

O/460/20

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003385795

BY S.C.P ATS HOLDING 1

TO REGISTER:



AS A TRADE MARK IN CLASSES 16, 35, 39, 41 AND 43

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 417519 BY

FHT TRAVEL LIMITED

BACKGROUND AND PLEADINGS

1. On 22 March 2019, S.C.P ATS Holding 1 (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The applicant was published for opposition purposes of 31 May 2019 and registration is sought for the following goods and services:

Class 16: Printed matter, books/catalogues, publications; travel guides; travel books.

Class 35: Advertising; business administration; advertising and promotional services; operation and supervision of sales and promotional incentive schemes; product launch services; production of marketing and advertising materials; information and advisory services relating to all the aforesaid services.

Class 39: Transportation of persons and goods by land vehicles, including railway and by sea and inland waterways; providing and arranging holidays, tours and cruises; vehicle rental; airport transfers; car transport; chauffeur services; escorting of travellers, sightseeing [tourism]; guided excursions; information and advisory services relating to all the aforesaid services.

Class 41: Education; entertainment; sporting and cultural activities; ticket agency services (entertainment); hospitality services (entertainment); hostess services (entertainment); booking agency services for theatres, cinemas, exhibitions, shows, nightclubs, discos and music performances; providing and arranging sporting and cultural events; organisation and provision of cultural and educational tours; organisation of meetings and conferences; provision of educational programmes; translation services; interpretation services; information and advisory services relating to all the aforesaid services.

Class 43: Services for providing food and drink; booking and reservation services for hotels, temporary accommodation, restaurants and bars; rental or temporary accommodation; rental of meeting and conference rooms; provision of facilities for meetings and conferences; information and advisory services relating to all the aforesaid services.

2. On 2 September 2019, the application was opposed by FHT Travel Limited (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).

3. The opponent relies on the following trade mark:

FHT TRAVEL

fht travel

(Series of 2)

UK registration no. 3177390

Filing date 29 July 2016; registration date 4 November 2016

(“the opponent’s registration”)

4. The opponent relies upon all of the services for which its mark is registered, as set out in **paragraph 21** below.

5. In its Notice of Opposition, the opponent submits that as a result of the high degree of similarity between the marks, the identity between the marks’ class 35, 39, 41 and 43 services and the nature, target customers and channels of trade in the goods and services of the applicant’s mark, there exists a likelihood of confusion between the marks on the part of the relevant public.

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

7. The applicant is represented by CSY London and the opponent is represented by Forbes Solicitors. Only the opponent has filed evidence. Neither party has requested a hearing and only the opponent has filed written submissions in lieu. I

have taken these into consideration and will refer to them below where necessary. This decision is taken following a careful perusal of the papers.

PRELIMINARY ISSUE

8. In its counterstatement, the applicant stated that:

“2. The Applicant and its predecessors in title have been using in the UK since 1997 various FHT-formative trade marks, including but not limited to FHT (solus), FHTDIRECT and FHTDIRECT.COM (“the FHT Marks”)

3. The FHT Marks have been used as part of a company trading name and as standalone elements in both stylised and unstylised form.

4. The Applicant makes no admission as to the validity or enforceability of UK registration no. 3177390 FHT TRAVEL (“the Earlier Mark”) which has a filing date of 29 July 2016 and forms the sole basis of the opposition”.

9. For reasons that I will now explain, the applicant’s comments regarding its ownership of earlier unregistered right using the letters ‘FHT’ have no bearing on the outcome of this opposition.

10. The ownership of an earlier unregistered right applies where an opposition or application for invalidation under section 5(4)(a) of the Act is raised. That is, where a trade mark shall not be registered (or shall be invalidated) because its use would be contrary to law of passing off, due to the fact that an earlier unregistered right exists. For the avoidance of doubt, the fact that the applicant claims to have used marks bearing the letters ‘FHT’ prior to the opponent’s mark being applied for/registered, is not a defence in law to the opposition under section 5 of the Act. Tribunal Practice Notice 4/2009 explains this as follows:

“The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker’s mark.

4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker's mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark."

11. As set out in the above Tribunal Practice Notice, if the applicant wanted to challenge the validity of the opponent's registration, then the correct course of action would have been to issue proceedings for invalidation. The applicant has not done so. Section 72 of the Act provides that registration shall be taken as prima facie evidence of the validity of a registered trade mark. The opponent's trade mark must, therefore, be regarded as validly registered and, in these circumstances, the law requires priority to be determined according to the filing dates of the applications for registration. This means the opponent's mark has priority.

EVIDENCE

12. The opponent has submitted evidence in the form of the witness statement of Deborah Beckett dated 20 January 2020. Ms Beckett is the opponent's managing director, a position she has held since 22 August 2013. The evidence focuses on the trading activity of the opponent. Ms Beckett states that the opponent began trading under the name FHT Travel on 14 May 2002. Evidence showing the opponent's use of the mark is included in the form of a trading brochure from 2009/2010.¹ Ms Beckett states that the opponent's activities include travel agent

¹ Exhibit DB2

services, advertising, arranging travel and holidays, organising and arranging sporting and cultural events, providing online booking services, transport, and other activities and services related to holidays. The opponent's services are aimed predominantly at students within the United Kingdom. Ms Beckett also states that these activities have been the same since the opponent was incorporated.

13. Ms Beckett confirms that in 2003 the annual turnover for the opponent was £319,274 and for the year ending 31 July 2019, the annual turnover was £3,566,923.² Further evidence is provided by way of travel accreditations from ABTA for 1 July 2019 to 20 June 2020 and ATOL (Air Travel Organiser's Licence) for 1 April 2019 to 21 March 2020.³

14. The evidence then goes on to demonstrate use of the opponent's mark in online search engine results for 'FHT Travel' and 'FHT' that are dated 10 January 2020.⁴

15. Ms Beckett finishes by stating that the opponent has a long history of trading under both the acronym FHT and the name FHT Travel and that its right to use it has not once been challenged by the applicant or any third party. Further, Ms Beckett states that the opponent has never come across the applicant.

DECISION

Section 5(2)(b): legislation and case law

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

“(2) A trade mark shall not be registered if because-

(a) ...

² Exhibit DB3

³ Exhibit DB4

⁴ Exhibit DB5

(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 or association with the earlier trade mark.”

17. Section 5A of the Act states as follows:

“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.”

18. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

19. The mark upon which the opponent relies qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process more than 5 years before the date of the application 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 services for which the marks are registered.

20. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might 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

21. The competing goods and services are as follows:

The opponent's services	The applicant's goods and services
<u>Class 35</u> Promotional services; distribution of advertising brochures; publication of advertising matter; compilation, production and dissemination of advertising matter; advertising services	<u>Class 16</u> Printed matter, books/catalogues, publications; travel guides; travel books.

by means of view data systems (satellite and terrestrial), newspapers, magazines, direct mail, international computer network systems, radio and television; arranging of exhibition stands for advertising purposes.

Class 39

Travel services; travel agency services; tourist services; services for the booking of travel; travel agency and tourist services; arranging of excursions; arranging and conducting of tours; passenger escort services; booking of seats and reservation services for travel and for tickets; advisory, consultancy and information services relating to transportation, travel and tourism; agency services for arranging travel; services for the arranging of transportation of travellers; services for booking travel; agency services for the arranging of transportation of goods; arranging of cruises and expeditions; warehouse storage of goods and of packages; provision of on-line travel information and booking services relating to travel, tours, transport, car and boat rental; operating and organising tours; arranging transportation; transportation of passengers by road and/or rail; sea transport services, chartering of aircraft, transport of

Class 35

Advertising; business administration; advertising and promotional services; operation and supervision of sales and promotional incentive schemes; product launch services; production of marketing and advertising materials; information and advisory services relating to all the aforesaid services.

Class 39

Transportation of persons and goods by land vehicles, including railway and by sea and inland waterways; providing and arranging holidays, tours and cruises; vehicle rental; airport transfers; car transport; chauffeur services; escorting of travellers, sightseeing [tourism]; guided excursions; information and advisory services relating to all the aforesaid services.

Class 41

Education; entertainment; sporting and cultural activities; ticket agency services (entertainment); hospitality services (entertainment); hostess services (entertainment); booking agency services for theatres, cinemas, exhibitions, shows, nightclubs, discos and music performances; providing and arranging sporting and cultural events; organisation and provision of cultural

passengers by air; booking agency services for travel, travel reservation services; travel ticket reservation services, tourist office and tourist agency services; travel agency services; courier and travel guide services; escorting travellers; arranging tours; tourist office services; provision of information and advisory, consultancy and information services in relation to all the aforesaid services.

Class 41

Education and continuous training, educational consultancy; teaching, in particular in the field of language courses; organization of shows (impresario services), musical performances, circus performances, public entertainment, theatrical performances; organization and providing of after-school entertainment; entertainment services provided by holiday resort establishments; holiday camp services [entertainment]; organization of sports competitions; organization and arrangement of cultural and sporting events; reservation services (included in this class) for sporting, scientific and cultural events; providing of information for education purposes; publication of printed matter, in particular of books, magazines,

and educations tours; organisation of meetings and conferences; provision of educational programmes; translation services; interpretation services; information and advisory services relating to all the aforesaid services.

Class 43

Services for providing food and drink; booking and reservation services for hotels, temporary accommodation, restaurants and bars; rental or temporary accommodation; rental of meeting and conference rooms; provision of facilities for meetings and conferences; information and advisory services relating to all the aforesaid services.

catalogues and newspapers, including electronic publications, especially online; organization of exhibitions for cultural and teaching purposes; educational and entertainment services provided by a recreation and amusement park; translation and interpretation services; consultation in the field of education and entertainment; consultation in the field of reservation services for sporting, scientific and cultural events; information about entertainment and entertainment events provided via the Internet; arranging of sporting, scientific and cultural events.

Class 43

Provision of accommodation; arranging of accommodation; provision of temporary accommodation; providing of food and drinks for guests; accommodation bureau services; providing and rental of holiday homes, holiday flats and apartments; providing room reservation and hotel reservation services, providing hotel, boarding house and motel services; catering; services of boarding houses, hotels and motels; arranging of temporary accommodation; provision of on-line booking services relating to accommodation; rental of meeting rooms; information, advisory and

consultancy services in relation to the aforesaid services.	
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22. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

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

- (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.

24. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

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

25. The opponent has submitted that:

“In respect of the goods and services covered by the Earlier Trade Mark and the Proposed Trade Mark, it is further averred by the Opponent that such are identical for the purposes of the Act and established case law, the same broadly covering advertising and promotional services (class 35), travel and travel agency services (class 39), education services (class 41) and accommodation services (class 43), noting that there is also a significant overlap between the aforementioned classes and class 16, in which the Applicant also seeks to register the Proposed Trade Mark, such that the required elements of section 5(2) of the Act have been satisfied by the Opponent.”

Class 16 goods

26. “Travel guides” and “travel books” in the applicant’s specification have no direct counterpart in the opponent’s specification. They will, however, overlap in user with “travel agency services” in the opponent’s specification. The users will be someone who is looking to travel. Further, both goods and services will provide users with information about a particular destination so there will be some overlap in purpose.

These goods and services may also be provided by the same undertaking. The goods and services differ in nature and method of use. I find that these goods and services are similar to between a low and medium degree.

27. “Printed matter, books/catalogues, publications” in the applicant’s specification covers a wide range of goods that can include travel guides and tourism information books. Therefore, there will be some overlap in user and purpose with “travel agency services” in the opponent’s specification. These goods and services may also be provided by the same undertaking. I find these goods and services are similar to between a low and medium degree.

Class 35 services

28. “Advertising” and “advertising and promotional services” in the applicant’s specification falls within the category of “promotional services” in the opponent’s specification. These services are therefore identical under the principle outlined in *Meric*.

29. “Production of marketing and advertising materials” in the applicant’s specification falls within the category of “compilation, production and dissemination of advertising matter” in the opponent’s specification. These services are therefore identical under the principle outlined in *Meric*.

30. “Operation and supervision of sales and promotional incentive schemes” and “product launch services” in the applicant’s specification both describe types of services that are included in the broader category of “promotional services” in the opponent’s specification. These services are therefore identical under the principle outlined in *Meric*. However, if I am wrong in my finding of identity, these services will overlap in trade channels, user, nature and purpose and will, therefore, be similar to a high degree.

31. “Business administration” in the applicant’s specification does not have any direct counterpart with the goods or services listed in the opponent’s specification. In the absence of any submissions to assist me, I can also see no point of overlap in

terms of trade channels, purpose, method of use or nature with any of the opponent's services. The fact that some of the opponent's services may be used by the same users as the applicant's services is not, on its own, sufficient for a finding of similarity. These services are therefore dissimilar.

32. "Information and advisory services relating to all the aforesaid services" in the applicant's specification describes information and advisory services relating to the other services listed within class 35 of its specification. In relation to the above services that I have found identical or highly similar, these services will overlap in user, nature and method of use. They will also overlap in trade channels because an undertaking that provides information and advisory services in respect of advertising and promotional services is also likely to provide the advertising and promotional services covered by the opponent's specification. These services will therefore be similar to a high degree. However, the same finding will not apply to information and advisory services relating to "business administration" in the applicant's specification. I have found "business administration" to be dissimilar to any services in the opponent's specification. It follows that information and advisory services in relation to business administration will be dissimilar to any of the services in the opponent's specification.

Class 39 services

33. "Transportation of persons [...] by land vehicles, including railway and by sea [...]" in the applicant's specification falls within the categories of "transportation of passengers by road and/or rail" and "sea transport services" in the opponent's specification. These services will therefore be identical on the principle outlined in *Meric*.

34. I consider "transportation of [...] goods by land vehicles, including railway and by sea" in the applicant's specification to be similar to a medium degree to "agency services for the arranging of transportation of goods" in the opponent's specification as the services will overlap in user and purpose.

35. “Transportation of persons and goods by [...] inland waterways” in the applicant’s specification will not fall within any of the services in the opponent’s specification. However, these services will overlap in user, method of use and purpose with “sea transport services” in the opponent’s specification. These services will also overlap in trade channels. These services will therefore be highly similar.
36. “Providing and arranging holidays, tours and cruises”, “sightseeing [tourism]” and “guided excursions” in the applicant’s specification all describe services that are commonly provided by a travel agent or tourism operators. These services will fall within the broader category of “travel agency and tourist services” in the opponent’s specification. These services will therefore be identical on the principle outlined in *Meric*.
37. “Provision of on-line travel information and booking services relating to travel, tours, transport, car and boat rental” in the opponent’s specification will overlap in user with “vehicle rental” in the applicant’s specification. They will also overlap in trade channels as an undertaking that provides vehicle rentals is also likely to provide information and booking services in relation to vehicle rental. These services will therefore be similar to a medium degree.
38. “Airport transfers”, “car transport” and “chauffer services” in the applicant’s specification all describe a service for transporting passengers by road and/or rail. These services will therefore fall within the category of “transportation of passengers by road and/or rail” in the opponent’s specification. These services will therefore be identical under the principle outlined in *Meric*. I consider it unlikely that these services will include transport over sea. However, in the event that they do, they will also fall within the category of “sea transport services” in the opponent’s specification and will be identical under the principle outlined in *Meric*.
39. “Escorting of travellers” in the applicant’s mark’s specification has a direct counterpart in the opponent’s specification, although expressed in a slightly different term (“escorting travellers”). These services are identical.
40. “Information and advisory services relating to all the aforesaid services” in the applicant’s specification describes information and advisory services relating to the

other services listed within class 39 of the applicant's specification. Within the class 39 list of services in the opponent's specification, the same term exists, although expressed in a slightly different term ("provision of information and advisory, consultancy and information services in relation to all the aforesaid services"). As a result, the same findings of identity or similarity that I have made above between the services within class 39 of each parties' specification will apply to the "information and advisory services" in respect of all class 39 services in the applicant's mark's specification.

Class 41 services

41. "Education" and "provision of educational programmes" in the applicant's mark's specification will fall within the category of "education and continuous training" in the opponent's specification. These services will therefore be identical under the principle outlined in *Meric*.

42. "Entertainment" in the applicant's specification describes a wide range of entertainment services such as music concerts or theatre productions. It can include entertainment events such as circus performances, after-school entertainment, holiday resort entertainment services and amusement parks. I am of the view that the provision of an entertainment service and the organisation of the entertainment event are the same. As a result, the services "organization of shows (impresario services), musical performances, circus performances, public entertainment, theatrical performances", "organization and providing of after-school entertainment", "entertainment services provided by holiday resort establishments", "holiday camp services [entertainment]" and "entertainment services provided by a recreation and amusement park" in the opponent's specification will all fall within this broader category. Insofar as the applicant's services will cover these services, these services will be identical under the principle outlined in *Meric*. However, in the event that the applicant's services do not cover the specific services contained in the opponent's specification, then they will overlap in user, purpose, trade channels, method of use and nature. These services will therefore be similar to a high degree.

43. "Sporting and cultural activities" in the applicant's specification covers a wide range of sporting and cultural activities. I am of the view that the provision of these events also includes the services of organisation and arrangement of the events. Therefore, these services, together with "providing and arranging sporting and cultural events" in the applicant's specification, will be identical under the principle outlined in *Meric* with "organization and arrangement of cultural and sporting events" in the opponent's specification.
44. "Ticket agency services (entertainment)" and "booking agency services for theatres, cinemas, exhibitions, shows, nightclubs, discos and music performances" in the applicant's mark's specification both describe services for booking tickets in respect of various entertainment events. This will overlap in user and purpose with "reservation services (included in this class) for sporting, scientific and cultural events". The user for both will be someone who wishes to make a reservation for an event. The nature of the services will be the same and there will be an overlap in purpose in that the purpose of each services is to make a booking. There will also be overlap in method of use and trade channels. I therefore find these services to be similar to a high degree.
45. Insofar as "organisation and provision of cultural and educational tours" in the applicant's specification covers cultural tours, it will fall within the broader categories of "organization and arrangement of cultural [...] events" in the opponent's specification and will, therefore, be identical under the principle outlined in *Meric*. Where the applicant's term covers educational tours, it will be fall within the category of "education and continuous training" in the opponent's specification and will, therefore, be identical under the principle outlined in *Meric*.
46. "Hospitality services (entertainment)" in the applicant's specification is a broad category that covers entertainment services that are provided within the hospitality sector. The hospitality sector covers lodging, food and drink services, events, theme parks and transportation. This service can therefore cover services such as entertainment events at hotels, music dining experiences or entertainment shows at theme parks. These services will therefore fall within the categories of "entertainment services provided by a recreation and amusement park", "holiday

camp services [entertainment]” and “organization of shows (impresario services), musical performances, circus performances, public entertainment, theatrical performances” in the opponent’s specification. These services will therefore be identical under the principle outlined in *Meric*.

47. “Hostess services (entertainment)” in the applicant’s specification describes the service of providing a hostess who will then provide entertainment to guests. These will overlap in user and purpose with “holiday camp services [entertainment]”, “entertainment services provided by a recreation and amusement park”, and “organization of shows (impresario services), musical performances, circus performances, public entertainment, theatrical performances” in the opponent’s specification. Further, they may overlap in user, method of use, nature and trade channels. I, therefore, find that these services will be similar to a high degree.

48. “Organisation of meetings and conferences” in the applicant’s specification will overlap in user and purpose with “rental of meeting rooms” in the opponent’s specification. This is because the user of both services will be someone who is looking to organise or arrange a meeting. There may also be overlap in trade channels because the same undertakings may provide both services. These services will therefore be similar to a medium degree.

49. “Translation services” and “interpretation services” in the applicant’s specification do not have any direct counterparts in the opponent’s specification. I note that the opponent’s specification contains “teaching, in particular in the field of language courses” but given that the only similarity in these services is that they relate to languages, I do not consider there to be enough to warrant a finding of similarity. In the absence of any submissions to assist me, I see no overlap in trade channels, purpose, method of use or nature. These services are therefore dissimilar.

50. “Information and advisory services relating to all the aforesaid services” in the applicant’s specification describes information and advisory services relating to the other services listed within class 41 of the applicant’s specification. In relation to the above services that I have found identical, these services will overlap in user, nature and method of use. They will also overlap in trade channels because an

undertaking that provides information and advisory services in respect of those services that I have found to be identical above is also likely to provide those services itself. These services will therefore be similar to a high degree. However, the same finding will not apply to these services in relation to the services that I have found to be similar to varying degrees or to those that I have found dissimilar. I will address these in further detail below.

51. I have found the following services within the applicant's class 41 specification to be similar to be of high similarity to various services within the opponent's specification.

“Hostess services (entertainment)”, “Ticket agency services (entertainment)”, “booking agency services for theatres, cinemas, exhibitions, shows, nightclubs, discos and music performances” and “entertainment”

52. “Information and advisory services relating to all the aforesaid services” in respect of the services at paragraph 51 above will overlap in user with the respective services that I have found them to be similar to. There will also be an overlap in trade channels because an undertaking that provides information and advisory services in respect of these services, is also likely to provide the service itself. These services will be similar to a medium degree.

53. I have found the following services within the applicant's class 41 specification to be of medium similarity to various services contained within the opponent's specification.

“Entertainment”, “hospitality services (entertainment)” and “organisation of meetings and conferences”

54. “Information and advisory services relating to all the aforesaid services” in respect of the services at paragraph 53 above will overlap in user with the respective services that I have found them to be similar to. There will also be an overlap in trade channels because an undertaking that provides information and advisory

services in respect of these services, is also likely to provide the service itself. These services will be similar to between a low and medium degree.

55. I have found the services of “translation services” and “interpretation services” to be dissimilar to any services in the opponent’s specification. Therefore, “information and advisory services relating to all the aforesaid services” in respect of translation and interpretation services will be dissimilar to any of the services in the opponent’s specification.

Class 43 services

56. “Services for providing food and drink” in the applicant’s specification are the same services described in the opponent’s specification, being “providing of food and drinks for guests”. These services will, therefore, be self-evidently identical.

57. “Booking and reservation services for hotels, temporary accommodation [...]” in the applicant’s specification will fall within the category of “booking services relating to accommodation” in the opponent’s specification. These services will therefore be identical under the principle outlined in *Meric*.

58. “Booking and reservation services for [...] restaurants and bars” in the applicant’s specification will overlap in user, method of use and nature with “booking services relating to accommodation” in the opponent’s specification in that both services are booking services. There will also be a limited overlap in purpose given that they both describe services used for making bookings, albeit for different types of services. Further, there will also be overlap in trade channels in that some undertakings provide options for users to book both hotels and restaurants. I therefore find that these services will be similar to a high degree.

59. “Rental or temporary accommodation” in the applicant’s specification is a broad category that will cover a wide range of rental and temporary accommodations such as hotels and holiday rental. These services will be the same as “provision of temporary accommodation” and “providing and rental of holiday homes, holiday

flats and apartments” in the opponent’s specification. These services will therefore be identical under the principle outlined in *Meric*.

60. A conference is defined as a meeting for consultation, exchange of information or discussion.⁵ Given that it is a type of formal meeting, “rental of meeting and conference rooms” in the applicant’s specification will fall within the category of “rental of meeting rooms” in the opponent’s specification. These services will therefore be identical under the principle outlined in *Meric*.

61. “Provision of facilities for meetings and conferences” in the applicant’s specification describes the provision of any type of facility for the purpose of meetings or conferences. These facilities can include the meeting room itself or other types of equipment such as chairs, table and projectors. These services will overlap in user with “rental of meeting rooms” in the opponent’s specification. This is because the user for both services is someone who wishes to host a meeting. Further, there will also be an overlap in purpose between these services, in that the purpose of both services is to provide facilities for the user to be able to host a meeting. There will also be overlap in trade channels in that the undertaking providing the meeting room is also likely to be the same undertaking that provides the other equipment that facilitates the performance of the meeting. These services will therefore be similar to between a high degree.

62. “Information and advisory services relating to all the aforesaid services” in the applicant’s specification describes information and advisory services relating to the other services listed within class 43 of the applicant’s specification. Within the class 43 list of services in the opponent’s specification, the same term exists, although expressed in a slightly different term (“information, advisory and consultancy services in relation to the aforesaid services”). As a result, the same findings of identity, similarity or dissimilarity that I have made above between the services within class 43 of each mark will apply to the “information and advisory services” in respect of all class 43 services in the applicant’s specification.

⁵ <https://www.collinsdictionary.com/dictionary/english/conference>

63. As some degree of similarity between services is necessary to engage the test for likelihood of confusion⁶, my findings above mean that the opposition must fail in respect of the following services, which I have found to be dissimilar:

Class 35: “Business administration; information and advisory services relating to all the aforesaid services”

Class 41: “Translation services”; “interpretation services”; “information and advisory services relating to all the aforesaid services”

The average consumer and the nature of the purchasing act

64. 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 decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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.”

65. Given the broad ranges of the specifications of the parties’ marks, I will assess the average consumer of each class of goods/services separately.

Class 16 goods

⁶ eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA

66. I consider that the average consumer for the goods within the applicant's class 16 specification will be a member of the general public. The costs of the goods at issue are likely to be fairly low. The purchase of these goods is likely to be range from frequent to fairly infrequent.

67. The goods at issue will generally be sold through a range of retail shops, such as book shops, travel agents, supermarkets and their online equivalents. In retail shops, the goods will normally be displayed on shelves where they will be viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods having viewed an image displayed on a webpage. The selection of the goods at issue will be primarily visual, although I do not discount that an aural component may play a part as a result of word of mouth recommendations and advice from sales assistants. When selecting the goods, the average consumer is likely to consider such things as the source of the publication or author of the books and the level of detail contained within the publication, book or guide. I am of the view that the average consumer is likely to pay no more than a medium degree of attention during the selection process of the goods at issue.

Class 35 services

68. Due to the nature and purpose of the class 35 services within the parties' marks' specifications, I consider the average consumers of such services to be business users and members of the general public. While the majority of consumers are likely to be members of the business community, it is not uncommon for members of the public to use these services by way of paying for local adverts in newspapers or online. The frequency of the purchase of these services is likely to vary, however, I note that there is potential for these services to be purchased relatively frequently. The cost of these services will range from low to fairly high.

69. For business users, the act of purchasing these services is likely to follow a measured thought process. Given that the services at issue are in relation to advertising, promotion and launch services, it would be an important choice for the business user to ensure that their business receives the correct quality and quantity of exposure to the most appropriate audience. The business user would want to

ensure that the services they purchase will be provided professionally and will meet their particular business needs. However, for members of the general public, the act of purchasing these services is likely to be more straight forward. The purchasing process for these services would predominantly be visual in nature in that they are likely to be purchased after viewing information on the internet, in advertising or brochures. However, I do not discount that aural considerations will play a role as a result of word of mouth recommendations, consultations from marketing advisors or advice sought from sales assistants. I am of the view that the average consumer is likely to pay a medium degree of attention during the selection process of the services at issue, however, I acknowledge that some business users are likely to pay a higher degree of attention.

Services within classes 39, 41 and 43

70. The average consumer for these services will likely be a member of the general public. However, I acknowledge that the average consumer for some of the services (those services relating to meetings and/or conferences) may be a business user. The services at issue will generally be sold through a variety of sales points including travel agents, transportation companies, entertainment venues, rental car companies and their online equivalents. The purchases are likely to be fairly infrequent and while the majority of the services are likely to be inexpensive, I note that some may be on the higher end of the scale in terms of cost (such as booking holidays). Various factors are likely to be taken into account such as reliability of the service provider, ease of use and the user's particular requirements. A medium degree of attention is likely to be paid during the purchasing process. However, I recognise that for some of the services the level of attention paid will be higher. The services are likely to be purchased following inspection of the premises frontage, websites, brochures/catalogues or advertisements. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that advice may be sought from organisers and bookings placed by telephone or in person. Aural considerations cannot, therefore, be discounted.

Distinctive character of the earlier mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in *Joined Cases C-108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

72. Registered trade marks possess various 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 distinctiveness of a mark can be enhanced by virtue of the use made of it.

73. The opponent has not pleaded that its mark has acquired enhanced distinctiveness. However, for the sake of completeness, I note the following. Although the opponent has not provided a market share figure, they have confirmed that their turnover was £319,274 for the year ending 31 October 2003

and £3,566,923 for the year ending 31 July 2019 which would be a relatively low market share given what must be a significant market. No information is provided about where the mark has been used to enable me to assess the geographical spread of any use. While the evidence contains a brochure of the opponent's services, no information is provided by the opponent about how much has been invested in promoting the mark relied upon or what steps have been taken to advertise under the mark. I, therefore, do not consider that the evidence filed is sufficient to show that the opponent's mark has acquired an enhanced level of distinctive character through use. Consequently, I have only the inherent position to consider.

74. I must assess the inherent distinctiveness of the opponent's registration as a whole. The opponent's registration consists of a series of two word only marks that are 'FHT TRAVEL' for the first mark and 'fht travel' for the second. The letters 'FHT' will be seen as a combination of letters that have no meaning, however, I note that the combination may be perceived as an acronym. The word 'TRAVEL' will be given its ordinary dictionary meaning and, in the context of some of the services, may be seen by the average consumer as identifying an entity that specialises in travel services. I find that the letters 'FHT' themselves are distinctive to a medium degree. Given that the word 'TRAVEL' is allusive to the services offered by the opponent, it will contribute very little to the distinctiveness of the mark. Overall, I find that the opponent's registration has a medium degree of inherent distinctive character.

Comparison of marks


75. It is clear from *Sabel 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.

76. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

77. 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.

78. The respective trade marks are shown below:

Opponent's registration	Applicant's mark
FHT TRAVEL fht travel (Series of 2)	

79. The opponent submits that:

“the distinctive and dominant element of both the Earlier Trade Mark and the Applicant's proposed trade mark (the ‘Proposed Trade Mark’) is the inclusion of the letters “FHT” and “fht”, the same being accompanied by “TRAVEL”/“travel” in the case of the Earlier Trade Mark, and “GLOBAL” in the

case of the Proposed Trade Mark. The term “FHT” is highly distinctive, such that there is a high likelihood of confusion on the part of consumers of the goods or services in question (broadly, consumers of travel related services within classes 35, 39, 41 and 43 (and, in the case of the Proposed Trade Mark, class 16 in respect of goods, being travel literature)). As set out by the CJEU in *SABEL BV v PUMA* (as paragraph 23), “[t]he average consumer normally perceives a mark as a whole and does not proceed to analyse its various details”; therefore, it is clear that a likelihood of confusion is possible as a result of “FHT” being the dominant element of each trade mark.

Overall Impression

The applicant’s mark

80. The applicant’s mark consists of both word and device elements. The word element consists of the words ‘fht GLOBAL’. The letters ‘fht’ are displayed above the word ‘GLOBAL’ and in a larger font. The letter ‘h’ is displayed in green whereas the letters ‘f’ and ‘t’ are white with a grey-blue border. The word ‘GLOBAL’ is displayed in green. The device elements consist of a small green circle that sits above the upright part of the letter ‘h’ and a stylised blue 3D sphere that also sits above the letter ‘h’. These two elements appear to be incorporated into the letter ‘h’ to form what the average consumer may see as a stick-figure of a person holding up a globe. Nonetheless, I consider that the letter ‘h’ will still be clearly identified by the average consumer. While there are also two small horizontal lines that sit either side of the word ‘GLOBAL’, I am of the view that these will play no role in the overall impression of the mark.

81. The combination of the letters ‘fht’ carry no obvious meaning and are likely to be seen as an acronym. The word ‘GLOBAL’ will be given its ordinary dictionary meaning and may be seen by the average consumer to allude to a worldwide service. The word ‘GLOBAL’ will, therefore, have less trade mark significance. Further, the difference in size between these words, means that the letters ‘fht’ will play a greater role than the word ‘GLOBAL’ in the overall impression of the mark. However, while I am of the view that the eye is naturally drawn to the elements of

the mark that will be read, given the size of the device element and its incorporation into the letter 'h' at the centre of the mark, it likely to be seen as playing an equal role in the overall impression of the mark, with the word 'GLOBAL' playing a lesser role.

The opponent's registration

82. I have found above that the letters 'FHT' will have a higher level of distinctive character given the allusive nature of the word 'TRAVEL'. I find that the letters 'FHT' play a greater role in the overall impression of the opponent's registration.

Visual Comparison

83. Visually, the marks coincide with the letters 'FHT'. The marks differ in the words 'TRAVEL' in the opponent's registration and 'GLOBAL' in the applicant's mark. Further, the device element present in the applicant's mark is not present in the opponent's registration. I have found that 'TRAVEL' and 'GLOBAL' will play a lesser role in the overall impression of the marks, however, they will still constitute a visual difference. The device element in the applicant's mark will further differentiate between the marks. The opponent's registration consists of two word only marks that can be used in any standard typeface and registration in black and white will cover the use of the mark in different colours. Taking all of this into account, I find that the marks are visually similar to no more than a medium degree.

Aural Comparison

84. Aurally, the opponent's registration consists of five syllables that will be pronounced 'EFF-HAITCH-TEE-TRA-VUHL'. The device elements of the opponent's registration will not be pronounced. The applicant's mark consists of five syllables that will be pronounced 'EFF-HAITCH-TEE-GLO-BUHL'. The first three syllables of the marks are identical. The fourth syllables will be dissimilar and the fifth syllables will be similar. Given that the average consumer tends to give more focus to the beginning of the marks (see *El Corte Inglés, SA v OHIM Cases*

T-183/02 and T-184/02), I find that the marks are aurally similar to a between a medium and high degree.

Conceptual Comparison

85. The letters 'FHT' in the marks convey no obvious conceptual meaning. They will be seen as an acronym. Further, the word 'TRAVEL' in the opponent's registration indicates a travel service whereas the word 'GLOBAL' in the applicant's mark indicates a global service. I am of the view that if the average consumer sees the word 'global' on travel agency services, it will have connotations to global travel services. However, for other services that are not travel related, this connection will not be made. The device element in the applicant's mark may further enhance the link to a global service as it may be seen by the average consumer to be a person holding up a globe.

86. As the letters 'FHT' have no meaning, the conceptual position regarding that element of the marks will be neutral. However, the addition of the words 'TRAVEL'/'GLOBAL' on travel agency related services will be a point of similarity between the marks. However, on services not relating to travel, these words will be a point of conceptual difference. I therefore find that on travel agency services, the marks are conceptually neutral with points of conceptual similarities, however, on other services, the marks are conceptually neutral with points of conceptual differences.

Likelihood of confusion

87. 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.

88. I have found some of the goods and services to be identical, some to be similar to varying degrees and some to be dissimilar. I have found the average consumer to be either a member of the general public or, for some of the services at issue, a business user who will purchase the goods and services by primarily visual means but I do not discount that an aural component will play a part. I have concluded that the level of attention paid will be mostly medium but may be higher for some services (such as the parties' class 35 services and other services that relate to the booking of holidays). I have found that the opponent's registration is inherently distinctive to between a low and medium degree. I have also found that the marks are visually similar to no more than a medium degree, aurally similar to between a medium and high degree and conceptually neutral with points of conceptual similarities on travel services or points of conceptual differences on other types of services. I have taken these factors into account in my assessment of the likelihood of confusion between the marks.

Direct Confusion

89. While the words 'TRAVEL' and 'GLOBAL' may be overlooked or mistakenly recalled by the average consumer, I do not consider that the differences in the presentation of the marks will be. Notwithstanding the principle of imperfect recollection and taking all of the above factors into account, I consider that the differences between the marks will be sufficient to enable the consumer to differentiate between the parties' marks. This is particularly the case where at least a medium degree of attention is paid during the purchasing process. Consequently, I do not consider there to be a likelihood of direct confusion between the marks, even when they are used on goods or services that are identical.

Indirect Confusion

90. I will now consider whether there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10.

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

91. I have borne in mind that the examples given by Mr Purvis QC are not exhaustive. Rather, they were intended to be illustrative of the general approach.⁷

92. I must now consider the possibility of indirect confusion and whether average consumers would believe that there is an economic connection between the marks or that they are variant marks from the same undertaking as a result of the shared common elements of the marks. I bear in mind that a finding of indirect confusion should not be made merely because the two marks share a common element. It is not sufficient that a mark merely calls to mind another mark. This is mere association, not indirect confusion.⁸

93. I have found that the letters ‘FHT’ will play a greater role in the overall impression of the opponent’s mark and an equal role with the device element in the applicant’s mark. Therefore, I find that it is likely that the average consumer will consider the

⁷ *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10

⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

differences in the stylisation and presentation of the marks as alternative marks being used by the same or economically linked undertakings. Further, even if the average consumer does notice the differences between the words 'TRAVEL' and 'GLOBAL', I am of the view that they will be seen as a logical brand extension of one another (being a mark from an undertaking known as 'FHT' that identifies travel services as opposed to global services and vice versa).

94. Due to the fact that the letters 'FHT' play a significant role in both marks, I find that even on goods and services that are similar to between a low and medium degree, the similarities between the marks are sufficient to offset the lesser degree of similarity in the goods. I therefore find there to be a likelihood of indirect confusion between the marks, even on goods that are considered similar to between a low and medium degree.

CONCLUSION

95. The opposition has succeeded against the majority of goods and services against which it was directed. The application is refused in respect of the following goods and services:

Class 16: Printed matter, books/catalogues, publications; travel guides; travel books;

Class 35: Advertising; advertising and promotional services; operation and supervision of sales and promotional incentive schemes; product launch services; production of marketing and advertising materials; information and advisory services relating to all the aforesaid services.

Class 39: Transportation of persons and goods by land vehicles, including railway and by sea and inland waterways; providing and arranging holidays, tours and cruises; vehicle rental; airport transfers; car transport; chauffeur services; escorting of travellers,

sightseeing [tourism]; guided excursions; information and advisory services relating to all the aforesaid services.

Class 41: Education; entertainment; sporting and cultural activities; ticket agency services (entertainment); hostess services (entertainment); hospitality services (entertainment); booking agency services for theatres, cinemas, exhibitions, shows, nightclubs, discos and music performances; providing and arranging sporting and cultural events; organisation and provision of cultural and educational tours; organisation of meetings and conferences; provision of educational programmes; information and advisory services relating to all the aforesaid services.

Class 43: Services for providing food and drink; booking and reservation services for hotels, temporary accommodation, restaurants and bars; rental or temporary accommodation; rental of meeting and conference rooms; provision of facilities for meetings and conferences; information and advisory services relating to all the aforesaid services.

96. The applicant can, however, proceed to registration in respect of the following goods and services:

Class 35: Business administration; information and advisory services relating to all the aforesaid services.

Class 41: Translation services; interpretation services; information and advisory services relating to all the aforesaid services.

COSTS

97. As the opponent has enjoyed the greater degree of success, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. While the opposition failed against some goods at which it was

aimed, I do not consider it appropriate to reduce the costs award. In the circumstances, I award the opponent the sum of £1,200 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the applicant's counterstatement:	£200
Preparing evidence:	£500
Preparing written submissions in lieu:	£300
Official fee:	£200
Total:	£1,200

98. I therefore order S.C.P ATS Holding 1 to pay FHT Travel Limited the sum of £1,200. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 18th day of September 2020

**A COOPER
For the Registrar**