness and a strong reputation. Considering all the factors, it seems to me that there would be a link.

99. The opponent has submitted that all three heads of damage are made out. In respect of its claim of unfair advantage, the opponent submits that the applicant would benefit from the opponent’s marketing effort, without having to spend its own time and

effort on marketing its services. The relevant consumer for the purposes of an unfair advantage claim is the consumer of the applicant's services. The high level of distinctiveness of the earlier marks and the strength of their reputation lead me to find that unfair advantage is made out. The applicant has provided no evidence to show that it has due cause to use the mark and so the opposition succeeds under section 5(3).

### **Section 5(4)(a)**

100. Section 5(4)(a) of the Act states that:

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

(a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

...

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

101. It is settled law that for a successful finding of passing off, three factors must be present: goodwill, misrepresentation and damage. Her Honour Judge Melissa Clarke, sitting as deputy Judge of the High Court, conveniently summarised the essential requirements of the law in *Jadebay Limited, Noa and Nani Limited trading as The Discount Outlet v Clarke-Coles Limited trading as Feel Good UK* [2017] EWHC 1400 IPEC:

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

misrepresentation. The burden is on the Claimants to satisfy me of all these limbs.

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

102. My findings in relation to use of the earlier 894 mark lead me to find that the opponent has protectable goodwill associated with the sign **UCAS** in respect of *Admission services relating to applications for admission to educational establishments including universities and/or colleges; coordinating and processing of applications for admission to educational establishments; providing events, information, advisory and consultancy services relating to the aforesaid*. There is, in my view, insufficient evidence suggesting goodwill in respect of *Administration services and education services* more broadly.

103. In *Marks and Spencer PLC v Interflora* [2002] EWCA (Civ) 1501, Lewinson LJ had cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. However, in the light of the Court of Appeal’s later judgment in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, it seems doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes. This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments. I found there to be a likelihood of confusion under section 5(2)(b) of the Act and in my view there will be misrepresentation under section 5(4)(a).

104. The opponent submits that damage is inherently likely and cites the comments of Asplin J in *British Sky Broadcasting Group Plc v Microsoft Corp* [2013] EWHC 1826 (Ch):

“... damage is inherently likely where frequently the customers of a business wrongly connect it to another.”<sup>29</sup>

105. I agree with the opponent that damage is likely, given the closeness of the services, and the opposition succeeds under section 5(4)(a) of the Act.

## **CONCLUSION**

106. The opposition has been successful. The application by Knowledge Well Limited is refused.

## **COSTS**

107. The opponent has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice (TPN) 2/2016. In the circumstances, I award the opponent the sum of £2300 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: £400*

*Preparing evidence: £1250*

*Preparation of written submission in lieu of a hearing: £450*

*Official fees: £200*

***TOTAL: £2300***

108. I therefore order Knowledge Well Limited to pay the Universities and Colleges Admissions Service the sum of £2300, which should be paid within twenty-one days of

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<sup>29</sup> Paragraph 250.

the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 10<sup>th</sup> day of March 2020**

**Clare Boucher  
For the Registrar,  
Comptroller-General**

## **ANNEX A**

### **Goods and Services on which the Opponent Seeks to Rely under Section 5(2)(b) of the Act**

#### **The 894 mark**

##### Class 41

*Advisory services relating to applications for admission to educational establishments; coordination and processing of applications for admission to educational establishments; evaluation services for evaluating candidates for entry to higher educational establishments and for evaluating higher educational establishments to ascertain their suitability for one another; information, consultancy and advisory services relating to all of the aforesaid services.*

#### **The 581 mark**

##### Class 9

*Computer software; computer programs; data recordal and storage media and devices; computer discs; compact discs; DVDs; CD-ROMs; DVD ROMs; downloadable electronic publications; multimedia programs, software and hardware; electronic and computerised publications including books, guides, manuals, and directories; data processing equipment; computer peripheral devices; computer software relating to student applications to educational establishments including universities and/or colleges; computer software for student applications to universities and/or colleges; computer software to provide information on student applications to educational establishments including universities and/or colleges; computer software for coordination and processing of applications for admission to educational establishments including universities and/or colleges; computer software for evaluating candidates for entry to educational establishments including universities and/or colleges and for evaluating higher educational establishments including universities and/or colleges to ascertain their suitability for one another; computer software for assessment and analysis of applications for admission to educational establishments including universities and/or colleges; computer software for assessment and analysis of statements made and references given in applications for admission to educational establishments including universities and/or colleges; computer software for detection, monitoring, assessment and analysis in relation to applications for admission to educational establishments including universities and/or colleges, being anti plagiarism software; anti-plagiarism computer software; downloadable electronic publications in the nature of magazines, guides, directories, brochures, manuals and guides for UK residents seeking to apply to study at universities and colleges in the United Kingdom; downloadable electronic publications in the nature of magazines, manuals, brochures, directories, and guides in the field of studying in the United Kingdom; downloadable electronic publications in the nature of magazines, manuals, brochures, directories, and guides for US residents in the field of studying in*



*the United Kingdom; downloadable electronic publications in the nature of magazines, manuals, brochures, directories, and guides for non UK residents in the field of studying in the United Kingdom; downloadable electronic publications in the nature of magazines, brochures, manuals, directories, and guides for those seeking to apply to study at universities and colleges in the United Kingdom; downloadable electronic publications in the nature of magazines, directories, manuals, brochures and guides for US residents seeking to apply to study at universities and colleges in the United Kingdom; downloadable electronic publications in the nature of magazines, directories, manuals, brochures and guides for non UK residents seeking to apply to study at universities and colleges in the United Kingdom.*

Class 16

*Printed matter, stationery, publications, directories, books, journals, periodicals, magazines, pamphlets, guides, leaflets, manuals and newspapers.*

Class 35

*Promotional, advertising, publicity and marketing services; administration services; administration services relating to applications for admission to educational establishments including universities and/or colleges; data collection, processing, assessment and analysis; collection, processing, assessment and analysis of data relating to applications for admission to educational establishments including universities and/or colleges; collection, processing, assessment and analysis of data relating to statements made and references given in applications for admission to educational establishments including universities and/or colleges; information, consultancy and advisory services relating to all the aforesaid services.*

Class 41

*Advisory services relating to applications for admission to educational establishments including universities and/or colleges; coordination and processing of applications for admission to educational establishments including universities and/or colleges; evaluation services for evaluating candidates for entry to higher educational establishments including universities and/or colleges and for evaluating higher educational establishments, including universities and/or colleges to ascertain their suitability for one another; providing an interactive website featuring advice and information in the field of application to universities and colleges in the United Kingdom; providing an interactive website featuring advice and information for non UK residents in the field of application to universities and colleges in the United Kingdom; providing an interactive website featuring advice and information in the field of studying at universities and colleges in the United Kingdom; providing an interactive website featuring advice and information for non UK residents in the field of studying at universities and colleges in the United Kingdom; providing a website featuring resources, namely, a website featuring primarily non-downloadable publications in the nature of magazines, brochures, directories, manuals and guides in the field of studying in the United Kingdom, and also allowing applications (via non-downloadable software) to study at universities and colleges in the United Kingdom; providing a website featuring resources, namely, a website featuring primarily non-downloadable publications in the nature*

*of magazines, brochures, directories, manuals and guides in the field of studying in the United Kingdom, and also allowing non UK residents to apply (via non-downloadable software) to study at universities and colleges in the United Kingdom; providing a website featuring resources, namely, a website featuring primarily non-downloadable publications in the nature of magazines, manuals, directories, brochures, and guides in the field of studying in the United Kingdom, and also allowing US residents to apply (via non-downloadable software) to study at universities and colleges in the United Kingdom; providing a website featuring non-downloadable videos in the field of studying in the United Kingdom; providing a website featuring non-downloadable videos for US residents on seeking to apply to study at universities and colleges in the United Kingdom; providing a website featuring non-downloadable videos for non UK residents on seeking to apply to study at universities and colleges in the United Kingdom; providing an interactive website featuring advice and information in the field of studying at educational establishments including universities and/or colleges in the United Kingdom; assessment and analysis of statements made and references given in applications for admission to educational establishments including universities and/or colleges; educational services, namely detection, monitoring, assessment and analysis in relation to applications for admission to educational establishments including universities and/or colleges, being anti plagiarism services; information, consultancy and advisory services relating to all of the aforesaid services.*

#### Class 42

*Project studies, namely research relating to education and educational qualifications; information, consultancy and advisory services relating to all of the aforesaid services.*

## **The 880 mark**

#### Class 9

*Software; computer programs; mobile application software; widgets (application software); multimedia programs, software and hardware; software relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; software for tracking, analysis and reporting on progress and outcomes of applications for admission to educational establishments, including reporting on applicants, offers, replies, acceptances, students, demographics, qualifications and profiling of individuals or groups; computer software for providing information on student applications to educational establishments including universities and/or colleges, including courses, educational establishments, the application process, applicants, qualifications, application preparation, application filing and tracking, outcomes, offers, replies, acceptances, fraud, plagiarism, finance, sponsorship; software for evaluating candidates for entry to educational establishments including universities and/or colleges and for evaluating higher educational establishments including universities and/or colleges to ascertain their suitability for one another; software for the administration, coordination, processing,*

*assessment and analysis of applications for admission to educational establishments including universities and/or colleges; software for the administration, assessment and analysis of statements made and references given in applications for admission to educational establishments including universities and/or colleges; software for detection, monitoring, assessment and analysis in relation to applications for admission to educational establishments including universities and/or colleges; anti-plagiarism computer software; software for computer-aided administration and processing of applications for places at educational establishments including universities and colleges, courses, training programmes, vocational training courses; software relating to online social media platforms, blogs, vlogs, chat rooms, forums; computer software and mobile applications for multi-user access to databases and online platforms; recorded and/or downloadable data, statistics, reports, research data and reports, schedules, tables; data processing software and equipment; electronic databases; computer software for database management; computer software and mobile applications for accessing, creating, integrating, browsing and searching databases; electronic directories; electronic bulletin boards; data recordal and storage media and devices; computer discs; multi-media discs; magnetic data carriers, recording discs and other digital recording media; blank or pre-recorded audio cassettes, compact discs, DVDs, CD ROMS, laser-readable disks, video tapes, optical-magnetic discs; pre-recorded computer memory discs and cards; pre-recorded computer data carriers; optical storage media with increased storage capacity; recorded and/or downloadable electronic publications, books, booklets, manuals, guides including study guides, reference manuals, directories, catalogues, brochures, bulletins, periodicals, magazines, newsletters, newspapers, journals, presentations, forms including application forms, pamphlets, leaflets, news articles, advertising materials, visuals, marketing publications, promotional publications, conference materials, events programmes, certificates, curricula, information sheets, questionnaires, reports, statistics and data tables, instructional and teaching materials, cards, postcards, occasion cards, posters, screensavers, tickets, photographs, pictures, drawings, including all the aforesaid relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; recorded and/or downloadable audio and/or visual recordings, podcasts, webcasts, videos, sound recordings, interviews, television programmes, radio programmes, animations, multimedia recordings, including all the aforesaid relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, education, courses, educational establishments, the application process, application preparation, application filing and tracking, and plagiarism; recorded and/or downloadable computer games and quizzes; computer peripheral devices; downloadable ring-tones; downloadable digital screen wallpapers; electronic book readers; digital photo frames; eyewear; lanyards, cords, frames, lenses and cases for use with eyewear, cameras, mobile phones and personal digital assistants; visors; mobile telephone fascias; cameras; mobile phones; telephones; electronic diaries; radios; headphones; earphones; audio speakers; batteries; battery chargers; chargers for mobile phones; magnets; fridge*

*magnets; mouse-mats; computer mice; covers, skins and cases for mobile handheld electronic devices, including telephones, computer tablets, Personal Digital Assistants and electronic book readers; parts and fittings for all the aforesaid goods.*

#### Class 16

*Printed matter; paper; cardboard; printed publications; books; booklets; manuals; guides, including study guides; reference manuals; directories; catalogues; brochures; bulletins; periodicals; magazines; newsletters; newspapers; journals; presentations, printed forms, including application forms; pamphlets; leaflets; advertising materials made of paper or cardboard; printed visuals; signboards of paper or cardboard; marketing publications; promotional publications; conference folders; events programmes; printed awards; printed certificates; printed curricula; printed information sheets; printed questionnaires; printed reports; printed statistics and data tables; flyers; banners made of paper or cardboard; bunting made of paper or cardboard; paper ribbons; paper flags; posters; money clips; vouchers; tickets; visitor cards; visitor books; calendars; agendas; planners; address books; appointment books; journals; sketch books; instructional and teaching materials (except apparatus); cases and containers for stationery; pencil cases; office requisites (except furniture); stationery; envelopes; paper weights; stickers; adhesives for stationery or household purposes; writing materials; drawing instruments; notebooks; notepads; adhesive notepads; desk organisers; files [stationery]; folders; binders; charts; wall charts; printers' type; printing blocks; whiteboards; adhesive stickers; adhesive labels; labels; stamps; decalcomanias; cards; postcards; greeting cards; occasion cards; invitations; cardboard picture mounts; cardboard badges; photographs; art prints; drawings; pictures; bookmarks; book ends; plastic materials for packaging (not included in other classes); packaging made of paper; bags made of paper; gift tags; gift wrap; boxes made of paper or cardboard; luggage tags of paper or cardboard; disposable paper products; parts and fittings for all the aforesaid goods.*

#### Class 18

*Bags; tote bags; all-purpose carrying bags; pouches; wallets; umbrellas; parasols; walking sticks; parts and fittings for all the aforesaid goods.*

#### Class 19

*Floor tiles, not of metal; floor coverings; adhesive floor tiles made of paper; parts and fittings for all the aforesaid goods.*

#### Class 26

*Lanyards for holding badges; parts and fittings for all the aforesaid goods.*

#### Class 35

*Business management; business administration; administration services relating to applications for admission to educational establishments; coordinating and processing of documents; office functions; business and commercial information services; accountancy, book keeping and auditing; administrative*

*data processing; collection and systemisation of business data; information services relating to business matters; coordination, processing and forwarding of official documents, applications for admission and replies to applications for admission all with respect to educational establishments; data collection, processing, assessment and analysis; data aggregation; collection, processing, retrieval, maintenance, assessment and analysis of data, statistics and information in databases, including on-line databases; creating indexes of information, sites and other resources available on a global communications network; compilation and management of computer databases, including on-line searchable databases; collection, processing, assessment and analysis of data, including data relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, wellbeing; collection, processing, assessment and analysis of data relating to statements made and references given in applications for admission to educational establishments; marketing, advertising and promotional services, including online social media campaigns and pay-per-click advertising; coordination and processing of applications for admission to educational establishments; marketing consulting; strategic market analysis services; market segmentation; marketing forecasting; opinion polling; organising and conducting surveys; preparing business reports, including in the fields of studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; market, marketing, business and advertising research, analytics and information services; providing statistical information; on-line data processing services, compilation, analysis and retrieval of market and marketing information and data; receipt and provision of computerised business information data; market analysis reports; preparing business reports; marketing reports and studies; publication of advertising, marketing and promotional materials; distribution of advertising, marketing and promotional materials; business and commercial information services; advertising, promoting and marketing the goods and services of others through communication networks, including through the Internet, websites, social media, search engines, mobile devices, mobile application software, messaging, emails, blogs and other communication channels; business analysis, research and information services; video advertising services; production and dissemination of video recordings for advertising, promotional or marketing purposes; online publication of advertising texts; rental of advertising space on online platforms, including websites and digital applications; promotion of products and services of third parties through electronic communications networks, mobile applications and television broadcasting; business networking services; arranging, organising, presentation and conducting of trade shows, promotional and marketing events, conferences and exhibitions; recruitment services; recruitment consultancy and information services; providing information in the field of careers, apprenticeships, recruitment and job applications; profiling of candidates for job and apprenticeship vacancies; loyalty, incentive and bonus scheme services; arranging subscriptions to access to databases for others; subscriptions to electronic*

*publications and online forums, user groups, chatrooms and blogs; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

#### Class 36

*Financial services; information, advisory and consultancy services relating to money and finance; providing information regarding fees, loans, grants and bursaries; sponsorship services; insurance services; information, advisory and consultancy services regarding insurance; real estate services (including letting agency services); rental of student accommodation; information, advisory and consultancy services regarding lettings and student accommodation; issuance of vouchers and coupons; issuance of tokens of value; charitable fund raising services; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

#### Class 38

*Telecommunications; communication services; broadcasting; webcasting services; streaming services; video, audio and television streaming services; all of the aforesaid including of user-generated content, communications, messages, text, posts, surveys, reports, reviews, opinions, documents, electronic publications, information, data, audio-visual recordings, podcasts, vlogs [video blogs], multi-media recordings, or a combination thereof; news agency services; podcasting; providing access to internet portals and platforms; providing access to global computer networks for the transfer and dissemination of information; providing online and telecommunication facilities for real-time interaction between and among users of computers, mobile and handheld computers, and wired and wireless communication devices; providing access to databases; leasing access time to databases; communication through online blogs; providing on-line chatrooms, forums and bulletin boards; messaging services; electronic mail services; internet social networking, namely the provision of access to social networking Internet websites; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

### Class 39

*Providing information, advisory and consultancy services regarding travel and travel documents (including visas); travel agency services; travel services, including by air, rail, road and sea; arranging and booking of travel; arranging for travel visas, passports and travel documents for persons travelling and/or studying abroad; providing information and arranging of tours, excursions, exploratory travel, expeditions, sightseeing, hitchhiking, trekking, hiking and walking trips, cycling, cultural tours and safaris; car pooling services; providing information and advice regarding car pooling, cycling, public transport and timetables; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

### Class 41

*Education, instruction and entertainment services; providing of training; sporting and cultural activities; vocational training services; providing information, advice and guidance in the fields of education, instruction, training, and entertainment; providing information, advice and guidance relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, education, courses, educational establishments (including universities and colleges), the application process, application preparation, application filing and tracking, and plagiarism, and including by means of an interactive website; evaluation services for evaluating candidates for entry to higher educational establishments and for evaluating higher educational establishments to ascertain their suitability for one another; assessment and analysis of applications for admission to educational establishments; assessment and analysis of statements made and references given in applications for admission to educational establishments; educational services, namely monitoring, collection, processing, assessment and analysis of data in relation to applications for admissions to educational establishments, being anti plagiarism services; organising, arranging, booking, conducting, providing and hosting of exhibitions, educational events, conventions, seminars, workshops, lectures, talks, presentations, classes, appointments, courses, training programmes, tuition, activities, leisure activities, including all of the aforesaid in connection with topics, events and activities in the field of studying in the United Kingdom; organising, arranging, booking, conducting, providing and hosting games, quizzes, competitions, sporting activities, cultural activities, concerts, live performances, theatrical performances, panel games, interactive audience participation events, recreational activities, live stage shows, fashion shows; amusement park and theme park services; academic mentoring; entertainment, educational, recreational and amusement use, including all of the aforesaid in connection with topics, events and activities in the field of studying in the United Kingdom, all provided via computer, electronic and online databases; electronic library services for the supply of electronic information (including archive information) in the form of text, audio and/or video information; publishing services; publication*

*(in print or in electronic form) of publications, books, booklets, manuals, guides including study guides, reference manuals, directories, catalogues, brochures, bulletins, periodicals, magazines, newsletters, newspapers, journals, presentations, forms including application forms, pamphlets, leaflets, news articles, advertising materials, visuals, conference materials, events programmes, certificates, curricula, information sheets, questionnaires, reports, statistics and data tables, instructional and teaching materials, cards, postcards, occasion cards, posters, tickets, photographs, pictures, drawings, including all the aforesaid relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; publishing of electronic publications, electronic texts, electronic books, electronic newsletters, electronic articles, music, sound recordings, images, moving images, graphic works, and other publications in electronic form; providing non-downloadable on-line electronic publications, including publications, books, booklets, manuals, guides including study guides, reference manuals, directories, catalogues, brochures, bulletins, periodicals, magazines, newsletters, newspapers, journals, presentations, forms including application forms, pamphlets, leaflets, news articles, advertising materials, visuals, marketing publications, promotional publications, conference materials, events programmes, certificates, curricula, information sheets, questionnaires, reports, statistics and data tables, instructional and teaching materials, cards, postcards, occasion cards, posters, screensavers, tickets, photographs, pictures, drawings, including all the aforesaid relating to studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; providing educational resources, including audio-visual media, videos, user-generated content, magazines, directories, brochures, manuals and guides; provision, production, development, editing, composition, presentation, distribution, networking, rental and leasing of media content for entertainment and/or educational purposes; production, distribution, presentation, leasing and syndication of audio-video content, multi-media content, videos, podcasts, webcasts, vlogs [video blogs], television programmes, radio programmes, publications, documents, information and data; production, editing, composition, distribution, rental and leasing of blank or pre-recorded audio cassettes, compact discs, DVDs, CD ROMS, laser-readable discs, video tapes, optical-magnetic discs, multi-media discs; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*



## Class 42

*Project analysis studies; technical data analysis services; computerised data analysis services; providing information in the fields project analysis studies, technical data and research; IT services; computer services; software advisory and consultancy services; design, development, installation, rental, updating and maintenance of software, mobile application software, online platforms, online databases; design services; providing quality assurance services; software as a service [SAAS]; platform as a service [PAAS]; software design, development and implementation services; providing online support services for users of software, mobile application software, online platforms and online databases; computer services for accessing databases of content and information; operation of search engines; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for multi-user access to databases and online platforms; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms, including in the fields of studying and training in the United Kingdom, applications for admission to educational establishments (including universities and/or colleges), qualifications, applicants, offers, replies, acceptances, outcomes, students, demographics, individual's profiling, education, marketing, advertising, careers, recruitment, finance, real estate, lettings, student accommodation, welfare, health, well-being; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for tracking, analysis and reporting on progress and outcomes of applications for admission to educational establishments, including reporting on applicants, offers, replies, acceptances, students, demographics, qualifications and profiling of individuals or groups; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for providing information on student applications to educational establishments including universities and/or colleges, including courses, educational establishments, the application process, applicants, qualifications, application preparation, application filing and tracking, outcomes, offers, replies, acceptances, fraud, plagiarism, finance, sponsorship; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for evaluating candidates for entry to educational establishments including universities and/or colleges and for evaluating higher educational establishments including universities and/or colleges to ascertain their suitability for one another; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for the administration, coordination, processing, assessment and analysis of applications for admission to educational establishments including universities and/or colleges; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for the administration, assessment and analysis of statements made and references given in applications for admission to educational establishments including universities and/or colleges; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for detection, monitoring, assessment and analysis in relation to applications for admission to educational establishments including universities and/or colleges; providing temporary use of web-based*

*applications, non-downloadable software, mobile application software and online platforms for detecting plagiarism; providing temporary use of web-based applications, non-downloadable software, mobile application software and online platforms for computer-aided administration and processing of applications for places at educational establishments including universities and colleges, courses, training programmes, vocational training courses; providing temporary use of non-downloadable software, mobile application software and online platforms for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services for interactive communications, including between individuals and educational establishments; computer services for storing, accessing, retrieval, broadcasting, transmission, reception, delivery and conveyance of electronic publications, surveys, reports, reports, reviews, opinions, documents, information, data, statistics, audio and/or visual content, multimedia content, podcasts, vlogs [video blogs], multi-media recordings, user-generated content, communications, messages, text, posts, or a combination thereof; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing publications, documents, reports, electronic media, videos, video files, photographs, still and moving images, graphics, voice, music, text, messages, news, information, data, statistics or information over communication networks; development and design services in relation to electronic publishing; building and maintaining websites and online platforms; storage of data, statistics and information in databases, including on-line databases; storage of market and marketing information and data; storage of computerised business information data; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

#### Class 43

*Hospitality services [food and drink]; temporary accommodation services; providing information regarding temporary accommodation; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

#### Class 44

*Information, advisory and consultancy services relating to health and healthcare; information, advisory and consultancy services relating to the personal welfare of students [health]; information, advisory and consultancy services relating to nutrition and diet; consultancy, advisory and information services*

*relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*

*Class 45*

*Information, advisory and consultancy services relating to fashion; social networking; consultancy, advisory and information services relating to any of the aforesaid services; including all the aforesaid services provided through communication networks, global computer networks, cable, satellite, including provided on-line from a computer, a computer database, the Internet, websites, interactive websites, online platforms, social media, search engines, mobile applications, digital applications, wireless devices, mobile devices, gaming consoles, blogs or other communication channels.*