

O-280-13

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2605767
BY
PRINCIPLE STATE ASSOCIATES
TO REGISTER THE TRADE MARK



copernicus
guiding your business to success

IN CLASSES 35 AND 41

AND

THE OPPOSITION THERETO
UNDER NO 103317
BY
EXICOM AKTIEBOLAG

BACKGROUND

1. On 24 December 2011, Principle State Associates (hereafter the applicant), applied to register the above trade mark in classes 35 and 41 of the Nice Classification system, as follows:¹

Class 35

Advertising and business management consultancy; acquisitions (business-) consulting services; business advice relating to strategic marketing; business consultancy; business consultancy and advisory services; business consultancy (professional-); business consultancy to firms; business management and consultancy services; business management and organization consultancy; business management consultancy; business management consulting; business management consultancy services; business management services relating to the acquisition of businesses; business planning consultancy; business services relating to the arrangement of joint ventures; business strategy services; buyer to supplier matching services; conducting of market research; consultancy relating to the establishment and running of businesses; establishing a network of business contacts (service to assist in-); export promotion services; foreign trade consultancy services; international business representation services; provision of commercial information; strategic business consultancy; strategic business planning; advisory services (business-) relating to the management of businesses; arranging business introductions relating to the buying and selling of products; arranging of trade shows; advisory services relating to business planning.

Class 41

Arranging of seminars relating to business; business training; computer training; conducting of courses relating to business management; courses (training-) relating to management; instruction in the use of computers; providing courses of training; providing training; providing training courses on business management; sales training services; training courses relating to computer software; training in business management; training in the operation of computer programs; training in the use of computers.

2. Following publication of the application on 16 March 2012, Exicom Aktiebolag (the opponent) filed notice of opposition against the application.

3. The grounds of opposition were brought under section 5(2)(b) of the Trade Marks Act 1994 (the Act).

4. The opposition is directed at all of the applicant's services in classes 35 and 41. The opponent relies upon the mark shown below:

Mark details	Services relied upon
CTM 4363297 Mark: Copernicus Filed: 30 March 2005 Registered: 18 April 2007	Class 35 Computerised database, data, file and records management, input, processing, checking, storage and/or preparation of information in databases, compilation, input and systematic ordering of information in databases, business management assistance, business inquiries, business administration and business management assistance with the aid of computer systems, processing, storage,

¹ *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

	<p>preparation and/or checking of computerised information, back-up services (database management); data search services (for third parties) in computer files and on the Internet, computerised database, data, file and records management; input, processing, checking, storage and/or preparation of information in databases; compilation, input and systematic ordering of information in databases; business administration and business management assistance with the aid of computer systems.</p> <p>Class 41 Education and providing of training in the fields of computer programming and computer technology, the Internet, telecommunications; information relating to the aforesaid services.</p>
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5. In its statement of grounds the opponent submits:

“4. The opposed mark is very similar to the opposing mark. When comparing the important part of the opposed mark “Copernicus” with the opposing mark, the marks are in this respect identical. The list of services in the competing marks are both identical and similar. When making an over all [sic] assessment comparing the competing trade marks the result is that there is a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

6. On 12 September 2012, the applicant filed a counter statement. It denies the grounds on which the opposition is based.

7. The opponent’s marks are earlier marks not subject to proof of use because, at the date of publication of the applications, neither of them had been registered for five years.²

8. Both parties filed submissions during their respective periods for filing evidence. The opponent filed submissions in lieu of attendance at a hearing. Neither party requested a hearing, both content for a decision to be made from the papers on file.

DECISION

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

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

(a)....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

² See section 6A of the Act (added by virtue of the Trade Marks (Proof of Use, etc.) Regulations 2004: SI 2004/946) which came into force on 5th May 2004.

Relevant case law

10. In his decision in *La Chemise Lacoste SA v Baker Street clothing Ltd* - BL O/330/10 (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs QC, expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

The CJEU cases

Sabel BV v Puma AG [1998] RPC 199; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77; *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723; *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-6/01; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04; *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P.

The principles

“(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 causes the public to 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 act

11. In accordance with the above cited case law, I must determine who the average consumer is and consider the nature of the purchasing process. The average consumer is reasonably well informed and reasonably circumspect and observant, but with a level of attention likely to vary according to the category of services at issue. The attention paid is likely to vary depending on price and, to some extent, the nature of the services and the frequency of the purchase.

12. The parties' specifications cover a wide range of services that can be aimed at an ordinary member of the public and/or to a more specialised commercial customer. In the case of a consumer seeking, for example, a business management consultant or international business representation services or someone to organise a series of business seminars, there is likely to be a high level of attention paid to the purchase and considerable discussion prior to entering into the purchasing act. In contrast a member of the general public who wishes to take a computer course or access a database is likely to pay a lower level of attention. That said, the purchasing act for all of the respective services will be at least well considered as the average consumer, whether an individual or a commercial undertaking, will take note of, inter alia, the type of service, the cost etc.

Comparison of services

13. The services to be compared are as follows:

The opponent's services	The applicant's services
<p>Class 35 Computerised database, data, file and records management, input, processing, checking, storage and/or preparation of information in databases, compilation, input and systematic ordering of information in databases, business management assistance, business inquiries, business administration and business management assistance with the aid of computer systems, processing, storage, preparation and/or checking of computerised information, back-up services (database management); data search services (for third parties) in computer files and on the Internet, computerised database, data, file and records management; input, processing, checking, storage and/or preparation of information in databases; compilation, input and systematic ordering of information in databases; business administration and business management assistance with the aid of computer systems.</p> <p>Class 41 Education and providing of training in the fields of computer programming and computer technology, the Internet, telecommunications; information relating to the aforesaid services.</p>	<p>Class 35 Advertising and business management consultancy; acquisitions (business-) consulting services; business advice relating to strategic marketing; business consultancy; business consultancy and advisory services; business consultancy (professional-); business consultancy to firms; business management and consultancy services; business management and organization consultancy; business management consultancy; business management consulting; business management consultancy services; business management services relating to the acquisition of businesses; business planning consultancy; business services relating to the arrangement of joint ventures; business strategy services; buyer to supplier matching services; conducting of market research; consultancy relating to the establishment and running of businesses; establishing a network of business contacts (service to assist in-); export promotion services; foreign trade consultancy services; international business representation services; provision of commercial information; strategic business consultancy; strategic business planning; advisory services (business-) relating to the management of businesses; arranging business introductions relating to the buying and selling of products; arranging of trade shows; advisory services relating to business planning.</p> <p>Class 41 Arranging of seminars relating to business; business training; computer training; conducting of courses relating to business management; courses (training-) relating to management; instruction in the use of computers; providing courses of training; providing training; providing training courses on business management; sales training services; training courses relating to computer software; training in business management; training in the operation of computer programs; training in the use of computers.</p>

14. In comparing the services, I bear in mind the following guidance provided by the General Court (GC) in *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks & Designs) (OHIM)*, Case T-133/05, which while referring to goods is equally applicable in principle when considering the parties' respective services:

“29. ...goods can be considered identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

15. Other factors which may be considered include the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281 (hereafter *Treat*) for assessing similarity between goods and services:

(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 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, taking into account how goods/services are classified in trade.

16. I also bear in mind the decision in *El Corte Inglés v OHIM* Case T-420/03, in which the court commented:

“96...goods or services which are complementary are those where there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for the production of those goods or provision of those services lies with the same undertaking (*Case T-169/03 Sergio Rossi v OHIM-Sissi Rossi* [2005] ECR II-685).”

17. I also take note of the case of *Les Éditions Albert René V OHIM* T-336/03, where it was held:

“The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

18. Additionally, there is the guidance provided in *Avnet Incorporated v Isoact Limited* - [1998] F.S.R. 16 (HC):

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

19. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

20. Where appropriate I will, for the purposes of comparison, group related services together in accordance with the decision in *Separode Trade Mark* BL O-399-10 (AP):

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

21. In respect of the services to be compared the opponent states in its submissions dated 4 January 2013 (the paragraphs are not numbered, the relevant sections shown here are on pages 2 and 3 of those submissions):

“All the services in the [applicant’s] trade mark application are similar to the [opponent’s] trade mark registration.

In class 35 [the applicant] applies for a range of business management services which are in principle identical or similar to the [opponent’s] trade mark in the same class, Business management assistance... Business administration and business management assistance with the aid of computer systems”. Advertising is also similar to management assistance. “Business consulting services” and “advisory services” are very similar to “business management assistance”. The various business services are also similar to “Business management assistance”, “business enquiries”, e.t.c. Even “buyer to supplier matching services, conducting of market research...and export promotion services, foreign trade consultancy services, international business representation services” is similar to “business management assistance.”

In class 41 of the [applicant’s] trade mark application, the services “arranging of seminars relating to business...and courses (training) in relation to... business management” is [sic] similar to those in the [opponent’s] trade mark class 41 namely “education and providing training in the fields of programming and computer technology, the internet, telecommunication”.

Several of the services in the [applicant's] trade mark application class 41 mentioned above is [sic] similar with those in the [opponent's] trade mark registration in class 35 'business management assistance". The [applicant's] services in class 41, "Arranging seminars relating to business, business training, conducting courses relating to business management, courses (training) relating to management...providing training, providing training courses on business management" is [sic] similar to those in [the opponent's] trade mark class 35 "business management assistance". Even if the services are in different classes, both services contains [sic] different business management services which are services directed to the same target group and services which are offered simultaneously to the same target group.

In the [applicant's] trade mark application class 41, "Training courses [relating] to computer software" and "training in the operation of computer programs, training in the use of computers" is [sic] similar to the [opponent's] registration in class 41, 'education and providing of training in the fields of computer technology, the Internet and telecommunication".

22. The applicant states in its submissions dated 5 March 2013:

"In class 35 [the opponent] puts forward a catch all statement that while they market a software product that is a project tool, this in some way can be confused with using Microsoft basic products as a means to deliver information to clients such as Excel or Word.

...

In class 41 [the applicant] offers management and IT training in respect of generic products as detailed on the website. These products do not, have not and never will include the products of [the opponent]."

The applicant's services in class 35

23. In making a comparison of both parties' services I must consider the opponent's specification as registered, since it is not subject to proof of use. This must be compared with the applicant's specification as it appears in the application.

24. In its specification the opponent has the terms, 'business management assistance' and 'business administration'. These are broad terms which include many of the applicant's business consultancy services. In accordance with the decision in Meric I find the following to be identical:

business management consultancy; acquisitions (business-) consulting services; business advice relating to strategic marketing; business consultancy; business consultancy and advisory services; business consultancy (professional-); business consultancy to firms; business management and consultancy services; business management and organization consultancy; business management consultancy; business management consulting; business management consultancy services; business management services relating to the acquisition of businesses; business planning consultancy; business services relating to the arrangement of joint ventures; business strategy services; consultancy relating to the establishment and running of businesses; establishing a network of business contacts (service to assist in-); strategic business consultancy; strategic business planning; advisory

services (business-) relating to the management of businesses; advisory services relating to business planning.

25. The term, '*provision of commercial information*' is included within business management assistance and also business enquiries, in accordance with *Meric* these are identical services.

26. 'Advertising, conducting of market research, export promotion services and arranging of trade shows' are promotional services which aim to raise the profile of a business and attract new customers. At their core these services are not the same as business management or business administration services which facilitate the running of a business. Consequently, I find these services to be dissimilar to those of the opponent.

27. The remaining services in the applicant's specification are '*international business representation services; arranging business introductions relating to the buying and selling of products, buyer to supplier matching services*' and '*foreign trade consultancy services*'. These are all third party services of the type which may be used by a business but that are not part of day to day management or administration functions of that business. They all have an element of business promotion as part of their core meaning, either in representing the business or by facilitating the buying and selling of products/services, but these services are one step removed from business administration and management. In the absence of any submissions from the opponent to explain why it considers these services in class 35 of the applicant's specification to be similar to its own services in class 35; and having considered the nature of the services, their intended purpose, their method of use and whether they are in competition with each other or are complementary, I can find no meaningful areas in which the competing services coincide. As a consequence I find these services dissimilar to those in the applicant's specification.

The applicant's services in class 41

28. In class 41 the opponent relies on '*Education and providing of training in the fields of computer programming and computer technology, the Internet, telecommunications; information relating to the aforesaid services.*' The applicant's specification includes '*computer training*', '*instruction in the use of computers*', '*training courses related to computer software*', '*training in the operation of computer programs*' and '*training in the use of computers*', all of which are identical to the opponent's services.

29. The terms '*providing courses of training*', '*providing training*' and '*business training*' are all broad terms which include the services offered by the opponent. Consequently, in accordance with the decision in *Meric* these are identical services.

30. The applicant's services '*conducting of courses relating to business management*', '*courses relating to management*', '*providing training courses on business management*' and '*training in business management*', are comparable in accordance with the decision in *Separode* and I will consider them together. I will consider these in addition to '*sales training services*'. The users of these services and those of the opponent may be an individual or a business. The parties' services will be used to improve the skills and knowledge of those undertaking the training. In the opponent's case the training relates to computer programming and computer technology, the Internet and telecommunications. The training provided by the applicant is in the business and management fields. Whilst the subject matter of the training being provided is different at a high level, I would expect there to be an area of overlap to the extent that business management is likely to include a

necessary understanding of telecommunications, the internet, etc in advertising, sales and day to day business management. However, since computer technology and telecommunications are a necessary part of our day to day lives this is not sufficient of itself for a finding of similarity. This type of training is likely to be provided face to face in a classroom or conference venue, though, may also include an electronic element. The training is not complementary in the sense that one is indispensable for the other, nor are they in competition. Taking all of these factors into account I find these services to be dissimilar.

31. The applicant's specification includes the term '*arranging of seminars relating to business*'. In accordance with Avnet I must consider the core meaning of the services. In this case the applicant's services are the arranging of seminars rather than the execution of the seminars themselves. However '*seminars for business*' can include any number of business related subjects which could include those offered by the opponent. Consequently, in absence of any submissions from the parties, whilst the services themselves are one step removed, in my view this does not necessitate a finding that there is no similarity, where the subject matter of the seminars being arranged and those being executed by the opponent could be identical. Consequently, I find there to be a degree of similarity, though at a low level.

Comparison of marks

32. The marks to be compared are as follows:

The opponent's mark	The applicant's mark
<p>Copernicus</p>	

33. In making a comparison between the marks, I must consider the respective marks' visual, aural and conceptual similarities with reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components³, but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details.

34. The opponent's mark consists of the single word 'Copernicus' in title case. No part of the word is stylised or emphasised in any way. Consequently, the mark does not possess any distinctive or dominant elements; the distinctiveness lies in the mark as a whole.

35. The applicant's mark consists of a circular device made up of concentric circles, each of which has a small gap. On close inspection the impression it creates is that of a maze.

³ *Sabel v Puma AG, para.23*

At the centre of this device is the letter C in red type. The circular device makes up the top half of the mark. Below it is the word 'Copernicus' presented in red, in lower case. This in turn is presented above the five word phrase 'guiding your business to success' which is in smaller, lower case, pale grey lettering.

36. In its submissions the applicant states:

"The letter 'C' within the logo is differentiated by colour and emboldened, it is clearly distinctive."

37. The applicant refers to the colouring of its mark as one of the elements which distinguishes it from the opponent's mark. This does not have a bearing on the issue of similarity as neither party's mark is limited to any particular colour. The matter must be assessed on the similarity between the respective marks without regard to colour.⁴

38. The circular device is a distinctive element of the mark and has a prominent position within the mark as a whole. However, the word 'Copernicus' is also a distinctive element and is the part of the mark which will be articulated.

39. The applicant states that the phrase 'guiding your business to success' "relates to the management consultancy services provided". This supports my view that this phrase is non-distinctive in the mark as a whole as it simply describes the desired outcome following use of the service being provided and would be afforded no trade mark significance by the average consumer. There is a general principle that words in trade marks "speak louder" than devices which, whilst not a rule of law, is an important factor to be kept in mind. In my view, the word 'Copernicus' is a distinctive element and the dominant element of the applicant's mark.

Visual and aural similarities

40. The opponent's mark consists of the word 'Copernicus' presented in title case. The applicants mark is the word 'copernicus' presented in lower case below a circular device. Any similarity between the marks rests in the common word 'copernicus' which is the totality of the opponent's mark and the dominant and distinctive element of the applicant's mark. Taking these factors into account I find there to be a high degree of visual similarity between the marks. This feeds into the phonetic comparison because Copernicus will be pronounced identically in both marks; This is the element which is more likely to be articulated in use than the non-distinctive words "guiding your business to success". Consequently, I also find that there is a high degree of aural similarity between the marks

Conceptual similarities

41. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.⁵ The assessment must be made from the point of view of the average consumer.

42. Britannica Encyclopedia's entry for Copernicus reads as follows:

'Copernicus, Nicolaus

⁴ *Specsavers International Healthcare Ltd v Asda Stores Ltd (No.2) [2011] FSR 1, Mann, J.*

⁵ *This is highlighted in numerous judgments of the GC and the CJEU including Ruiz Picasso v OHIM [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.*

*(born Feb. 19, 1473, Toruń, Pol.—died May 24, 1543, Frauenburg, East Prussia) Polish astronomer...By attributing to Earth a daily rotation around its own axis and a yearly revolution around a stationary Sun, he developed an idea that had far-reaching implications for the rise of modern science.*⁶

43. The average consumer cannot be assumed to know the meaning of everything. In the *Chorkee* case (BL O-048-08), Anna Carboni, sitting as the Appointed Person, stated in relation to the word CHEROKEE:

“36. ...By accepting this as fact, without evidence, the Hearing Officer was effectively taking judicial notice of the position. Judicial notice may be taken of facts that are too notorious to be the subject of serious dispute. But care has to be taken not to assume that one’s own personal experience, knowledge and assumptions are more widespread than they are.

37. I have no problem with the idea that judicial notice should be taken of the fact that the Cherokee Nation is a native American tribe. This is a matter that can easily be established from an encyclopaedia or internet reference sites to which it is proper to refer. But I do not think that it is right to take judicial notice of the fact that the average consumer of clothing in the United Kingdom would be aware of this. I am far from satisfied that this is the case. No doubt, some people are aware that CHEROKEE is the name of a native American tribe (the Hearing Officer and myself included), but that is not sufficient to impute such knowledge to the average consumer of clothing (or casual clothing in the case of UK TM no. 1270418). The Cherokee Nation is not a common subject of news items; it is not, as far as I am aware, a common topic of study in schools in the United Kingdom; and I would need evidence to convince me, contrary to my own experience, that films and television shows about native Americans (which would have to mention the Cherokee by name to be relevant) have been the staple diet of either children or adults during the last couple of decades.”

44. Similarly in this case, I am aware of the identity of Copernicus and can establish it very quickly. However, in the absence of any evidence from the parties to the contrary, I am not able to take judicial notice of the fact that the average consumer for the services at issue would know it.

45. Whatever the average consumer’s knowledge of the identity of Copernicus actually is, whether that be a detailed knowledge or no recognition, to the extent that the average consumer may consider ‘Copernicus’ to be an invented word, it will be the same in respect of both marks. I have already concluded that the additional words ‘guiding your business to success’ in the applicant’s mark are non-distinctive for the services in classes 35 and 41. Taking all of these factors into account, I find the marks to possess a very high degree of conceptual similarity.

⁶ *Britannica Concise Encyclopedia*. Copyright © 1994-2012 Encyclopedia Britannica, Inc

Distinctive character of the earlier mark

46. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the services for which it has been used as coming from a particular undertaking and thus to distinguish those services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

47. The earlier mark consists entirely of the word 'copernicus' which does not have a meaning in respect of the services in classes 35 or 41. I find there to be a high degree of distinctive character.

Likelihood of confusion

48. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind.⁷ I must also keep in mind the average consumer for the services, the nature of the purchasing process and have regard to 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.

49. I have found the marks to be visually, aurally highly similar and conceptually very highly similar. I have found there to be a high level of inherent distinctive character in the earlier mark.

50. Given the nature of the parties' services I have identified that the average consumer will include any members of the general public taking part in training courses, accessing databases, etc. and professional consumers seeking to purchase consulting services, seminar organisation, etc, which will self evidently require a higher level of attention to be paid. I have found that some of the services are identical, some are highly similar and some similar to a low degree and some are dissimilar.

51. In the case of services which I have concluded are dissimilar, I need not go on to consider the similarity of the marks.⁸ In respect of the remaining services, taking all of these factors into account, the similarity of the marks is such that in the context of identical or similar services (even those where similarity is at a low level) there will, in my view, be direct confusion (where one mark is mistaken for the other). Even if I am wrong in this, the similarity between the parties' marks is such that there will be indirect confusion (where the average consumer believes the respective services originate from the same or a linked undertaking).

⁷ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27.

⁸ *The test is a cumulative one, see Vedral SA v OHIM* C-106/03

CONCLUSION

52. The opposition succeeds in respect of:

Class 35

Business management consultancy; acquisitions (business-) consulting services; business advice relating to strategic marketing; business consultancy; business consultancy and advisory services; business consultancy (professional-); business consultancy to firms; business management and consultancy services; business management and organization consultancy; business management consultancy; business management consulting; business management consultancy services; business management services relating to the acquisition of businesses; business planning consultancy; business services relating to the arrangement of joint ventures; business strategy services; consultancy relating to the establishment and running of businesses; establishing a network of business contacts (service to assist in-); foreign trade consultancy services; provision of commercial information; strategic business consultancy; strategic business planning; advisory services (business-) relating to the management of businesses; advisory services relating to business planning.

Class 41

Arranging of seminars relating to business; business training; computer training; instruction in the use of computers; providing courses of training; providing training; training courses relating to computer software; training in the operation of computer programs; training in the use of computers.

53. The opposition fails in respect of:

Class 35

Advertising, conducting of market research, export promotion services, arranging of trade shows, international business representation services, arranging business introductions relating to the buying and selling of products, buyer to supplier matching services and foreign trade consultancy services.

Class 41

Conducting of courses relating to business management, courses relating to management, providing training courses on business management, training in business management, and sales training services in class 41.

COSTS

54. Both the opponent and the applicant have achieved a measure of success. Consequently, the parties should bear their own costs and I decline to make an award.

Dated this 10th day of July 2013

**Ms Al Skilton
For the Registrar,**