

O/424/20

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003361972

BY COLAV FRICKERS

TO REGISTER THE FOLLOWING MARK:

Teacher Insight

IN CLASSES 9 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 417000

BY EQUIN LIMITED

BACKGROUND AND PLEADINGS

1. On 19 December 2018, Colav Frickers (“the applicant”) applied to register the trade mark **Teacher Insight** in the UK. The application was published for opposition purposes on 3 May 2019 and registration is sought for the goods and services listed in paragraph 27 below.

2. On 16 July 2019, Equin Limited (“the opponent”) opposed the application based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). For the purposes of its opposition based upon sections 5(2)(b) and 5(3), the opponent relies on the following trade mark:



UK registration no. 3294492

Filing date 5 March 2018; registration date 3 August 2018

3. For the purposes of its opposition based upon section 5(2)(b), the opponent relies on some of the goods and services for which the earlier mark is registered, namely:

Class 9 Application software; Communication software; Education software; Educational software; Software; Software; Software and applications for mobile devices; Scientific research and laboratory apparatus, educational apparatus and simulators; Teacher software; all the aforesaid being provided to schools and educational establishments to help them monitor and track pupil progress.

Class 42 Certification of educational services; Quality assessment; Software as a service; Software as a service [SAAS] services; Software as a service [SaaS].

4. The opponent claims that there is a likelihood of confusion because the respective marks are similar, and the goods and services are identical or similar.

5. For the purposes of its opposition based upon section 5(3), the opponent claims a reputation in respect of all of the goods and services for which the earlier mark is registered, as set out in the **Annex** to this decision. The opponent claims that use of the applicant's mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or reputation of the earlier mark.

6. For the purposes of its opposition based upon section 5(4)(a), the opponent relies upon the sign **INSIGHT**. The opponent claims to have used the sign throughout the UK since 2007 in respect of the following goods and services:

“Application software; Communication software; Computer software; Education software; Educational software; Software; Teacher software; Software being provided to schools and educational establishments to help them monitor and track pupil progress; Educational assessment services; Providing computer-delivered educational testing and assessments; Teaching assessments for counteracting learning difficulties; Analysing educational test scores and data for others; Computer assisted education services; Computer based educational services; Information relating to education, provided on-line from a computer database or the internet; Management of education services; Providing information about education; Setting of educational standards; Teacher training services; Training of teachers; Provision of educational examinations and tests; Quality assessments; Software as a service.”

7. The applicant filed a counterstatement denying the claims made.

8. The applicant is unrepresented and the opponent is represented by Stephens Scown LLP. Only the opponent filed evidence. Neither party requested a hearing and neither party filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE

9. The opponent filed evidence in the form of the witness statement of Andrew James Davey dated 10 January 2020, which was accompanied by 12 exhibits. Mr Davey is one of the Directors of the opponent, a position he has held since August 2007.

10. Mr Davey explains that the opponent is a software development company. He states that its lead product is branded INSIGHT. Mr Davey states that this product was launched in around April 2010 and enables to schools to analyse educational test scores and data.

11. Mr Davey has provided printouts from the opponent's web page dated January 2011, December 2014 and March 2018.¹ These show the word "Insight" used in the body of the text, as well as the following marks:



12. The website states "we have built a simple, online pupil tracking system for primary schools, designed with teachers, for teachers." The pages list benefits of the opponent's software such as "see your pupils' individual progress using a colourful timeline", "instantly compare attainment against national expectation", "ensure intervention programmes are having a positive effect" and "create dynamic reports for all your key groups in a few clicks".

13. Mr Davey confirms that as at 19 December 2018, the opponent's INSIGHT software was being used by 1,200 primary schools. Mr Davey has provided a report from the British Educational Suppliers Association which confirms that there are 20,832 primary schools in the UK, with 16,769 of those in England, 1,238 of those in Wales, 2,012 of those in Scotland and 813 of those in Northern Ireland.² Mr Davey

¹ Exhibit AJD1

² Exhibit AJD3

states that this means the opponent holds a minimum 7% market share based on the number of primary schools in England. As Mr Davey notes, not all primary schools will actually use software of this kind.

14. Mr Davey has provided information about an event sponsored by the opponent.³ The event took place on 27 April 2018 and appears to be a conference for Junior school leaders to discuss current issues, including the opportunity to listen to expert speakers. The event description states that it is “proudly sponsored by”:



15. Mr Davey states that this event took place in Birmingham and that in excess of 100 people attended.

16. Mr Davey has provided the following sales figures for INSIGHT products:⁴

Year	Value of sales of Insight (£)
2010 – 2011	£24,653
2011 – 2012	£71,802
2012 – 2013	£35,385
2013 - 2014	£49,221
2014 - 2015	£90,691
2015 – 2016	£82,662
2016 – 2017	£124,422
2017 – 2018	£277,823
2018 - 2019	£678,721
2019 – 2020	£1,040,278.70 (to date)

³ Exhibit AJD4

⁴ Witness statement of Mr Davey, para. 11

17. A number of invoices have been provided, dated between October 2010 and April 2018.⁵ These show sales to schools located around the country including Cornwall, Cheshire, Wiltshire, Berkshire, London, Cambridgeshire, Tyne and Wear, Oxfordshire and Gloucestershire. They all display either the mark shown in paragraph 14 above or the word “Insight” and all describe a “subscription”.

18. I note that the opponent’s product features in a case study on a website backed by the Department of Education.⁶ However, no information is provided about when this was published.

19. Mr Davey confirms that the opponent does not hold detailed records of its marketing expenditure. However, the opponent estimates this to be “approximately £5,000 from 2010 to 2018”. Mr Davey notes that the opponent relies on word of mouth recommendations and has provided a number of testimonials to support this, 35 of which are dated prior to the relevant date.⁷

20. Mr Davey has, however, provided some examples of some advertisements placed by the opponent in specialist magazines.⁸ Not all of these are dated. However, I note that there are references to the opponent’s mark in publications called *Headteacher* (2011) and *Education Review* (2011). There is also a reference to the opponent’s mark in a publication called *Make The Grade* which, although it is undated, does include a reference which states “Save £20 when you book before 4th May 2011”. It is, therefore, reasonable to infer that this was published at some point during that year.

21. Mr Davey has provided a Google Analytics Report for the opponent’s website www.insighttracking.com.⁹ This confirms that since 1 November 2015, the opponent’s website has had 198,000 users.

22. Mr Davey explains that the opponent also uses Twitter to promote its Insight brand, and has done so since July 2013. A printout of the opponent’s Twitter account, which

⁵ Exhibit AJD5

⁶ Exhibit AJD7

⁷ Exhibit AJD6

⁸ Exhibit AJD9

⁹ Exhibit AJD10

displays a print date of 7 January 2020, shows that at that date the opponent's INSIGHT account had over 2,000 followers. All of the visible tweets are from 2019.

23. Mr Davey has provided a copy of the search results for the term "school assessment tacker" in Google.¹⁰ This lists the opponent's website as the fourth result, beneath three adverts. The search appears to have been carried out on 1 July 2020 (the print date).

DECISION

Section 5(2)(b)

24. Section 5(2)(b) of the Act reads as follows:

"5(2) A trade mark shall not be registered if because –

(a)...

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

25. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years before the application date of the mark in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services identified.

¹⁰ Exhibit AJD12

26. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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

27. The competing goods and services are as follows:

Opponent's goods and services	Applicant's goods and services
<u>Class 9</u> Application software; Communication software; Education software; Educational software; Software; Software; Software and applications for mobile devices; Scientific research and laboratory apparatus, educational apparatus and simulators; Teacher software; all the aforesaid being provided to schools and educational	<u>Class 9</u> Computer programmes for data processing. <u>Class 42</u> Advice and development services relating to computer software; Advisory and information services relating to computer software; Advisory services relating to computer programming;

establishments to help them monitor and track pupil progress.

Class 42

Certification of educational services; Quality assessment; Software as a service; Software as a service [SAAS] services; Software as a service [SaaS].

Advisory services relating to computer software; Advisory services relating to computer software design; Computer and software consultancy services; Computer design research; Computer programming; Computer programming and maintenance of computer programs; Computer programming and software design; Computer programming for data processing; Computer services for the analysis of data; Computer software consultancy; Computer software design; Computer software design and updating; Computer software development; Computer software installation; Computer software installation and maintenance; Computer software maintenance; Consultancy and information services relating to software maintenance; Consultancy in the field of computer software; Consultancy relating to computer software; Creation of computer programmes for data processing; Design and development of computer software for evaluation and calculation of data; Design and development of data processing software; Design, updating and maintenance of computer software; Developing and updating computer software; Developing computer software; Development and creation of computer programmes for data

	<p>processing; Development of computer programs; Development of data programs; Development of software; Development of systems for the processing of data; Development services in the field of computer software and advisory services relating thereto; Installation, maintenance and repair of software for computer systems; Installation, maintenance and updating of computer software; Installation, maintenance, repair and servicing of computer software; Installation, maintenance, updating and upgrading of computer software; Leasing of computer programmes; Leasing of computer programs; Leasing of computer software; Leasing of data processing systems; Maintenance of computer software; Programming of computer software for evaluation and calculation of data; Providing online, non-downloadable software; Providing temporary use of on-line non-downloadable software for the management of data; Rental and maintenance of computer software; Rental of computer software and programs; Technical consultancy relating to the installation and maintenance of computer software.</p>
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28. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for 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.”

29. In the *Treat* case, [1996] R.P.C. 281, Jacob J. (as he then was) identified the following factors for assessing similarity:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

30. “Software [...] being provided to schools and educational establishments to help them monitor and track pupil progress” in the opponent’s specification is essentially software that enables schools to keep track of data in relation to their pupils. In my view, this is identical under the *Meric* principle to “Computer programmes for data processing” in the applicant’s specification. Even if the goods are not identical, there

would be overlap in nature, method of use, and purpose (albeit the specific purposes, such as being for tracking pupil data may differ). There may also be a degree of overlap in user and trade channels. Consequently, even if I am wrong in my finding that the goods are identical, they would be similar to at least a medium degree.

31. Businesses that sell computer software or software as a service are also often responsible for providing additional services, such as advice, development, information and maintenance in relation to that software. Consequently, I consider that there will be overlap in trade channels between “software [...] being provided to schools and educational establishments to help them monitor and track pupil progress” and “software as a service” in the opponent’s specification, and the following services in the applicant’s specification:

Advice and development services relating to computer software; Advisory and information services relating to computer software; Advisory services relating to computer programming; Advisory services relating to computer software; Computer programming; Computer programming and maintenance of computer programs; Computer programming and software design; Computer programming for data processing; Computer software design; Computer software design and updating; Computer software development; Computer software installation; Computer software installation and maintenance; Computer software maintenance; Design and development of computer software for evaluation and calculation of data; Design and development of data processing software; Design, updating and maintenance of computer software; Developing and updating computer software; Developing computer software; Development of computer programs; Development of data programs; Development of software; Development of systems for the processing of data; Development services in the field of computer software and advisory services relating thereto; Installation, maintenance and repair of software for computer systems; Installation, maintenance and updating of computer software; Installation, maintenance, repair and servicing of computer software; Installation, maintenance, updating and upgrading of computer software; Maintenance of computer software; Programming of computer software for evaluation and calculation of data.

There will also be overlap in user between these goods and services. I also consider that there will be complementarity between them.¹¹ I consider the goods and services to be similar to at least a medium degree.

32. I also consider that consumers that might wish to purchase software or software as a service might, alternatively, wish to engage software designers to develop a bespoke product to meet their needs. There will, therefore, be overlap in user between “software [...] being provided to schools and educational establishments to help them monitor and track pupil progress” and “software as a service” in the opponent’s specification and “Creation of computer programmes for data processing” and “Development and creation of computer programmes for data processing” in the applicant’s specification. There may also be competition and an overlap in trade channels. I consider these goods and services to be similar to at least a medium degree.

33. Consultancy, research and advisory services that relate to computer software and its design may be services that are provided to businesses that, themselves, develop and design computer software. However, I also consider that there is scope for these services to be provided directly to the end user. For example, the end user of the software may contract a provider of these services to assess their business and provide them with advice and information about how to meet their software needs. Consequently, I consider that there is overlap in user between “software [...] being provided to schools and educational establishments to help them monitor and track pupil progress” and “software as a service” in the opponent’s specification and the following services in the applicant’s specification:

Advisory services relating to computer software design; Computer and software consultancy services; Computer design research; Computer software consultancy; Consultancy and information services relating to software maintenance; Consultancy in the field of computer software; Consultancy

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

relating to computer software; Technical consultancy relating to the installation and maintenance of computer software.

There may also be a degree of overlap in trade channels. I consider the goods and services to be similar to a medium degree.

34. Software as a service typically involves the licensing of centrally hosted software on a subscription basis. In my view, “software as a service” in the opponent’s specification is identical under the *Meric* principle to the following services in the applicant’s specification:

Leasing of computer programmes; Leasing of computer programs; Leasing of computer software; Leasing of data processing systems; Providing online, non-downloadable software; Providing temporary use of on-line non-downloadable software for the management of data; Rental and maintenance of computer software; Rental of computer software and programs.

Even if I am wrong in this finding, there will be overlap in user, method of use, trade channels, nature and purpose. There may also be a degree of competition between the services. Consequently, I consider these services to be highly similar.

35. That leaves “computer services for the analysis of data” in the applicant’s specification. This is a broad term that could encompass a number of services such as software as a service and the installation and maintenance of computer software for the analysis of data. Consequently, I consider that, at the very least, there will be overlap in user and trade channels between this service and the opponent’s “software as a service” and “software [...] being provided to schools and educational establishments to help them monitor and track pupil progress” and for the same reasons as set out above, there will be at least a medium degree of similarity.

The average consumer and the nature of the purchasing act

36. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods and services. I must then

determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

37. The average consumer for the goods and services will range from business users to members of the general public. In the case of those goods directed at analysis of pupil data, the average consumer will clearly be business users in the education sector. The cost of the purchase is likely to vary, but it is not likely to be at the very highest end of the scale. The frequency of the purchase is also likely to vary, although it is unlikely to be particularly regular. Even where the cost of the purchase is low, various factors will be taken into account by the average consumer such as the data that can be tracked using the software, the ease of use and access to information and the suitability of the service provider for the user’s particular requirements. Consequently, I consider that at least a medium degree of attention will be taken into account. However, I recognise that in relation to goods and services being used in professional sectors (such as education services), where they may be required to meet certain standards (such as school inspections) the level of attention paid may be higher.

38. The goods are likely to be purchased from the shelves of a retail outlet or their online equivalent, or following inspection of a specialist catalogue. Consequently, visual considerations are likely to dominate the selection process. However, I recognise that verbal advice, telephone orders and word-of-mouth recommendations mean that aural considerations cannot be discounted.

39. The services are likely to be purchased from specialist retail outlets or their online equivalents. Alternatively, the services may be purchased following perusal of advertisements. However, I recognise that aural considerations cannot be discounted given that word-of-mouth recommendations are likely to play a part.


Comparison of trade marks

40. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

42. The respective trade marks are shown below:

Opponent’s trade mark	Applicant’s trade mark
	Teacher Insight

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43. The applicant's mark consists of the words TEACHER INSIGHT, presented in title case. The overall impression of the mark lies in the combination of these words. However, I note that where the goods and services may relate to the education sector, the word "teacher" is likely to be seen as descriptive of the intended user of the goods and services and will, therefore, play a lesser role.

44. The opponent's mark consists of the word INSIGHT presented in upper case, with a speech bubble device. The eye is naturally drawn to the element of the mark that can be read, and so it is the word INSIGHT which plays the greater role in the overall impression of the mark, with the device playing a lesser role.

45. Visually, the marks coincide in the presence of the word INSIGHT. I do not consider that the use in title case/upper case has any impact upon this, as registration of a word only mark covers use in any standard typeface. The points of visual difference are the presence of the word TEACHER in the applicant's mark, which is absent from the opponent's mark and the presence of the device in the opponent's mark which is absent from the applicant's. Taking this all into account, I consider the marks to be visually similar to between a low and medium degree.

46. Aurally, the only element of the opponent's mark that will be pronounced is the word INSIGHT, which will be given its ordinary English pronunciation. The word INSIGHT in the applicant's mark will be pronounced identically. The only point of aural difference, therefore, is the word TEACHER in the applicant's mark, which has no counterpart in the opponent's. Consequently, I consider the marks to be aurally similar to a medium degree.

47. Conceptually, the word INSIGHT will be given the same meaning in both marks i.e. to gain an understanding of something. In the context of the opponent's mark, the meaning of this is abstract; it is not clear in relation to what an insight will be gained. However, in the context of the applicant's mark, the conceptual meaning conveyed is that the insight will be provided to someone who is engaged in the provision of education. I do not consider that the device in the opponent's mark will be identified

as conveying any particular meaning and will remain conceptually neutral. Overall, I consider the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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).”

49. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

50. I will begin by assessing the inherent distinctive character of the earlier mark. The earlier mark consists of the word INSIGHT, along with a speech bubble device. In his counterstatement, the applicant states:

“The use of my opponent’s trademark “Insight” is generic and cannot be used to enforce within software or even educational software. Accordingly, you are squatting on any iteration of insight – and are using aggressive misinterpretation of trademark law.”

51. The word INSIGHT is an ordinary dictionary word. I recognise that in the context of goods and services that may relate to data processing or analysis, this may be seen as alluding to the fact that the goods or services will convey some sort of insight to the user. I consider this word to be inherently distinctive to between a low and medium degree. Although I have found the device to play a lesser role in the overall impression of the mark, it is not negligible, and does contribute to the mark’s distinctive character. Overall, I consider the mark to be inherently distinctive to a medium degree. For the avoidance of doubt, if the intention of the applicant is to suggest that the opponent’s mark is devoid of distinctive character and/or descriptive, I do not consider this to be the case and, in any event, the applicant has not sought to invalidate the opponent’s trade mark on this grounds and registration is prima facie evidence of validity.¹²

52. The opponent has filed evidence of the use made of its mark. Mr Davey states that he considers the opponent’s mark to have a 7% market share. This is based upon the number of schools in England and the number of schools currently using the opponent’s software. However, Mr Davey does not state whether it is exclusively schools located in England that use his product, or whether schools in Scotland, Wales and Northern Ireland also use it. I note that none of the invoices provided are addressed to schools outside of England and so it may well be the case that this 7% figure is accurate. On the larger figure, being the total number of primary schools in the UK as a whole, the opponent has over 5.5% of the market.

¹² Section 72 of the Act

53. The opponent's INSIGHT product was launched in around April 2010. Mr Davey has provided sales figures for that product ranging from £24,653 in 2010-2011 to £678,721 in 2018-2019. I note that in the year 2019-2020, the opponent had achieved sales of £1,040,278.70 at the date of Mr Davey's statement, but as the relevant date was in 2018, this does not assist the opponent. I also note that the opponent's website has received a fairly significant number of users since 2015. There is evidence that the use of the mark has been geographically widespread, with invoices addressed to schools located in Cheshire, Wiltshire, Berkshire, London, Cambridgeshire, Tyne and Wear, Oxfordshire and Gloucestershire.

54. The evidence in relation to the amount invested in promoting the mark is limited. By Mr Davey's own admission, the opponent focuses on promoting its business through word-of-mouth and social media, rather than through "traditional advertising". Mr Davey suggests that only around £5,000 has been invested in promoting the mark between 2010 and 2018. It is not clear whether this is in total or per annum. In either case, this is clearly not a significant sum. That being said, the opponent has clearly promoted its mark via its website for a number of years and has sponsored events, in particular, an event for Junior School leaders on 27 April 2018. I note that more than 100 people attended that event. However, given the number of junior school leaders in the UK (based on Mr Davey's figures for the total number of primary schools) this is not a particularly extensive reach. There are also examples of the opponent's mark being promoted in advertising through publications such as *Headteacher*, *Education Review* and *Make The Grade*, although we have no information about the audience for each of these publications. I also note that the opponent has a number of Twitter followers, although it is not clear how many of these would have been following the opponent at the relevant date.

55. I do not consider the fact that the opponent appears as the first result of a search for "school assessment tracker" (after three paid for adverts) to be significant. To my mind, this does not represent the popularity of the opponent's website. Rather, it is likely to be an indicator of the algorithms used by the particular search engine or the fact that the opponent has paid contributions to secure a higher position on search results. In any event, I have no evidence before me about how the search results of such websites are determined and I do not, therefore, consider that this assists the

opponent. Notwithstanding the fact that the opponent's evidence in relation to its advertising expenditure is limited, I am mindful of the number of testimonials from customers that appear on its website.

56. Taking the evidence as a whole into account, I am satisfied that the opponent has established that its mark has acquired a degree of enhanced distinctive character through use. In my view, this increases the distinctive character of the earlier mark to a slightly higher than medium degree.

Likelihood of confusion

57. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

58. I have found the marks to be visually similar to between a low and medium degree and aurally and conceptually similar to a medium degree. I have found the earlier mark to be inherently distinctive to a medium degree, with the word INSIGHT being inherently distinctive to between a low and medium degree. I have found that the distinctive character of the earlier mark has been enhanced through use to a slightly higher than medium degree. I have identified the average consumer to be a member of the general public or a business user. I have found that at least a medium degree

of attention will be paid in the purchasing process, although it may be higher where the average consumer is a business user. I have found that visual considerations will dominate the purchasing process, although I do not discount an aural component. I have found the goods and services to vary from being similar to a medium degree to identical.

59. In my view, the visual differences between the marks will be sufficient to avoid them being mistakenly recalled or misremembered as each other. I do not consider that the presence of the word “Teacher” in the applicant’s mark and the device in the opponent’s mark will be overlooked. Consequently, I do not consider there to be a likelihood of direct confusion.

60. Having recognised the differences between the marks, and taking all of the above factors into account, I consider that the average consumer will conclude that they originate from the same or economically linked undertakings. In my view, the addition of the word “Teacher” in the applicant’s mark will be seen as indicating a sub-brand of the goods and services which are intended for use within the education sector, specifically for use by teachers. The addition of the device in the earlier mark is likely to be seen as an alternative mark being used by the same or an economically linked undertaking. Consequently, I consider there to be a likelihood of indirect confusion.

61. The enhanced distinctiveness of the earlier mark does, of course, go in the opponent’s favour. However, in my view, even if I am wrong in finding enhanced distinctiveness, the addition of the word “Teacher” and the device will still be viewed as outlined above. The fact that a mark has a low level of inherent distinctiveness is not fatal to a finding of confusion and I consider that to be the case here.¹³ In making this finding, I have also considered the fact that the purchasing process is predominantly visual and that the marks are only visually similar to between a low and medium degree.

62. The opposition based upon section 5(2)(b) succeeds in its entirety.

¹³ See, *L’Oréal SA v OHIM*, Case C-235/05 P

Section 5(3)

63. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) 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 repute of the earlier trade mark.”

64. As noted above, by virtue of its earlier filing date the opponent’s mark qualifies as an earlier trade mark pursuant to section 6 of the Act.

65. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Addidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial

compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

66. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Secondly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Thirdly, assuming the first and second conditions have been met, section 5(3) requires that one or more of the types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods and services 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.

67. The relevant date for the assessment under section 5(3) is the date of the application i.e. 19 December 2018.

Reputation

68. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

69. In determining whether the opponent has demonstrated a reputation for the goods and services in issue, it is necessary for me to consider whether its mark will be known by a significant part of the public concerned with the goods and services. In reaching this decision, I must take all of the evidence into account including "the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it."

70. As noted above, the opponent has between a 5.5% and 7% share of the market for software for analysing data for education purposes and software as a service for the same purpose. Clearly, this is not an insignificant market share. Further, sales figures have increased year on year, culminating in £678,721 in 2018-2019 and almost 200,000 users have visited the opponent's website since 2015. There is evidence of the geographical spread of the use of the mark, with invoices being addressed to schools in Cheshire, Wiltshire, Berkshire, London, Cambridgeshire, Tyne and Wear, Oxfordshire and Gloucestershire. Mr Davey confirms that use has been continuous since 2010. The evidence relating to the amount invested in promoting the mark is limited; expenditure in this regard does not appear to have been particularly significant. There are examples of the opponent sponsoring a conference event in its particular sector and of advertisements being placed in relevant publications. There are also 35 testimonials from customers listed on its website, which are dated prior to the relevant date.

71. Taking the evidence as a whole into account, I am satisfied that the opponent has demonstrated that it had a reasonable reputation in the UK at the relevant date for “software provided to schools and educational establishments to help them monitor and track pupil progress” and “software as a service provided to schools and educational establishments to help them monitor and track pupil progress”.

Link

72. As I noted above, my assessment of whether the public will make the required mental ‘link’ between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

For the reasons set out above, I consider the marks to be visually similar to between a low and medium degree and aurally and conceptually similar to a medium degree.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

The applied-for goods and services and the goods and services for which the opponent has demonstrated a reputation will vary from being identical to similar to a medium degree.

The strength of the earlier mark’s reputation

The earlier mark has a reasonable reputation in the UK.

The degree of the earlier mark’s distinctive character, whether inherent or acquired through use

The earlier mark is inherently distinctive to a medium degree, with the word INSIGHT being inherently distinctive to between a low and medium degree. The distinctive character of the earlier mark has been enhanced through use to a slightly higher than medium degree.

Whether there is a likelihood of confusion

I have found there to be a likelihood of indirect confusion.

73. In my view, taking into account the similarities between the marks and the similarities between the parties' respective goods and services, I consider that a significant part of the relevant public will make a link between the marks in use. In my view, it is likely that the applicant's mark will be seen as indicating a category of products that are aimed at the education sector, in particular, teachers. This will be particularly the case for those consumers who are familiar with the fact that the opponent operates within this sector already.

Damage

74. I must now assess whether any of the three pleaded types of damage will arise.

75. In relation to unfair advantage, the opponent states:

"The Applicant takes unfair advantage of the Opponent's reputation by riding on the Opponent's coattails in order to gain a foot hold in the market place and benefit from the reputation that has been built up by the Opponent. The unfair advantage gained from the Opponent's reputation will lead the relevant consumer to call to mind the Opponent's registration and mistakenly believe that the entities are economically linked."

76. I bear in mind that unfair advantage has no effect on the consumers of the earlier mark's goods and services. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to

buy the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark.

77. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

“80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

78. It is clear from the testimonials on the opponent's website that its customers associate its products and services with being easy to use and informative. Taking into account the opponent's reputation, the similarity of the marks, and the similarity of the goods and services, it is clear that there is potential for this image to be transferred to the applicant. The applicant would secure a commercial advantage, benefitting from the opponent's reputation without paying financial compensation and would, therefore, be likely to take unfair advantage of the earlier mark.

79. As damage is made out on the basis of unfair advantage, I do not consider it necessary to go on to consider the opponent's other heads of damage.

80. The opposition based upon section 5(3) succeeds in its entirety.

Section 5(4)(a)

81. Section 5(4)(a) of the Act states as follows:

“5(4) 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 of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

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”.

82. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

83. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“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 three 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)."

84. There is no suggestion that the applicant was using its mark prior to the date of the application in issue. Consequently, the relevant date for the purposes of my assessment is 19 December 2018.

Goodwill

85. The House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) provided the following guidance regarding goodwill:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes an old-established business from a new business at its first start."

86. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

"27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the

enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97* as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

87. However, in *Minimax GmbH & Co KG v Chubb Fire Limited [2008] EWHC 1960 (Pat)* Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

88. Goodwill arises as a result of trading activities. Clearly, the opponent had been trading prior to the relevant date. This is clear from the sales figures provided, the invoices exhibited and the number of schools currently using the opponent's goods and services. Taking all of this into account, I am satisfied that the opponent has a reasonable degree of goodwill in the UK in relation to “software provided to schools and educational establishments to help them monitor and track pupil progress” and “software as a service provided to schools and educational establishments to help

them monitor and track pupil progress”. I am also satisfied that the sign relied upon was distinctive of that goodwill at the relevant date.

Misrepresentation and damage

89. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“.... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

90. I recognise that the test for misrepresentation is different from that for likelihood of confusion in that it entails ‘deception of a substantial number of members of the public’ rather than ‘confusion of the average consumer’. However, as recognised by Lewison L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. Certainly, I believe that to be the case here. I consider that a substantial number of members of the relevant public would be misled into purchasing the applicant’s goods and services in the mistaken belief that they were the services of the opponent. In *Harrods Limited V Harroddian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases like this:

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff’s business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff’s goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff’s reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant’s plastic irrigation equipment might be dissuaded from buying one of the plaintiff’s plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation.

91. In this case, I consider that damage through diversion of sales is easily foreseeable.

92. The opposition based upon section 5(4)(a) succeeds in its entirety.

CONCLUSION

93. The opposition is successful and the application is refused.

COSTS

94. The opponent has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£1,400** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£400
Filing evidence	£800
Official fee	£200
Total	£1,400

95. I therefore order Colav Frickers to pay Equin Limited the sum of **£1,400**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 7th day of September 2020

S WILSON

For the Registrar

ANNEX

Class 9

Application software; Communication software; Computer software; Education software; Educational software; Software; Software; Software and applications for mobile devices; Scientific research and laboratory apparatus, educational apparatus and simulators; Teacher software; all the aforesaid being provided to schools and educational establishments to help them monitor and track pupil progress.

Class 16

Printed matter; Printed publications; Educational publications; Printed reports; all the aforesaid being provided to schools and educational establishments to help them monitor and track pupil progress.

Class 41

Educational assessment services; Providing computer-delivered educational testing and assessments; Teaching assessments for counteracting learning difficulties; Analysing educational test scores and data for others; Computer assisted education services; Computer based educational services; Information relating to education, provided on-line from a computer database or the internet; Management of education services; Providing information about education; Setting of educational standards; Teacher training services; Training of teachers; Provision of educational examinations and tests; all the aforesaid being provided to schools and educational establishments to help them monitor and track pupil progress.

Class 42

Certification of educational services; Quality assessment; Software as a service; Software as a service [SAAS] services; Software as a service [SaaS].