

O-068-21

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No. 3447587
BY DANIEL SENCIER
TO REGISTER THE TRADE MARK
ONE YEAR NO BEER PIRATES
IN CLASS 44**

AND


**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 419700 BY
OYNB LIMITED**

BACKGROUND

1) On 28 November 2019, Daniel Sencier (hereinafter the applicant) applied to register the trade mark One Year No Beer Pirates in respect of the following services in class 44: Addiction treatment services.

2) The application was examined and accepted, and subsequently published for opposition purposes on 6 December 2019 in Trade Marks Journal No.2019/049.

3) On 5 March 2020 OYNB Limited (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the following trade mark:

Mark	Number	Dates of filing & registration	Class	Specification relied upon
	UK 3421347	14.08.19 08.11.19	41	See annex 1

4) The grounds of opposition are, in summary:

- a) The opponent contends that its mark above and the mark applied for are very similar and that the services applied for are identical / similar to the services for which the earlier mark is registered. As such the mark in suit offends against Section 5(2)(b) of the Act.
- b) The opponent also contends that it has a considerable reputation in its mark in respect of the services for which it is registered. It states that the similarity between the marks and businesses is such that there is a likelihood of consumers assuming a link. It contends that this will enable the applicant to take unfair advantage of the opponent's reputation and free ride on its investment in promoting and advertising the brand. Use of the mark in suit will dilute and tarnish the reputation of the opponent. It contends that the mark in suit offends against section 5(3) of the Act.
- c) As a result of the use made of the sign OYNB One Year No Beer since 2015 the opponent has acquired a substantial amount of goodwill and reputation in its mark in the UK in relation to the

services for which it is registered; such that the average consumer will assume that the services of the applicant are those of the opponent or linked to them and therefore misrepresentation will occur. The mark in suit therefore offends against section 5(4)(a) of the Act.

- d) The opponent alleges that the applicant was a former user of the opponent's services and has now created a competing service using the same name. It also contends that the applicant merely sought registration to extract monies from the opponent in return for withdrawing the application. The mark in suit therefore offends against section 3(6) of the Act.

5) On 28 March 2020 the applicant filed a counterstatement, in which he does not put the opponent to proof of use of its mark. Amongst other comments he states:

- a) "I didn't just choose that name by accident; I was a member of 'One Year No Beer' (OYNB) at the time, when they were a free group. Along with about 50 other members, I was not happy that OYNB were about to charge a subscription fee, so decided to leave and form our own Facebook group. We based ourselves on a virtual ship and called ourselves 'One Year No Beer Pirates'. We still loved the OYNB concept but had become unhappy at how things were evolving."
- b) "Then, for 3 years we sailed happily alongside OYNB, both respecting each other for what we were. The difference being, they charged for a premium service to customers who could afford it, where our offering was very different, minimal in comparison, but free to all. As goes with the territory of their condition, many alcoholics are very poor, and our typical members are often with mental health issues and on a limited income."
- c) "I don't agree that the two marks look similar. 'One Year No Beer Pirates' and 'OYNB One Year No Beer' look and sound distinctly different."
- d) "*Crucially, OYNB claim that the services we offer are "nearly identical" to theirs! That is preposterous in the extreme! It's like saying the Titanic is "nearly identical" to the Woolwich Ferry! The only similarity is that we both try to help alcohol-dependent people. Let's look at the differences:*

- One Year No Beer is a multi-million-pound concern, a blue-chip limited company with nearly 80,000 subscribers. Their offering is extensive! Online courses, podcasts, merchandising, events, etc. You can see all this and more on their state-of-the-art website at <https://www.oneyearnobeer.com> They are administered from modern offices in Berwick with some +40 employees! If you Google 'One Year No Beer' you will not see our group mentioned because we do not, and never have pretended to be OYNB.

- Our offering is FREE. We are simply an online supportive chatroom where +4,000 people with alcohol problems can go to get friendly support. We offer no courses, podcasts, events or merchandising. In the past, if people wanted any of that, and could afford it, we have readily recommended them to OYNB. We are manned by 35 volunteers from around the world who give their time free from their own homes as I do. We have no assets and rely on donations for the upkeep of our website.”

e) “All 'alcohol support' groups are aware of each other on Facebook, and members drift from one to another, we lose and gain members daily. You can't stop people talking, and many other groups are now picking up people from OYNB who have left because they simply don't like what it has become.”

f) “We always had banners on our site and still recommended OYNB which we saw as somewhat of a big brother. As a result, OYNB offered to make us affiliates so that anyone clicking on those adverts for membership or courses would automatically send a small commission back to us; we were delighted! Up to then, we had funded our website development, our only expense, through donations; but their promises never materialised.”

6) Only the opponent is professionally represented and was the only party to file evidence. Both parties seek an award of costs in their favour. Neither party wished to be heard on the issue and so a decision will be made from the papers. Only the opponent filed submissions which I shall take into account as and when necessary.

OPPONENT’S EVIDENCE

7) The opponent filed a witness statement, dated 27 October 2020, by Ruari Fairbairns the Director of OYNB Limited. He contradicts most of the claims made by the applicant in his counterstatement,

others he puts another side to the claim. One such is the affiliation offer, which he says was conditional upon the applicant changing its name.

8) That concludes my summary of the evidence filed, insofar as I consider it necessary.

DECISION

9) Although the UK has left the EU, section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

10) The first ground of opposition is under section 5(2)(b) which reads:

“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.”

11) An “earlier trade mark” is defined in section 6, the relevant part of which states:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark 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.”

12) The opponent is relying upon its trade mark listed in paragraph 3 above which is clearly an earlier trade mark. As the opponent's mark had not been registered for five years at the time that the applicant's mark was filed (28 November 2019), the proof of use requirements do not bite.

13) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

(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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The average consumer and the nature of the purchasing decision

14) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which these 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.”

15) The services at issue in these proceedings are addiction treatment services. Whilst it is clear that in the instant case these services are aimed at alcoholics, they can relate to any form of addiction. Neither side has commented upon how such services are found. I am therefore relying upon my own knowledge from providing funds to a group assisting alcoholics in Manchester when working for the Inner Cities Unit Task Force, as I believe that most addiction services will operate in a similar manner. The average consumer for such items will be the addict, once they have admitted to themselves that they have a problem. The services at issue will typically be offered in magazines and newspapers, on social media and on public noticeboards such as in libraries and churches. The initial selection is therefore primarily visual, although contact with the services provider will often initially be by phone or internet. I must also take into account personal recommendations, so aural considerations must also be considered. Turning now to the level of attention the average consumer will display when selecting these services, the average consumer will need help more than anything and will probably pay only an average level of attention to the group providing it initially. I was informed by the group I assisted that it then depended upon personal chemistry between those seeking and those offering the help as to whether the assistance progressed.

Comparison of services

16) 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 of its judgment 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”.

17) Clearly, the opponent’s mark is registered for services in Class 41 whilst the applicant’s mark is sought for services in class 44. However, it is clear from the applicant’s comments in his counterstatement that he accepts that both parties are engaged in offering alcoholics assistance to stop or manage their dependence upon alcohol. The applicant does not contend that the services are different merely that they go about things in an entirely different manner. Therefore, the opponent


obviously felt under no obligation to provide evidence or submissions on this point. The services are therefore highly similar.

Comparison of trade marks

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

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

Opponent's earlier mark	Applicant's Mark
	One Year No Beer Pirates

20) The opponent's mark has, to my mind, three distinct elements. The pint glass with a line through it, the acronym OYNB, and the words "ONE YEAR NO BEER". It will be clear to anyone seeing the mark that the acronym is an abbreviation of the wording in the mark, and that the pint glass has a line through it to indicate it is "off limits". The wording in the opponent's mark appears in full in the instant mark, albeit with the applicant's mark word "Pirates" at the end. It even has each word shown with the first letter in uppercase and the balance in lower case so it has an obvious acronym of OYNBP". In his

counterstatement the applicant relied heavily upon the difference between each parties logos, clearly unaware that the mark he applied for does not contain the “ship” logo shown in his counterstatement. To my mind, visually there are obvious differences and similarities, Aurally there are more similarities than differences, as the device will not be auralised, conceptually the marks are very similar. Taken overall it is my opinion **that the marks of the two parties must be regarded as similar to at least a medium to high degree.**

Distinctive character of the earlier trade mark

21) 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).”

22) In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.’

40. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out”.

23) Although the opponent’s mark consists of three parts it is immediately obvious to anyone seeing the mark that the acronym relates to the wording and that the device is simply adding to the message of “saying no to alcohol”. Even for alcohol addiction services it is inherently distinctive to at least a medium degree. The opponent has not filed sufficient evidence of use for it to be considered to have enhanced distinctiveness through use.

Likelihood of confusion

24) In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer for the services is an addict who will select the services by predominantly visual means, although not discounting aural considerations and that they will pay an average degree of attention to the selection of such services.
- Overall, there is a medium to high degree of similarity between the opponent's mark and the mark in suit.
- The opponent's mark is inherently distinctive to at least a medium degree, but cannot benefit from enhanced distinctiveness through use.
- The services of the two parties are highly similar.

25) Taking into account all of the factors identified earlier, and allowing for the concept of imperfect recollection, I find that in relation to the services applied for there is a likelihood of consumers being directly confused into believing that the services applied for and provided by the applicant are those of the opponent or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) therefore succeeds in full.**

26) I next turn to the ground of opposition under section 3(6) which reads:

“3(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

27) The relevant case-law covering trade mark applications made in bad faith can be found in the following cases: *Chocoladefabriken Lindt & Sprüngli*, CJEU, Case C-529/07, *Malaysia Dairy Industries*, CJEU, Case C-320/12, *Koton*, CJEU, Case C-104/18P, *Sky v Skykick*, CJEU, Case C-371/18, *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16), *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch), *Copernicus-Trademarks v EUIPO*, General Court of the EU, Case T-82/14, *Daawat Trade Mark, The Appointed Person*, [2003] RPC 11, *Saxon Trade Mark*, [2003] EWHC 295 (Ch), *Mouldpro ApS v EUIPO*, General Court of the EU, Case T-796/17, *Alexander Trade Mark, The Appointed Person*, BL O/036/18, *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch) and *Sky v Skykick* [2020] EWHC, 990 (Ch).

28) The law appears to be as follows:

- (a) While in everyday language the concept of 'bad faith' involves a dishonest state of mind or intention, the concept of bad faith in trade mark law must be understood in the context of trade: *Sky CJEU*.
- (b) Applying to register a trade mark without an intention to use it is not bad faith *per se*. Therefore, it is not necessary for the trade mark applicant to be using, or have plans to use, the mark in relation to all the goods/services covered by the specification: *Sky CJEU*.
- (c) The bad faith of the trade mark applicant cannot, therefore, be presumed on the basis of the mere finding that, at the time of filing his or her application, that applicant had no economic activity corresponding to the goods and services referred to in that application: *Sky CJEU*.
- (d) However, where the trade mark application is filed without an intention to use it in relation to the specified goods and services, and there is no rationale for the application under trade mark law, it may constitute bad faith. Such bad faith may be established where there are objective, relevant and consistent indications showing that the applicant had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark: *Sky CJEU*.
- (e) This may be the case where the exclusive right was sought as part of a strategy of using widely cast trade mark registrations as legal weapons for use against others in opposition proceedings and/or for the purposes of blocking applications by third parties: *Sky EWHC and Copernicus-Trademarks v EUIPO*.
- (f) A trade mark may be applied for in good faith in relation to some of the goods/services covered by the application, and in bad faith as regards others: *Sky CJEU*.
- (g) This may be the case where the applicant has included a specific term in the specification, such as 'computer games', with no intention of using the mark in relation to any such goods, simply to obstruct third parties from using or registering the same mark, or similar marks. It

may also be the case where the applicant has included a broad term, such as 'computer software', with the intention of using the mark in relation to a particular sub-category of such goods/services, but no intention of using the mark in relation to all the other (sometimes very different) sub-categories of goods/services covered by the broad term, with the objective of obstructing third parties from using or registering the mark in relation to such goods/services: *Sky EWHC*.

(h) In deciding whether there was a rationale for registering the trade mark in relation to any particular term, it is necessary to bear in mind that trade mark proprietors have a legitimate interest in seeking protection in respect of goods or services in relation to which they may wish to use the trade mark in future (even if there were no plans to use the mark in relation to the goods/services at issue at the time of filing the application): *Sky EWHC*. It is therefore relevant to consider whether the goods/services in the contested application are related to those for which the mark has been used, or for which the applicant had plans to use the mark.

29) The following points are apparent from the pre-*Sky* case-law about registering trade marks in bad faith:

- (i) Although it may be a relevant factor, the mere fact that the applicant knew that another party was using the trade mark in another territory does not establish bad faith: *Malaysia Dairy Industries*.
- (j) Similarly, the mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith: *Lindt, Koton* (paragraph 55). The applicant may have reasonably believed that it was entitled to apply to register the mark, e.g. where there had been honest concurrent use of the marks: *Hotel Cipriani*.
- (k) However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it may wish to do so in future, and intended to use the trade mark registration to extract payment/consideration from the third party, e.g. to lever a UK licence from an overseas trader: *Daawat*, or to gain an unfair advantage by exploiting the reputation of a well-known name: *Trump International Limited*.

(l) An application may also have been filed in bad faith where the applicant acted in breach of a general duty of trust as regards the interests of another party, including his or her own (ex) company or (ex) partners, or a party with whom there is, or had recently been, a contractual or pre-contractual relationship, such as a licensor, prospective licensor or overseas principal: *Saxon, Mouldpro*; or where a legal agreement prohibits such a filing.

30) The correct approach to the assessment of bad faith claims is as follows. According to *Alexander Trade Mark*, the key questions for determination in such a case are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

31) The applicant's intention (i.e. objective) is a subjective factor which must be determined objectively by the competent authority. An overall assessment is required, which must take account of all the factual circumstances relevant to the particular case: *Lindt*.

32) The matter must be judged at the relevant date, which is the date of the application for registration: *Lindt*.

33) It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull*. Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani*.

34) A statement on the application form that the mark is in use, or there is a *bona fide* intention to use it may, if untrue, provide evidence supporting a bad faith case, but is not sufficient by itself to justify the refusal or cancellation of the registration: *Sky CJEU*.

35) An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull*.

36) The applicant in his counter-statement claimed he had been using its mark for a couple of years, but there was no evidence provided to back up this claim. I also note that the applicant also states that the opponent was using its mark prior to this date and that he was a member of the opponent's group. I am therefore considering the issue as of the date that the applicant filed for registration, 28 November 2019. The applicant, in his counterstatement comments on how events unfolded. He freely admits that he was a member of the opponent organisation and left because of plans to start charging for the service. He set up a rival service offering help for free. He accepts that whilst the two parties have very different philosophies, they both still try to help alcohol-dependent people. The applicant's website also had links to the opponent's website. Whilst I am willing to accept that the applicant thought that the addition of the word "pirate" differentiated his mark from that of the opponent it is clear from my comments earlier in this decision that I do not agree with his analysis. The fact that the applicant's website had links to the opponent would only have served to confirm in the average consumer's mind that the organisations were inextricably linked and as such I find that the mark was applied for in bad faith and the **ground of opposition under section 3(6) succeeds**.

37) In the circumstances I do not intend to consider either of the other grounds of opposition as the position is so clear cut under the two sections I have explored.

CONCLUSION

38) The opposition succeeds under both Section 5(2)(b) ad 3(6).

COSTS

39) As the opponent has been successful it is entitled to a contribution towards its costs.

Preparing a statement and considering the other side's statement	£300
Expenses	£200
Preparing evidence	£200
Submissions	£300
TOTAL	£1000

40) I order Daniel Sencier to pay OYNB Limited the sum of £1000. 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 1st day of February 2021

George W Salthouse
For the Registrar,
the Comptroller-General

ANNEX 1

Opponent's class 41 specification:

Editorial consultation; Education; Education and instruction; Education and instruction services; Education and training; Education and training consultancy; Education and training services; Education, entertainment and sport services; information; Education (Information relating to -); Education information services; Education services; Education services for managerial staff; Education services provided by radio; Education services provided by television; Education services relating to business training; Education services relating to health; Education services relating to

management; Education services relating to meditation; Education services relating to nutrition; Education; Education and instruction; Education and instruction services; Education and training; Education and training consultancy; Education and training in the field of business management; Education and training in the field of occupational health and safety; Education and training services; Education in the field of occupational health and safety; Education information; Education (Information relating to -); Education information services; Education services; Education services for managerial staff; Education services relating to business training; Education services relating to customer satisfaction; Education services relating to management; Education services relating to meditation; Education services relating to modelling; Education services relating to nutrition; Education services relating to physical fitness; Education services relating to quality services; Education services relating to yoga; Education, teaching and training; Educational advisory services; Educational and instruction services relating to sport; Educational and teaching services; Educational and training services; Educational and training services relating to games; Educational and training services relating to healthcare; Educational and training services relating to sport; Educational assessment services; Educational consultancy; Educational consultancy services; Educational courses (Provision of -); Educational courses relating to design; Educational demonstrations; Educational establishments providing courses of instruction (Services of -); Educational information; Educational information services; Educational instruction; Educational services; Educational services for providing courses of education; Educational services in the healthcare sector; Educational services in the nature of coaching; Educational services in the nature of correspondence courses; Educational services relating to business; Educational services relating to management; Educational services relating to physical fitness; Educational services relating to spiritual development; Educational services relating to sports; Educational testing; Electronic publication; Health and fitness training; Health and wellness training; Health club [fitness] services; Health education; Higher education services; Teaching of diet education; Teaching of meditation practices; Technological education services; Training; Training and education services; Training and further training consultancy; Training and instruction; Training consultancy; Training courses; Training courses (Provision of -); Training in communication techniques; Training in yoga; Training of sports teachers; Training of teachers; Training or education services in the field of life coaching; Training (Practical -) [demonstration]; Training related to cooking; Training related to nutrition; Training services; Training services relating to fitness; Training services relating to health and safety; Training services relating to occupational health; Tuition; Tuition in homeopathy; Tuition in management; Tuition in physical fitness; Tuition in recreational pursuits; Tuition in sports; Tutoring; Adult training; Adult tuition; Advisory services relating to training; Demonstration [for instructional purposes].