

O-414-15

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3043083
BY PIE CORBETT CONSULTANCY LIMITED
TO REGISTER THE TRADE MARK
Talk for Writing
IN CLASS 41**

**IN THE MATTER OF OPPOSITION
THERE TO UNDER No. 402385 BY
TT EDUCATION LIMITED
AND**

**IN THE MATTER OF APPLICATION No. 3045061
BY TT EDUCATION LIMITED
TO REGISTER THE TRADE MARK**



**IN CLASSES 16 & 41
AND
IN THE MATTER OF APPLICATION No. 3045065
BY TT EDUCATION LIMITED
TO REGISTER THE TRADE MARK**



IN CLASSES 16 & 41

**IN THE MATTER OF OPPOSITIONS
THERE TO UNDER No. 402491 & 402492 BY
PIE CORBETT CONSULTANCY LIMITED**

BACKGROUND

1) On 18 February 2014 Pie Corbett Consultancy Ltd (hereinafter PCC) applied to register the mark Talk for Writing in respect of the following services in Class 41:

Arrangement of training courses in teaching institutes; Arranging professional workshop and training courses; Training and further training consultancy; Arranging and conducting of training workshops; Providing training; Provision of education and training; Provision of training; Provision of training and education; Training; Training and education services; Training courses; Training services; Providing of training; Adult training; Arranging of conferences relating to training; Education services; Provision of education and training; Provision of training and education; Training and education services; Education; Education services related to the arts.

2) The application was examined and accepted, and was subsequently published for opposition purposes on 28 March 2014 in Trade Marks Journal No.2014/013.

3) On 27 June 2014 TT Education Ltd (hereinafter TTE) filed a notice of opposition. The grounds of the opposition are in summary:

- a) The phrase “TALK FOR WRITING” comprises common English words used in their known descriptive sense and as a result is not capable of functioning as a trade mark, as required by Section 1(1) of the Trade Marks Act 1994. The phrase “TALK FOR WRITING” is incapable of distinguishing the services applied for from the services of other undertakings. As such the mark offends against Section 3(1)(a) of the Trade Marks Act 1994.
- b) The mark consists solely of the words TALK FOR WRITING without any distinguishing feature. TALK FOR WRITING is completely descriptive when used in relation to educational services and training courses. The mark is descriptive of the provision of talks for writing in addition to the concept of using oral methods for (TALK FOR) the purpose of writing. It is descriptive in relation to educational services similar to TALK FOR READING, TALK FOR SPELLING, TALK FOR CHANGE and TALK FOR HEALTH. Accordingly, the mark TALK FOR WRITING fails to satisfy the provisions of Section 3(1)(b) of the Trade Mark Act 1994 in that it is devoid of distinctive character.
- c) Further to the reasons set out above, or alternatively, the mark in suit consists exclusively of signs or indications which may serve in trade to designate the kind, intended purpose or other characteristics of the services for which the mark is filed. In particular, the mark indicates the use of “talk for” the purpose of “writing”; in other words the use of speech to assist with the application of text. The mark in suit therefore offends against Section 3(1)(c) of the Trade Marks Act 1994.
- d) The phrase “TALK FOR WRITING” is used extensively by educational providers to apply a teaching method in order to enhance writing skills - the concept has been around for many years and is the fundamental basis for the use of dictation machines. TTE will show that the phrase “TALK FOR WRITING” would be recognised by the public as an educational method rather than a badge of origin.

4) PCC provided a counterstatement, dated 1 September 2014, in which it denies the above grounds. It states that the words comprising the mark are a lexical invention of PCC; devoid of any descriptive meaning; not common parlance and nonsensical in that one cannot “talk for writing” or be said to be doing

so. PCC states that the words individually are common English words but in the form used in the mark have no everyday meaning. It contends that to the extent that the mark in suit reflects a form of teaching methodology used in the education profession, it is a teaching methodology invented, adapted/developed and utilised by PCC over a period of forty years. The words therefore indicate the origin of the teaching process or related services provided by PCC. To the extent that the mark in suit is recognised in educational circles is a result of the promotion carried out by PCC. The use of the terms “Talk for” and “talk for Writing” are used by the education profession only as a reference to PCC’s services.

5) On 4 March 2014 TTE applied to register the two marks shown on the front page of this decision in respect of the goods and services shown at annex 1.

6) The applications were examined and accepted, and both were subsequently published for opposition purposes on 18 April 2014 in Trade Marks Journal No.2014/016.

7) On 8 July 2014 PCC filed notices of opposition. The grounds of the opposition are identical and are in summary:

- a) TTE is a company owned and run by David Maytham, who until recently was associated with PCC. Mr Maytham worked with PCC on a consultancy basis on the “Talk for” method. Mr Maytham has inside knowledge not only of the teaching processes used but also of the development and implementation of the same across the curriculum. Mr Maytham was trained by Mr Corbett (founder of PCC) in the approach such that he (Mr Maytham) became a trainer himself. Mr Maytham is aware that the “Talk for” method was used by and is associated with Mr Corbett and PCC and of the goodwill and reputation that both have established in the “talk for” brand. The mark therefore offends against section 3(6) of the Act.
- b) Mr Pie Corbett is the owner and managing director of PCC. He is an internationally recognised literacy expert and has for forty years been working on the development of a teaching philosophy and approach using a unique three stage process. Since 2003 this teaching method has been developed under the brand “Talk for” and applied to “Talk for Writing”, “Talk for Learning” and “Talk for Maths”. The method places emphasis on students learning the key concepts of a topic verbally through listening and speaking and becoming involved in activities to assist them in internalising the key concepts before progressing to writing and using them. This method can be used across the curriculum. PCC introduced “Talk for”, “Talk for Writing” and “Talk for Learning” in 2003. “Talk for Maths” has been on the website of PCC since 2012 and all mathematics teachers in the Brighton and Hove area have been trained in the “Talk for Maths” approach. In addition work has been undertaken with mathematics teachers in Reading and Birmingham. It is seen as an extension of the “talk for” brand. The marks that PCC claim to have used, amended following the hearing, are reduced to simply Talk for Writing since January 2003. The mark therefore offends against section 5(4)(a) of the Act.

8) On 6 October 2014 TTE filed identical counterstatements, other than numbers etc. The grounds are denied. TTE does not accept that PCC has goodwill or reputation in its marks and puts it to proof of such. It is admitted that PCC used the phrase “TALK FOR LEARNING” but contends this does not give PCC exclusive rights to the phrase. It contends that “talk for writing” is an ordinary English phrase which describes the intended purpose of the services offered by PCC, and as such the level of use of the phrase would need to be extensive to assert goodwill. TTE maintains that whatever use has been made of the various phrases by PCC it has not resulted in passing off rights. It also states that its marks are highly stylised and clearly distinguishable from those of PCC, such that there is no likelihood of misrepresentation to the public. TTE also states:

“9. It is admitted that the applicant [TTE] has assisted the opponent [PCC] with various research training tasks but the opposition under section 3(6) is strenuously denied as this is tantamount to an allegation of fraud. The burden of proof is heavy and lies on the opponent who is required to prove the basis for this allegation or withdraw it.

10. Bad faith includes dishonesty and includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. The applicant has always been open about its development of the trade mark TALK FOR LEARNING and has been pro-active in keeping the opponent informed.”

9) All of the cases were consolidated on 13 October 2014. Both sides filed evidence. Both ask for an award of costs. The matter came to be heard on 15 June 2015 when TTE was represented by Mr Sanderson of Messrs Sanderson & Co.; PCC was represented by Ms Scott of Counsel instructed by Messrs Chadwick Lawrence LLP.

EVIDENCE OF PCC

10) PCC filed four witness statements. The first, dated 3 February 2015, is by Mr Pie Corbett the Managing Director of PCC. He provides a history of his career covering forty years, describing how he developed his ideas on teaching and learning and describing how the phrases “talk for writing” and “talk for learning” were first used as chapter titles in a book published in 2003. In 2006 he describes how he lead a nationwide project with the Department of Education in which “Talk for Writing” (TFW) were sent out to every primary school and thousands of teachers throughout the UK, with the CDROM having “Crown copyright by kind permission of Pie Corbett” upon it. This he states indicates that he developed and owns the ideas and that teachers link him with the phrases. In 2011 he published “Talk for writing across the curriculum” which he states has been an education best seller. Mr Corbett describes how he had been working with various groups in the field of maths for some time seeking to use his “talk for” approach in relation to maths. In March 2012 he joined with Lucy Sayce-Brown in an attempt to raise standards in a group of schools. On 4 December 2014 a conference was held in Reading which looked at how “Talk for Writing” and “Talk for Maths” used similar teaching approaches and understandings. This was followed by the teachers running workshops. Over 100 teachers attended the conference and it included talks on how the “talk for” method could be used across the curriculum. Schools in Portsmouth and Birmingham have been using the methodology and developing programmes.

11) Mr Corbett states that in January 2000 he set up as a freelance educational consultant and as his income grew he incorporated and became a limited company. Towards the end of 2012 he employed Mr Batty as the TFW co-ordinator, managing conferences, the website and also the work of eight consultants and five training centres. The consultants and training centres pay 20% of their earnings to PCC, and their work is focussed upon TFW training. PCC also runs a research and development project which is free to participating schools, and which looks at how “talk for” can develop and grow. One such aspect is the “talk for maths” framework being developed. He states that the company turnover, see below, demonstrates the commercial value of the “talk for” brand.

Year	Turnover £
2011	194,469
2012	425,200
2013	459,069
2014	774,991

12) Mr Corbett claims that his name is so synonymous with the teaching method that teachers often refer to “do Pie Corbett”, or even “we Pie’d it”. The system has, he contends, transformed the standards in many schools. As such there is considerable goodwill and value in the “talk for” brand and it is beginning to be used overseas. He states that The Education Department booklet refers to

“incorporation of “talk for writing” time into literacy lessons” and the system has also been mentioned in Ofsted reports from 2011 onwards. In addition he states that he has spoken to over 100,000 teachers regarding the “talk for” approach as part of conferences run by the National Literacy Trust and through the National Primary Strategy Initiative. He has written in National newspapers such as *The Times* and magazines such as *Junior Education* and *Teach Primary*. A book “Talk for Writing across the curriculum” published in 2010 sold 10,000 copies in its first year and is now sold world-wide. There are also numerous Internet clips of Mr Corbett discussing his TFW approach.

13) Mr Corbett states that in 2007 Mr Maytham, who was in his first year as a teacher, was part of the “Teachers and Teaching Assistants as Writers” project run by Mr Corbett. Mr Corbett states that given the short time that Mr Maytham has been teaching he has not taught Mr Corbett anything about teaching and learning. Despite his limited experience Mr Maytham was used to offer limited advice in a project looking at the establishment of “writing schools”. At this time Mr Maytham was working at a school in Essex and Mr Corbett visited the school to work on a further project, the Essex Writing Project, run by Mr Maytham. He states that Mr Maytham then left teaching and began working on Maths trails. This was an idea that had been used before, but was different to the “talk for” approach. Mr Corbett states that although he did not see how the “trails” idea would make money he encouraged Mr Maytham as best he could and even suggested to a publisher that the idea might be worth supporting. Mr Corbett provided a “blurb” for Mr Maytham’s website but did not endorse his courses. Mr Corbett even supported the setting up of Treasure Trails Education (TTE). Mr Corbett states that in 2012 he was approached by Mr Maytham to view his Maths Trails idea and in May 2012 Mr Corbett did a conference for Mr Maytham, to generate funds to invest in further projects in Essex schools. At this time Mr Maytham was not working on “talk for maths”. In mid 2013 Mr Maytham was employed by PCC as a training consultant for TFW. He states that in 2013 during a conversation with Mr Maytham he became aware that he was doing some work on “talk for maths”. However, as PCC had been using this title for some time at this point he merely thought that Mr Maytham was developing PCC’s ideas and did not think he would try to appropriate the brand. It was later in 2013 that PCC was contacted by various contacts who informed PCC that Mr Maytham was offering a product and ideas close to those of PCC and even claiming that they were endorsed by PCC. Mr Corbett then wrote to Mr Maytham asking him to remove all references to him from the TTE website, but met with no success.

14) Mr Corbett states that in December 2013 Mr Maytham requested a meeting to hear about the Primary Writing Project. Mr Maytham put forward the idea of a business partnership, however, given his relative inexperience compared to that of Mr Corbett the idea was rejected. However, Mr Maytham was invited to be a trainer on the project. At this meeting Mr Corbett asserts that he informed Mr Maytham of his intention of trade marking TFW in order to ensure quality control. On 2 April 2014 Mr Maytham informed Mr Corbett of his intention of trade marking “Talk for Maths”. Mr Corbett stated that this was unacceptable, as he had been working in this field for a number of years and the research was not concluded. Mr Maytham had only been working in the area for a short while and it could affect the worth of TFW. Further, Mr Maytham’s work had taken a different approach i.e. Trails. It was at this time that Mr Corbett became aware that Mr Maytham had registered the domain names “talk for Learning” and “Talk for Maths”. A further meeting between the two men occurred on 2 May 2014 where Mr Corbett suggested that he use “Talk Maths” or “Maths Talk” instead. Despite claiming to have an entirely new approach not based on Mr Corbett’s work, when Mr Maytham described his “new” approach it was clearly based upon Talk for Writing. Although Mr Maytham produced minutes from this meeting these were not accepted as a true reflection of the meeting by Mr Corbett. Further meetings were considered but did not take place. Mr Corbett stated, in emails, that for Mr Maytham to trade mark “talk for Maths” would be “dishonest and immoral”, Mr Maytham’s own account of the meeting also indicates that he agreed to consider changing the “talk for maths” name. As Mr Maytham also made it clear that he would oppose Mr Corbett’s trade mark application for TFW his employment as a consultant was terminated. Mr Maytham then presented a series of “talk for Maths” conferences and continues to refer to PCC on his website. Mr Corbett also provides an analysis of some of Mr Maytham’s writings where, Mr Corbett

contends he plagiarises Mr Corbett's work without any accreditation. Mr Corbett provides the following exhibits:

- Exhibit 1: This consists of fifteen emails from Head/Deputy Head Teachers, educational consultants, lecturers/professors in education and journalists all of whom state that TFW is widely associated in the educational industry with Mr Corbett.
- Exhibit 2: Copies of emails between Mr Corbett and Mr Maytham over a number of years which appear to back up the various assertions made in his statement by Mr Corbett.
- Exhibit 3: A copy of a booklet, dated December 2013, entitled "Talk for Maths" written by Lucy Sayce-Brown, which states "most of the ideas in this document have been directly adapted from TFW strategies (Corbett and Strong, 2011) in the best tradition of "magpieing."
- Exhibit 4: Copies of pages from various educational websites which refer to PCC's TFW approach and refer to schemes in 2011. Also a page from the website of TTE referring to courses to be run by TTE in 2015 which states: "This creative and inspiring course uses approaches developed by literacy expert Pie Corbett to help teachers break down barriers."

15) The second witness statement, dated 2 February 2015, is by Julia Strong who was between 2005 and 2012 the Deputy Director of the National Literacy Trust (NLT). She states that she first came across the TFW approach in 2003 when although demonstrated by someone else the work was attributed to Mr Corbett. Mr Corbett gave talks to the NLT conference each year until 2012. She describes using the TFW method in various projects with schools in the UK. She states that as part of obtaining funding for the Transforming Writing Project with NLT (2010-2012), she identified the influential schools and teachers who had helped Mr Corbett to develop TFW, a list which did not include Mr Maytham. She then obtained endorsements from a number of leading academics in the UK who all acknowledged that TFW was associated with PCC. She refers to the very strong book sales and the reviews on Amazon by purchasers who are very enthusiastic about the system. She provides a quote from a publisher, Routledge Education which states: "Pie Corbett and the Talk for Writing brand are the flagships of our professional publishing list. Pie's books are of enormous commercial and intellectual value and he is a household name amongst teachers and PGCE students. Pie's Talk for Writing books outsell all other titles on our extensive teacher list. His importance to us as an author and colleague cannot be overstated". She also provides extracts from emails from schools which make it clear that the TFW brand is identified with Mr Corbett/PCC.

16) Ms Strong states that in 1999 she had a book published which looked at the initiatives relating to schools. The term "talk for" does not feature in the book as Mr Corbett had not coined it at this stage. She states that the phrase TFW is not commonplace and is only used when referring to the work of PCC. She states that when she provides lectures on the subject and PCC's name and copyright appears on all her slides. She further comments that the term TFW is synonymous with Pie Corbett/PCC. Ms Strong states that in addition to literacy the method has been developed for use in other subjects including maths and she has been contacted by schools wishing to use the methodology throughout the curriculum. However, she states that when she has used the methodology in relation to subjects other than literacy she still uses the TFW name as it is the methodology behind all the teaching irrespective of subject. In her view, teachers associate the term "talk for" with PCC. She comments that plagiarism is always a problem but when asked PCC generally grants permission to use the material provided the source of the ideas is attributed. She provides the following exhibit:

- Exhibit 1: This comprises of pages from the internet. The first group show a conference in 2010 which is referred to as "Talking for Learning and Life; developing TFW to fulfil potential across the curriculum". This conference was organised by Mr Corbett. Other pages show a book for sale on Amazon titled "Talk For Writing across the Curriculum", written by Mr Corbett and Ms Strong.

Another article is titled “My journey into “Talk for Writing” and how it applies to Maths” again written by Mr Corbett.

17) The third witness statement, dated 2 February 2015, is by Nick Batty an employee of PCC. He states that PCC produce six termly newspapers which are sent to over 9,000 TFW network subscribers, usually teachers or educationalists. He states that the TFW website had over 93,000 unique users access it during the period September 2013 to July 2014. Further, in the last two years PCC held 38 conferences in the UK which delivered TFW training to over 5,000 delegates with 95% rating the conference as “excellent” on feedback sheets. He states that PCC has received a great deal of interest in TFW from other countries, with PCC’s TFW trainers visiting a number already. Research in TFW is ongoing and the system is constantly refined. He states that a number of schools have used TFW in relation to teaching Maths with the help of PCC and therefore teachers and schools would associate Talk for Maths with TFW and PCC. PCC has had schools contact them stating that they believed that the trademark/copyright in “talk for” belonged to PCC. He states that Mr Maytham continued to deliver TFW training to schools despite being told by PCC that he was not authorised to do so, and he did not even offer to honour his contract with PCC of paying the 15% commission for using TFW. PCC have been contacted by a number of schools who had booked TFW training with Mr Maytham before being made aware that he was not authorised to carry out such training, when they contacted Mr Maytham he apparently offered training in “raising Attainment in Writing”. Mr Batty describes the clients as being unhappy. PCC are particularly concerned over the level of quality being provided to clients. He describes Mr Maytham’s actions as “dishonest and deceitful”. He provides the following exhibits:

- Exhibit 1: Copies of what are described as ways that the brand “Talk for Writing” has been used but which look more like the covers of books and which have various device elements but not the words “Talk for Writing”. These are not relevant because of the change to the pleadings at the hearing relating to various device elements which were withdrawn. Also included are screen shots from the Open University Press website which shows use of the above devices on books. He also includes copies of various emails which show the term TFW being used from 2005 by Mr Corbett.
- Exhibit 2: This consists of various emails with Mr Maytham, in which he often refers to the TFW website, and TFW as an entity to pay fees to when he clearly is referring to PCC.

18) The fourth witness statement, dated 11 February 2015, is by John Stannard a co-director with Pie Corbett of the Primary Writing Project, a not for profit company delivering TFW training to schools. He has been involved in education for over fifty years as a teacher, local authority advisor, District Inspector, Ofsted inspector and working on the National Literacy Project for the Department of Education. He has also worked as an education consultant on literacy in a number of countries world-wide. He states that he began working with Pie Corbett in 1995 and that the term TFW grew out of the work involved in the Nation Literacy Project, which itself drew heavily upon Mr Corbett’s thinking about teaching. Mr Stannard states that the term TFW was used by Mr Corbett “as an over-arching label to develop an approach to the teaching of writing that had been foreshadowed in his work on these earlier publications”. He goes on to state that TFW has two key characteristics in the market place. He describes the first as “It is known as a pedagogy with unique characteristics associated solely with Pie Corbett’s name and now that of his company PCC..”; the second characteristic is that “It is perceived by schools as valuable and very effective”. He also adds “the Talk for Writing label has become known in the primary teaching profession as a by-word for quality teaching in Literacy. It is an intellectual property with high reputational value. The name was invented by Pie Corbett, his professional reputation is tied to it and he has, in my view an unassailable claim to the rights to control its use via his company.”

19) Mr Stannard describes a meeting between himself, Mr Maytham and Mr Corbett on 2 May 2014. He states that Mr Maytham was asked to use a different title such as Maths Talk or Talking into Maths. Such requests were refused. Mr Stannard states: “The reason is plain, it is to pass off their work as linked to Talk for Writing in order to gain a reputational benefit to which they are not entitled.”

EVIDENCE OF TTE

20) TTE filed a witness statement, dated 15 December 2014, by David Maytham the Managing Director and Head of Education at TTE. He states that he began developing his business in October 2011 but only incorporated in December 2012. He states that he has known Mr Corbett since 2008 and that over the years they developed a business relationship including collaboration with the development of teaching strategies as well as various teaching methods. He states that TFW is a phrase used to refer to a teaching methodology and that Mr Corbett, amongst others was involved in its development during which the phrase was widely used in a descriptive sense to refer to the teaching method. He points out that the mark applied for initially by PCC was a series of two which included “talk4writing” but as this differed from the mark in suit it could not be considered a series and so was dropped from the application. He states that he informed Mr Corbett of his intention of using Talk for Learning and Talk for Maths on 28 March 2012. He claims that they spoke several times after regarding the use of these marks and that Mr Corbett supported him. He states that it was not until 7 April 2014 that any objection was raised to his using the two marks. He states that Mr Corbett is widely regarded as a literacy expert, but he has never had any interest in mathematics, nor did he make any use of the phrase TALK FOR as a reference to a teaching methodology other than for TFW. He states that over the past two years he has developed and used the mark Talk for Learning in relation to an underpinning methodology. He describes the methodology which to my mind sounds exactly the same as that in TFW. He states that he has delivered training in his technique to hundreds of teachers. He provides the following exhibits:

- DM01: This consists of extracts from the Internet. The first is a book published in 2010 by the UK Literary Association (UKLA) titled “Talk for Spelling”; the second extract is from another UKLA book titled “Talk for Reading”. The introduction mentions the title a number of times and to my mind it is being used as a trade mark and not in a descriptive manner e.g. “This booklet explores the importance of talk for reading.” The last extract is from a website offering “talk4meaning” training.
- DM02: This consists of a number of pages of uncertain origin as many are not identified, a number of which have “Crown Copyright 2008” printed upon them and are presumably ones which Mr Corbett was involved in as set out in his evidence. There are numerous references to TFW but all use it, in my opinion, in the form of a trade mark e.g. “using drama activities as a Talk for Writing strategy.”; “Such drama or talk activities can support children in creating and developing characters when writing fiction.” and “Each and all of these key Talk for Writing strategies”. Some have been downloaded from the internet recently, December 2014, but are otherwise undated. It includes a copy of *The National Literacy Strategy: Developing Early Writing* published by the Department for Education and Employment which makes many references to TFW all in a trade mark sense such as “working from the talk for writing to show how a text is written”; “Talk for writing should be used to”; “These usually open with talk for writing and move into..”.
- DM03: This consists of three documents from the internet. The first refers to the National Strategies on the Talk For Writing Strategy, is dated 2012, and is clearly linked with the work carried out by PCC. The second is dated 2014-15 and refers to various training courses offered by BC Education Ltd, but is after the relevant date. The third relates to a course dated June 2013 and a “Talk for Writing” course offered by Learning Exchange.
- DM04: This shows that the domain name talk4writing.co.uk is owned by Talk4Writing.
- DM06: More pages from the Internet which is said to provide examples of other entities using the phrase TALK FOR to describe a particular service. These include “Improving talk for teaching and learning” from the education endowment foundation website; “Talk for Change” relating to psychological therapies, dated 2014: “talk for health” in relation to psychotherapy dated 2013; and

two booklets “Talk for Learning issued by North Yorkshire County Council and “Talk for Learning by Dr Lyn Dawes both of which are undated.

- DM07: An email from Mr Maytham to Mr Corbett where he mentions “I’m also working with schools on ideas around Talk for Maths and Talk for Learning”. There is no response from Mr Corbett.
- DM08: Copies of emails which have been described elsewhere in my evidence summary.
- DM09: copies from the TTE website showing use of “talk for learning” in the context of offering teacher training, they are undated.
- DM10: Copies of evaluation sheets for two courses dated 21 November 2013 and 13 January 2014 with most of the participants believing the course was called “talk for maths”, others referred to “talk maths”, “maths” and “maths talk”.
- DM11: This shows that the domain name for talkforlearning.co.uk is owned by TTE.

EVIDENCE IN REPLY OF PCC

21) PCC filed two witness statements. The first, dated 16 March 2015, is by Mr Corbett who has provided evidence already in these proceedings. He points out that Mr Maytham has written articles referring to “Pie Corbett’s Talk for Writing and confirmed in an email that he would not deliver TFW training once his contract with PCC had been terminated. He points out that, were his mark found to be lacking distinctiveness then the same would be true of Mr Maytham’s marks. Mr Corbett denies having a business relationship with Mr Maytham other than employing him. He points out that many of the documents relied on by Mr Maytham are actually ones which Mr Corbett was involved in, including virtually all of exhibit DM02. Exhibit DM03 consists of writings by individuals who also worked for Mr Corbett on the National Strategy Project. Mr Corbett states that PCC owns the domain names www.talkforwriting.com and www.talk4writing.co.uk and that both links lead to the same website.

22) Mr Corbett states his belief that the majority of courses run by TTE have been based on his TFW methodology. He also provides the following exhibit:

- 5: This consists of an article, dated 15 January 2015, by Mr Maytham under the TTE banner. This contains the sentence: “Pie Corbett’s Talk for Writing is, simply put, an approach that works and one that is being increasingly adopted by schools around the UK.”. In an email dated 12 June 2014 Mr Maytham states: “In terms of schools who have booked me via your referrals, I am in the process of contacting them to let them know that I am no longer associated with you and will not be able to deliver your Talk for Writing training for them.”

23) The second witness statement, dated 16 March 2015, is by Julia Strong who has provided evidence earlier in these proceedings. She states that she is aware that Mr Maytham was as of early 2015 still running TFW courses. Further he has another workshop planned at Wokingham Literacy Conference in October 2015 where he is presenting on Talk for Writing and the Process of Writing. At exhibit 2 she provides emails which corroborate her contentions.

EVIDENCE IN REPLY OF TTE

24) TTE filed a witness statement, dated 16 March 2015, by David Maytham who has provided evidence earlier in these proceedings. He states that the exhibit in Mr Batty’s evidence has had the top section removed and that this showed the title “The National Strategies- Primary”. He states that as it was delivered by the UK government the TFW strategy was a recommended teaching method. Mr Maytham contests the claim by PCC to have only presented idea on “talk for” since 2010, he refers to exhibit 15 as evidence to the contrary. He also comments on Mr Corbett’s statement that the phrase

“talk for writing” appears in Ofsted reports as an indication that the term is widely used in the education sector. He claims that Mr Corbett is known not by his brand. He states he was unaware of PCC carrying out work on Talk for Maths and reiterates his claims that PCC knew of his work on Talk for Maths. He points out that Mr Corbett agreed to provide a written statement for TTE to use it on its website, although I note that this was more of an endorsement of Mr Maytham personally, and does not refer to any use of Talk for Maths. He states that the TTE website has been cleared of all references to Mr Corbett, although other websites which advertise TTE courses may still carry a reference. He denies that Mr Corbett played a part in setting up TTE and states that in December 2013 Mr Corbett states he has no recollection of TTE. He also claims to have assisted PCC and refers to exhibit 20. Mr Maytham appears to believe that being asked to deliver training on dates where Mr Corbett cannot attend or being given permission to provide training under his company name to a known PCC client is an indication of the true nature of the relationship. He refutes that claim made by Julia Strong that he was not influential in the Transforming Writing Project and states that he was invited to be an advisor and that he provided research. He provides the following exhibits:

- 13. A collection of emails, dated October 2013 –December 2013, where T4W has been used instead of TFW by PCC. There is also use of TFW and other variants within the emails.
- 14. A copy of the National Strategies paper, published prior to May 2010. This shows that TFW is used in italics as a title even in the middle of sentences.
- 15. A collection of twenty emails, dated February 2010 –May 2011, mostly between Mr Corbett and Mr Maytham. These show no use of TFW but do refer to “training days”, “writing days” and “Teachers and TA’s as Writers”. They also refer to a move of house by Mr Maytham and whether a school is in special measures and visits by Ofsted.
- 18. Copies of emails where Mr Corbett agreed to provide an endorsement regarding Mr Maytham for the TTE website. There is no mention of “talk for maths”.
- 19. A copy of an email exchange in December 2013 which shows that Mr Corbett has no knowledge of the setting up of TTE.
- 20. Copies of two emails, dated April 2010. The first is from Mr Corbett to Mr Maytham praising his presentation, the second is asking for copies of the Powerpoint slides used.

25) That concludes my review of the evidence. I now turn to the decision.

DECISION

402385 – The opposition to the “TALK FOR WRITING” trade mark

26) The opposition is based upon 3(1)(a)(b)(c) & (d) of the Act. The relevant sections read:

“3(1) The following shall not be registered –

- (a) signs which do not satisfy the requirements of section 1(1),
- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade:

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

27) It is settled law that the various sections in 3(1) [(a), (b), (c) and (d)] are independent and have differing general interests. In *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, the Court of Justice of the European Union stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

28) I turn first to consider the opposition under section 3(1)(c). I rely upon the summary of the case law under s.3(1)(c) written by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) which states:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp.z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that

the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And:

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those

characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

29) In *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04, the Court of Justice held that:

“24. In fact, to assess whether a national trade mark is devoid of distinctive character or is descriptive of the goods or services in respect of which its registration is sought, it is necessary to take into account the perception of the relevant parties, that is to say in trade and or amongst average consumers of the said goods or services, reasonably well-informed and reasonably observant and circumspect, in the territory in respect of which registration is applied for (see Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 29; Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 77; and Case C-218/01 *Henkel* [2004] ECR I-1725, paragraph 50).”

30) In *Exalation v OHIM*, Case T-85/08, the General Court confirmed that, at least where technical terms are concerned, it is appropriate to take account of meanings known to those in the trade. At the hearing both parties agreed that the average consumer would be an educational professional, trainer, teacher and local authority.

31) TTE’s contentions are virtually identical for each of the grounds of opposition. TTE contends that:

“4. The opposed mark comprises the plain words “talk for writing” without any stylisation or logo. The phrase comprises the English words “talk”, “for” and “writing” with their normal and usual meanings, namely:

TALK – “speak in order to give information”

FOR – “with the object or purpose of” or “be used in connection with”

WRITING – “the activity of composing text”

The phrase is purely descriptive in nature, i.e. “using speech for the purpose of writing”.

5. The phrase “talk for writing” is defined on PCCL’s website as a methodology that “enables children to imitate the key language they need for a particular topic orally before they try reading and analysing it and then writing their own version”. This can be summarised as “talk for writing”.

6. The application covers a range of educational and training services in class 41. The phrase “talk for writing” is wholly descriptive of a characteristic of such educational and training services as the phrase is used in a descriptive sense to refer to a particular literacy teaching strategy. The use of this term to describe the teaching strategy is strongly emphasised by PCCL throughout their evidence and submissions.

7. The important factor is whether the phrase is descriptive of the services applied for and not who was involved in developing the strategy those services aim to teach.

8. The phrase “talk for writing” clearly represents in the mind of the relevant public a

description of a literary teaching strategy and thus characteristics of the services applied for, namely training and educational services.

9. It is not necessary that descriptive terms comprising a mark are actually in use, it is sufficient that such signs and indications could be used to designate a characteristic of the goods and services (*Doublemint* Case C191/01 [2004] RPC 18; para 32; *Postkantoor* Case C 363/99 [2004] ETMR 78; para 97). Accordingly, a sign must be refused under these provisions if at least one of its possible meanings designates a characteristic of the goods or services concerned (*Doublemint*, para 32). In this case “talk for writing” is a phrase in use to describe a method of teaching.

10. It is irrelevant if there are other, more usual signs or indications for designating a particular characteristic of the services –though this does not appear to be the case here. The provisions do not require that the sign or indication under examination should be the only way of designating the characteristic in question (*Postkantoor*, para 57) but in this particular case if one wishes to describe the particular teaching method one must use the term “talk for writing” as this is recognised as a particular type of literacy teaching method.”

32) Many trade marks allude to characteristics of the goods or services for which they are used, but nevertheless make good trade marks. The CJEU’s reference to signs which are “easily recognisable by the relevant class of persons” is not to be taken as meaning that marks that are recognisable as having been derived from two or more descriptive indications must themselves be excluded from registration. In fact the CJEU has found that even a combination of complete descriptive elements:

“... may not be descriptive within the meaning of Article 3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements.”

33) Although I take into account the comments of the Court of Justice of the European Union in *Campina Melkunie BV and Benelux-Merkenbureau*, Case C-265/00, where they stated that:

“39. As a general rule, the mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics within the meaning of Article 3(1)(c) of the Directive even if the combination creates a neologism. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned.

40 However, such a combination may not be descriptive within the meaning of Art.3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition will have to be satisfied as regards both the aural and the visual impression produced by the mark.

41 Thus, a mark consisting of a neologism composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of those characteristics within the meaning of Art.3(1)(c) of the Directive, unless there is a perceptible difference between the neologism and the mere sum of its parts: that assumes that, because of the unusual nature of the combination in relation to the goods or services, the word creates an impression which is sufficiently far removed from

that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts.”

34) It was agreed at the hearing that the broad term education and training services covers the services in class 41 applied for, and PCC accepted that the whole of their services stand or fall together. There is no doubt in my mind that, *prima facie*, TALK FOR WRITING does not create a descriptive impression of the training service it is used upon. In educational terms “writing” can mean the simple act of marking a surface with letters or images in order to convey a message. Young children have to be taught to write which involves using ones hand to use an implement, typically a pen or pencil, to form letters. Once one has mastered this basic activity the student then progresses to learning the rules of English composition. Even if one accepts that the average consumer will understand that the word “writing” refers to “composition” it is not, to my mind, immediately obvious what services are on offer. As TTE acknowledges, PCC, on its website has to provide an explanation of what the term refers to (paragraph 31 point 5 above refers). To my mind the reason for this explanation is that the term “TALK FOR WRITING” does not describe the methodology used in providing the services, although it does allude to them. To my mind the mark is *prima facie* acceptable and does not fall foul of section 3(1)(c). The mark does not form a sign or indication “which may serve, in trade, to designate.... characteristics of goods or services.”

35) TTE clearly carried out extensive searches including on the internet, yet could not find instances of use of the term “Talk for Writing” in relation to education and training services which do not have the words in italics or quotation marks where it is clear that the use is in relation to a trade mark. The evidence of TTE is set out extensively at paragraph 20 earlier in this decision. I accept that the evidence does show that others, including TTE, use the words “talk for” as part of their trade marks. However, use by others as a brand name is not enough to engage this section. In *Nude Brands Ltd v Stella McCartney Ltd*, [2009] EWHC 2154 Ch, Floyd J. stated that:

“29. Whilst the use by other traders of the brand name NUDE in relation to perfume may give those traders relative rights to invalidate the mark, it does not give those rights to any defendant. I am not at this stage persuaded that this evidence has a bearing on any absolute ground of invalidity. It certainly does not go as far as establishing ground 7(1)(d) - customary indication in trade. Ground 7(1)(b) is concerned with the inherent character of the mark, not with what other traders have done with it. The traders in question are plainly using the mark as a brand name: so I do not see how this use can help to establish that the mark consists exclusively of signs or indications which may serve to indicate the kind or quality or other characteristics of the goods, and thus support an attack under 7(1)(c).”

36) Consequently, there is no need to exclude the marks from registration in order to give effect to the policy underlying s.3(1)(c), which is to prevent the registration of “descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought [so that they] may be freely used by all traders offering such goods or services.” **I therefore reject the section 3(1)(c) ground of opposition.**

37) I now turn to the ground under section 3(1)(d). In *Telefon & Buch Verlagsgesellschaft mbH v OHIM* (Case T-322/03) the General Court (“GC”) summarised the case-law of the Court of Justice of the European Union (“CJEU”) under the equivalent of section 3(1)(d) of the Act as follows:

“49. Article 7(1)(d) of Regulation No 40/94 must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 *Merz & Krell* [2001] ECR I-6959, paragraph 31, and Case T-237/01 *Alcon v OHIM – Dr. Robert Winzer Pharma* (BSS) [2003] ECR II-411,

paragraph 37). Accordingly, whether a mark is customary can only be assessed, firstly, by reference to the goods or services in respect of which registration is sought, even though the provision in question does not explicitly refer to those goods or services, and, secondly, on the basis of the target public's perception of the mark (*BSS*, paragraph 37).

50. With regard to the target public, the question whether a sign is customary must be assessed by taking account of the expectations which the average consumer, who is deemed to be reasonably well informed and reasonably observant and circumspect, is presumed to have in respect of the type of goods in question (*BSS*, paragraph 38).

51. Furthermore, although there is a clear overlap between the scope of Article 7(1)(c) and Article 7(1)(d) of Regulation No 40/94, marks covered by Article 7(1)(d) are excluded from registration not on the basis that they are descriptive, but on the basis of current usage in trade sectors covering trade in the goods or services for which the marks are sought to be registered (see, by analogy, *Merz & Krell*, paragraph 35, and *BSS*, paragraph 39).

52. Finally, signs or indications constituting a trade mark which have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by that mark are not capable of distinguishing the goods or services of one undertaking from those of other undertakings and do not therefore fulfil the essential function of a trade mark (see, by analogy, *Merz & Krell*, paragraph 37, and *BSS*, paragraph 40)."

38) TTE contends that the mark in suit has become generic in the education industry. I accept that the term is well known in the industry and is used as the name of the methodology used by PCC, as such the use made of it by others in various documents is use of the mark as an indication of origin. The fact that the mark represents the name of a methodology does not mean that the objection is made good, so long as that methodology retains its proprietary nature, which I consider it does. The relevant public has been set out earlier in this decision. As set out earlier, the evidence shows no uses of the term "Talk for writing" in anything other than a trade mark sense that predate the use by PCC. TTE contends that the evidence shows that the expression TALK FOR WRITING was customary in the trade. The evidence falls a long way short of establishing such a proposition. I cannot hold that the evidence establishes that the term was "customary in the current language or in the bona fide and established practices of the trade" from the viewpoint of the relevant public at the relevant date. **Consequently, I reject the ground for invalidation based on section 3(1)(d) of the Act.**

39) I now turn to the ground of opposition under section 3(1)(b). The principles to be applied under article 7(1)(b) of the CTM Regulation (which is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

"29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo*

v *OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

40) TTE contends that the mark has "no synergistic effect or unusual lexical or syntactic arrangement in their combination. Therefore the mark, as a whole, is no more distinctive than the constituent parts, and perhaps is even less so". TTE continues that the mark in suit "simply identifies a literacy teaching method using normal descriptive words." In my opinion the evidence filed simply does not support such a contention. On the contrary, I view the mark in suit as inherently distinctive and in my opinion the evidence shows that most others in the educational industry also recognise that the mark in suit refers to the services offered by PCC. **As such the opposition under section 3(1)(b) fails.**

41) I next turn to the ground of opposition under section 3(1)(a). In *Koninklijke Philips Electronics NV and Remington Consumer Products Ltd*, Case C-299/99, the Court of Justice of the European Union stated that:

"30. Moreover, according to the case-law of the Court, the essential function of a trade mark is to guarantee the identity of the origin of the marked product to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin, and for the trade mark to be able to fulfil its essential role in the system of undistorted competition which the Treaty seeks to establish, it must offer a guarantee that all the goods or services bearing it have originated under the control of a single undertaking which is responsible for their quality (see, in particular, Case C-349/95 *Loendersloot* [1997] ECR I-6227, paragraphs 22 and 24, and Case C-39/97 *Canon* [1998] ECR I-5507, paragraph 28)."

AND:

"47. First, it is clear from Article 2 of the Directive that a trade mark has distinctive character if it serves to distinguish, according to their origin, the goods or services in respect of which registration has been applied for. It is sufficient, as is clear from paragraph 30 of this judgment, for the trade mark to enable the public concerned to distinguish the product or service from others which have another commercial origin, and to conclude that all the goods or services bearing it have originated under the control of the proprietor of the trade mark to whom responsibility for their quality can be attributed."

42) To my mind there is little to say regarding this ground. In *AD2000* [1997] RPC 168, Mr Hobbs Q.C. (acting as The Appointed Person) pointed out that section 3(1)(a) permits registration provided that the mark is “capable” to the limited extent of “*not being incapable*” of distinguishing. It follows that if I believe that the mark complies with sections 3(1)(b), (c) and (d) of the **Act the section 3(1)(a) ground is bound to fail.**

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43) I next turn to the opposition actions filed by PCC in respect of the marks applied for by TTE. At the hearing PCC withdrew its section 5(4)(a) grounds in respect of all the marks listed at paragraph 7 above with the exception of TALK FOR WRITING. Also at the hearing PCC requested that they be allowed to amend the grounds of opposition in both cases to include opposition under sections 3(1)(b), (c) and (d). This was couched in terms that it was in the alternative and was not pursued with any enthusiasm. In the event that I did not find against PCC under the same grounds then these grounds would not be pursued against TTE. As I have found in favour of PCC earlier under these grounds I do not have to consider these grounds under the oppositions filed by PCC against TTE.

44) I now turn to the first ground of opposition under section 5(4)(a) which reads:

“5. (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

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

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

45) In deciding whether the marks in question offend against this section, I intend to adopt the guidance given by the Appointed Person, Mr Geoffrey Hobbs QC, in the *WILD CHILD* case [1998] RPC 455. In that decision Mr Hobbs stated that:

“The question raised by the grounds of opposition is whether normal and fair use of the designation WILD CHILD for the purposes of distinguishing the goods of interest to the applicant from those of other undertakings (see section 1(1) of the Act) was liable to be prevented at the date of the application for registration (see Article 4(4)(b) of the Directive and section 40 of the Act) by enforcement of rights which the opponent could then have asserted against the applicant in accordance with the law of passing off.

A helpful summary of the elements of an action for passing off can be found in Halsbury’s Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731 is (with footnotes omitted) as follows:

‘The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff’s goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

46) I also note the comments of Pumfrey J in *South Cone Incorporated v JackBessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* case, in which he said:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See Smith Hayden (OVAX) (1946) 63 RPC 97 as qualified by BALI [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

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

47) I must also keep in mind the comments of Mr Justice Floyd in *Minimax GMBH & Co KG and Chubb Fire Limited* [2008] EWHC 1960 (Pat) in which he says of the above:

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

48) In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act and concluded as follows:

“39. In *Last Minute*, the General Court....said:

‘50. First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51. However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant seeking a declaration of invalidity has

acquired rights over its non-registered national mark before the date of filing, in this case 11 March 2000.'

40. Paragraph 51 of that judgment and the context in which the decision was made on the facts could therefore be interpreted as saying that events prior to the filing date were irrelevant to whether, at that date, the use of the mark applied for was liable to be prevented for the purpose of Article 8(4) of the CTM Regulation. Indeed, in a recent case before the Registrar, *J Sainsbury plc v. Active: 4Life Ltd* O-393-10 [2011] ETMR 36 it was argued that *Last Minute* had effected a fundamental change in the approach required before the Registrar to the date for assessment in a s.5(4)(a) case. In my view, that would be to read too much into paragraph [51] of *Last Minute* and neither party has advanced that radical argument in this case. If the General Court had meant to say that the relevant authority should take no account of well-established principles of English law in deciding whether use of a mark could be prevented at the application date, it would have said so in clear terms. It is unlikely that this is what the General Court can have meant in the light of its observation a few paragraphs earlier at [49] that account had to be taken of national case law and judicial authorities. In my judgment, the better interpretation of *Last Minute*, is that the General Court was doing no more than emphasising that, in an Article 8(4) case, the *prima facie* date for determination of the opponent's goodwill was the date of the application. Thus interpreted, the approach of the General Court is no different from that of Floyd J in *Minimax*. However, given the consensus between the parties in this case, which I believe to be correct, that a date prior to the application date is relevant, it is not necessary to express a concluded view on that issue here.

41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom's TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user's mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: "date of commencement of the conduct complained of". If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.'

49) Also in *Phones 4u Ltd v Phone4u.co.uk. Internet Ltd* [2006] EWCA 244 (Civ), Jacob L.J. stated that:

“34. The judge also thought the “descriptiveness” of the name affected the question of whether it had a goodwill. But the name is not descriptive in the sense that anyone would describe a business or shop selling mobile phones as a “Phones 4u” business or shop. It is that sort of name which tells you what the business is, but is also obviously intended to be an invented name to denote a particular business. True it is that it is not particularly inventive—“4u” was a bit in vogue—the sort of thing others might well want to use. For that reason it would be unlikely to be accepted for registration as a trade mark without some proof of acquired distinctiveness. But distinctiveness for trade mark registration purposes is not the same concept as descriptiveness—it requires more. I think the judge was wrong to say, as he did:

“The phrase ‘Phones 4u’ is not inherently distinctive. It is a descriptive phrase, although not wholly descriptive in that I accept that it is more likely to acquire distinctiveness through use than a wholly descriptive expression. Nevertheless, there is an onus on the Claimants to satisfy me that it had become distinctive through use.”

This is the language of distinctiveness for trade mark registration, not that for testing whether a goodwill has been established.”

50) I also take into account the views in *Neutrogena Corporation and Another v Golden Limited and Another*, [1996] RPC 473, where Morritt L.J. stated that:

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

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

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

And later in the same judgment:

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

51) In its evidence PCC has clearly shown that it has used the mark TALK FOR WRITING (TFW) since 2003. Initially as a sole trader and then as PCC Mr Corbett has built a significant reputation in the educational industry in the UK for his methodology which he branded Talk For Writing. In 2006 the Department for Education engaged him to lead a nationwide project based around his TFW teaching system. He even employed a young inexperienced teacher, Mr Maytham, as part of the team delivering training in schools in 2007. A number of independent witnesses have provided

evidence, albeit not necessarily in the form of witness statements, to the effect that TFW is associated with PCC. I am therefore persuaded that PCC has cleared the first hurdle in that it has goodwill in the mark TFW in relation to the provision of education and training as of December 2006.

52) It is accepted that a common field of activity is not required as stated in *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA). In the instant case TTE have sought to register its marks for goods in class 16 and services in class 41. To my mind, the services in class 41 can be summed up as being educational and training services similar to which PCC has goodwill and reputation. I accept that the goodwill of PCC is in relation more to literacy education and that some of the services of TTE are couched in terms which are clearly not literacy education based there is still some similarity. With regard to the goods in Class 16 these would appear to be designed to be used as part of the delivery of the education and training services and as such must be considered at least moderately similar to the services in which PCC has goodwill.

53) The marks applied for are shown on the front cover. Whilst they are in a slightly stylised font they are not particularly unusual. Both have coloured backgrounds but there is no colour claim made for either mark. To my mind the signs would be viewed as being similar in all ways to the mark used by PCC, albeit with the subject matter of the education being varied (writing/learning maths). **In the instant case with both parties offering, broadly speaking, education and training services, and goods used in the delivery of said services, and both using highly similar signs there is no doubt in my mind that there will be misrepresentation, as a substantial number of people will understand the applied for marks as an extension of the already established TFW system that they have already experienced and that it would be offered by PCC or by some form of economically linked undertaking.**

54) Having shown misrepresentation PCC must show that there is a likelihood of damage. I take into account the views in *Harrods Limited v. Harrodian School Limited*, Millett L.J. described the requirements for damage in passing off cases like this:

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

55) In a *quia timet* action it is clearly not possible to show that damage has been suffered. In *Draper v Trist and Trisbestos Brake Linings Ltd* 56 RPC 429 Goddard L.J. stated:

“But in passing-off cases, the true basis of the action is that the passing-off by the defendant of his goods as the goods of the plaintiff injures the right of property in the plaintiff, that right of property being his right to the goodwill of his business. The law assumes, or presumes, that if the goodwill of a man's business has been interfered with by the passing-off of goods, damage results therefrom. He need not wait to show that damage has resulted, he can bring his action as soon as he can prove passing-off; because it is one of the class of cases in which the law presumes that the Plaintiff has suffered damage. It is in fact, I think, in the

same category in this respect as an action for libel. We know that for written defamation a plaintiff need prove no actual damage. He proves his defamation. So, with a trader; the law has always been particularly tender to the reputation and goodwill of traders. If a trader is slandered in the way of his business, an action lies without proof of damage.”

56) In the instant case whilst TTE would appear to have used its marks in respect of at least one conference, the extent of the use is not clear. Consequently in the instant case if the applicant has established a goodwill and shown deception then damage can be considered as the automatic sequitur and the three elements of the classic trinity of passing-off will have been established. To my mind the damage in the instant case is based upon the goodwill and reputation of PCC being placed in the hands of another when in the field of activity concerned quality and reputation are extremely important. **Taking into account all of the above there is clear danger of damage. The ground of opposition under section 5(4)(a) therefore succeeds.**

57) I next turn to the ground of opposition based on 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.”

58) Section 3(6) has its origins in Article 3(2)(d) of the Directive, the Act which implements Council Directive No. 89/104/EEC of 21 December 1988 which states:

“Any Member State may provide that a trade mark shall not be registered or, if registered, shall be liable to be declared invalid where and to the extent that....

(c) the application for registration of the trade mark was made in bad faith by the applicant.”

59) I refer to case O/094/11 *Ian Adam* where Mr Hobbs QC acting as the Appointed Person said:

“32. Any attempt to establish bad faith must allow for the fact that there is nothing intrinsically wrong in a person exercising *‘the right to apply the rules of substantive and procedural law in the way that is most to his advantage without laying himself open to an accusation of abuse of rights’* as noted in paragraph [121] of the Opinion delivered by Advocate General Trstenjak in Case C-482/09 Budejovicky Budvar NP v. Anheuser-Busch Inc on 3 February 2011. In paragraph [189] of his judgment at first instance in Hotel Cipriani SRL v. Cipriani (Grosvenor Street) Ltd [2009] EWHC 3032 (Ch); [2009] RPC 9 Arnold J. likewise emphasised:

“... that it does not constitute bad faith for a party to apply to register a Community trade mark merely because he knows that third parties are using the same mark in relation to identical goods or services, let alone where the third parties are using similar marks and/or are using them in relation to similar goods or services. The applicant may believe that he has a superior right to registration and use of the mark. For example, it is not uncommon for prospective claimants who intend to sue a prospective defendant for passing off first to file an application for registration to strengthen their position. Even if the applicant does not believe that he has a superior right to registration and use of the mark, he may still believe that he is entitled to registration. The applicant may not intend to seek to enforce the trade mark against the third parties and/or may know or believe that the third parties would have a defence to a claim for infringement on one of the bases discussed above. In particular, the applicant may wish to secure exclusivity in the bulk of the Community while knowing that third parties have local rights in certain areas. An applicant who proceeds on the basis explicitly provided for in Art. 107 can hardly be said to be abusing the Community trade mark system.”

These observations were not called into question in the judgment of the Court of Appeal in that case: [2010] EWCA Civ 110; [2010] RPC 16. They were re-affirmed by Arnold J. in *Och-Ziff Management Europe Ltd v. Och Capital LLP* [2011] ETMR 1 at paragraph [37].

33. The line which separates legitimate self-interest from bad faith can only be crossed if the applicant has sought to acquire rights of control over the use of the sign graphically represented in his application for registration in an improper manner or for an improper purpose. The appropriate remedy will in that case be rejection of the offending application for registration to the extent necessary to render it ineffective for the purpose which made it objectionable in the first place.

34. In a case where the relevant application fulfils the requirements for obtaining a filing date, the key questions are: (1) what, in concrete terms, is the objective that the applicant has been accused of pursuing? (2) is that an objective for the purposes of which the application could not properly be filed? (3) is it established that the application was filed in pursuit of that objective? The first question serves to ensure procedural fairness and clarity of analysis. The second question requires the decision taker to apply a moral standard which, in the absence of any direct ruling on the point from the Court of Justice, is taken to condemn not only dishonesty but also *'some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined'*: *Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 (Lindsay J). The third question requires the decision taker to give effect to the principle that innocence must be presumed in the absence of evidence sufficient to show that the applicant has acted improperly as alleged.

35. In assessing the evidence, the decision taker is entitled to draw inferences from proven facts provided that he or she does so rationally and without allowing the assessment to degenerate into an exercise in speculation. The Court of Justice has confirmed that there must be an overall assessment which takes into account all factors relevant to the particular case: Case C-529/07 *Chocoladefabriken Lindt & Sprüngli AG v. Franz Hauswirth GmbH* [2009] ECR I-4893 at paragraph [37]; Case C-569/08 *Internetportal und Marketing GmbH v. Richard Schlicht* [2010] ECR I-00000 at paragraph [42]. As part of that assessment it is necessary as part of that approach to consider the intention of the applicant at the time when the application was filed, with intention being regarded as a subjective factor to be determined by reference to the objective circumstances of the particular case: *Chocoladefabriken Lindt & Sprüngli GmbH* (above) at paragraphs [41], [42]; *Internetportal and Marketing GmbH* (above) at paragraph [45]. This accords with the well-established principle that 'national courts may, case by case, take account -on the basis of objective evidence -of abuse or fraudulent conduct on the part of the persons concerned in order, where appropriate, to deny them the benefit of the provisions of Community law on which they seek to rely': Case C16/05 *The Queen (on the applications of Veli Tum and Mehmet Dari) v. Secretary of State for the Home Department* [2007] ECR I-7415 at paragraph [64].

36. The concept of assessing subjective intention objectively has recently been examined by the Court of Appeal in the context of civil proceedings where the defendant was alleged to have acted dishonestly: *Starglade Properties Ltd v. Roland Nash* [2010] EWCA Civ 1314 (19 November 2010). The Court considered the law as stated in *Royal Brunei Airlines v. Tan* [1995] 2 AC 378 (PC), *Twinsectra Ltd v Yardley* [2002] 2 AC 164 (HL), *Barlow Clowes International Ltd v. Eurotrust International Ltd* [2006] 1 WLR 1476 (PC) and *Abu Rahman v. Abacha* [2007] 1 LL Rep 115 (CA). These cases were taken to have decided that there is a single standard of honesty, objectively determined by the court and applied to the specific conduct of a specific individual possessing the knowledge and qualities that he or she

actually possessed: see paragraphs [25], [28], [29] and [32]. This appears to me to accord with treating intention as a subjective factor to be determined by reference to the objective circumstances of the particular case, as envisaged by the judgments of the Court of Justice relating to the assessment of objections to registration on the ground of bad faith.”

60) In the case of *Red Bull GmbH v Sun Mark Limited, Sea Air & Land Forwarding Limited* [2012] EWCH 1929 (Ch) Arnold J. Set out the general principles of what constitutes “Bad Faith” as follows:

“130 A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/ Article 3(2)(d) of the Directive/ Article 52 (1)(b) of the Regulation are now fairly well established. (For a helpful discussion of many of these points, see N.M. Dawson, “Bad faith in European trade mark law” [2011] IPQ 229.)

131 First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see *Case-529/07 Chocoladenfabriken Lindt & Sprungli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132 Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2009] EHC 3032 (Ch), [2009] RPC 9 at [167] and cf. *Case C-259/02 La Mer Technology Inc. V Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and *Case C-192/03 Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133 Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207–2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134 Fourthly, bad faith includes not only dishonesty, but also “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined”: see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004) at [8].

135 Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly’s Trade Mark Application* [2008] RPC 20 at [51] and *CHOOS/ Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136 Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137 Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is

dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138 Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth* :

“41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48).”

61) It is well established (*Chocoladenfabriken Lindt & Sprungli AG v Franz Hauswirth GmbH; Nonogram Trade Mark* [2001] RPC 21 and *Hotpicks Trade Mark* [2004] RPC 42) that the relevant date for consideration of a bad faith claim are the application's filing date or at least a date no later than that. In the instant case the relevant date is 4 March 2014.

62) In asserting that the marks were applied for in bad faith, the onus rests with PCC to make a prima facie case. A claim that a mark was applied for in bad faith implies some action by TTE which a reasonable person would consider to be unacceptable behaviour or, as put by Lindsay in the *Gromax* trade mark case [1999] RPC 10:

“includes some dealings which fall short of the standards of acceptable commercial behaviour”.

63) The issue must be determined on the balance of probabilities. On the basis of these authorities it is clear that a finding of bad faith may be made in circumstances which do not involve actual dishonesty. Furthermore, it is not necessary for me to reach a view on TTE's state of mind regarding the application for registration if I am satisfied that its actions in applying for the mark in the light of all the surrounding circumstances would have been considered contrary to normally accepted standards of honest conduct.

64) In the instant case, Mr Maytham is the controlling mind behind TTE. He worked for PCC for a number of years and would have been aware of the use by PCC of their TFW mark. PCC were quite willing for TTE to use the methodology behind TFW provided that it chose another mark, even going to the trouble of suggesting marks that would be acceptable. In the light of all the

circumstances set out in this case it appears to me that TTE applied for its trade marks in the full knowledge of the goodwill and reputation of PCC in the field of activities to which TTE sought to register its marks. TTE contended that PCC were aware of the proposed use by TTE and did nothing, however this is disputed by PCC. **The applications were therefore filed in bad faith and so the ground of opposition under section 3(6) succeeds.**

CONCLUSION

65) PCC has successfully defended its mark and been successful in opposing both of TTE applications.

COSTS

66) As PCC has been successful it is entitled to a contribution towards its costs.

Preparing a statement and considering the other side's statement x3	£900
Expenses x2	£400
Preparing evidence and considering the evidence of the other party	£900
Preparing for and attending a hearing	£1100
TOTAL	£3,300

45) I order TT Education Ltd to pay Pie Corbett Consultancy Limited the sum of £3,300. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 2nd day of September 2015

**G W Salthouse
For the Registrar
the Comptroller-General**

ANNEX 1

<p>3045061</p>	<p>In Class 16: Activity books;Adhesive stickers;Adhesive-backed letters and numbers;Advertisement boards of card;Albums;Albums for stickers;Angle guides [drawing instruments];Angle plotters [drawing instruments];Arithmetical tables;Art paper;Art prints;Atlases;Attachments for pencils;Bibles;Binders;Binders for office use;Binders for the office;Binders (Loose-leaf -);Binders (office supplies);Binders [stationery];Binding materials for books and papers;Binding strips [bookbinding];Blackboard rulers;Book binding materials;Book bindings;Book covers;Book holders;Book jackets;Booklets;Books;Catalogues;Children's activity books;Children's comics;Children's storybooks;Colored craft and art sand;Coloring books;Colour pencils;Colour pens;Coloured pencils;Coloured pens;Colouring books;Colouring crayons;Colouring pencils;Colouring pens;Comic books;Comic strips;Comic strips' comic features;Comics;Compasses for drawing;Computer programmes in printed form;Computer programs in printed form;Computer reference manuals;Computer software in printed form;Copy books;Copybooks;Covering materials for books;Covers for books;Covers [stationery];Date stamps;Date stamps [daters];Day planners;Decorative pencil-top ornaments;Desk agendas;Desk diaries;Desk organisers;Desk pads;Desk top planners;Desk trays;Diaries;Diaries [printed matter];Dictionaries;Drawing books;Drawing instruments;Drawing instruments for blackboards;Drawing materials;Drawing materials for blackboards;Drawing pads;Drawing pens;Dry transfer characters;Dry transfer lettering;Erasers;Erasers (Writing board -);Event programs;Events programmes;Exercise books;Exercise-book covers;Extensions for pencils;Felt marking pens;Felt tip markers;Felt-tip pens;Fibertip pens;Figures made of paper;Figurines [statuettes] of papier mâché;Flags of paper;Flash cards;Flipcharts;Flyers;Folios;Forms, printed;Fountain pen ink cartridges;Fountain pens;Gel roller pens;Geographical maps;Glitter glue for stationery purposes;Glitter pens for stationery purposes;Globes;Globes (Terrestrial -);Handbooks [manuals];Handwriting specimens for copying;Highlighter pens;Highlighters;Highlighting markers;Highlighting pens;Histological sections for teaching purposes;Instructional and teaching material (except apparatus);Instructional material (except apparatus);Jackets for papers;Jackets of paper for books;Jotters;Leather book covers;Magazine supplements for newspapers;Magazines [periodicals];Manuals [handbooks];Manuscript books;Map cases;Maps;Maps (Geographical -);Maps made of flexible plastics;Marking inks;Marking pen refills;Marking pens [stationery];Marking stamps;Mechanical pencils;Modelling clays (Molds for -) [artists' materials];Modelling clays (Moulds for -) [artists' materials];Mounted and unmounted photographs;Mounted posters;Music in sheet form;Newsletters;Newspapers;Note books;Note pad holders;Note paper;Noteboards;Notebooks;Notelets;Notepads;Novels;Pads of paper;Pads [stationery];Pads (Writing -);Page holders;Page markers;Paint boxes;Paint boxes [articles for use in school];Paint brushes;Painting books;Painting sets for children;Paintings and calligraphic works;Paintings [pictures], framed or unframed;Pamphlets;Paper ;Paper;Paper badges;Paper for wrapping books;Paper name badges;Paper pennants;Paper sheets for note taking;Paper sheets [stationery];Paper signs;Paper stationery;Pencil ornaments [stationery];Personal organisers;Photographs;Photographs [printed];Picture books;Picture postcards;Pictures;Planners [printed matter];Pop-up books;Portraits;Postcards and picture postcards;Printed art reproductions;Printed awards;Printed calendars;Printed certificates;Printed matter;Printed music;Printed publications;Printed timetables;Propelling pencils;Prospectuses;Protective covers for books;Protractors [for stationery and office use];Publications (Printed -);Reading easels;Refills for ballpoint pens;Reinforced stationery tabs;Removable tattoos [decalcomania];Retractable pencils;Rosettes of paper;Route maps;Ruled paper [finished products];Rulers;Scented stationery;School yearbooks;Score books;Score cards;Score charts;Score sheets;Score-books;Score-cards;Scoring cards;Scrap books;Scrapbooks;Sculptures made from papier mache;Sharpeners (pencil-);Sheet music;Signboards of paper or cardboard;Silver paper;Sketch boards;Sketch books;Sketch pads;Sketchbooks;Sketching boards;Sketching pads;Small blackboards;Software programmes in printed form;Song books;Spiral-bound notebooks;Stationery;Stencils [stationery];Sticker activity books;Sticker albums;Stickers [decalcomanias];Stickers [stationery];Strips of fancy paper (tanzaku);Table place setting mats of cardboard;Table place setting mats paper;Tablemats of paper;Tables (Arithmetical -);Tables (Calculating -);Talking children's books;Temporary tattoos;Terrestrial globes;Textbooks;Timetables;Timetables (Printed -);Transfers;Transfers [decalcomanias];Transparencies [stationery];Unmounted and mounted photographs;User manuals;Wall calendars;Wall charts;Wall planners;Whiteboard erasers;Whiteboards;Whiteboards having magnetic properties;Wristbands for the retention of writing instruments;Writing instruments;Writing materials;Writing or drawing books;Writing pads;Writing paper;Writing paper holders;Writing paper pads;Writing stationery;Writing tablets;Writing utensils;Year planners.</p>
	<p>In Class 41: Academic examination services;Academies [education];Academy education services;Academy services (education-);Adult education services;Adult education services relating to accounting;Adult education services relating to auditing;Adult education services relating to banking;Adult education services relating to commerce;Adult education services relating to environmental issues;Adult education services relating to management;Adult training;Adult tuition;Advisory services relating to education;Advisory services relating to publishing;Advisory services relating to training;Analyzing educational tests scores and data for others;Arrangement of conferences for educational purposes;Arrangement of conventions for educational purposes;Arrangement of seminars for educational purposes;Arrangement of sports competitions;Arrangement of training courses in teaching institutes;Arranging and conducting award ceremonies;Arranging and conducting competitions;Arranging and conducting conferences;Arranging and conducting conferences and seminars;Arranging and conducting educational conferences;Arranging and conducting of colloquiums;Arranging and conducting of commercial, trade and business conferences;Arranging and conducting of conferences;Arranging and conducting of educational seminars;Arranging and conducting of seminars;Arranging and conducting of symposiums;Arranging and conducting of training workshops;Arranging and conducting of workshops;Arranging and conducting of workshops [training];Arranging and conducting seminars;Arranging and conducting workshops;Arranging conferences;Arranging for students to participate in educational activities;Arranging for students to participate in educational courses;Arranging of an annual educational conference;Arranging of competitions for education or entertainment;Arranging of competitions for educational purposes;Arranging of competitions for training purposes;Arranging of conferences relating to education;Arranging of conventions for business purposes;Arranging of conventions for educational purposes;Arranging of courses of instruction;Arranging of demonstrations</p>

for educational purposes;Arranging of demonstrations for training purposes;Arranging of displays for educational purposes;Arranging of displays for training purposes;Arranging of exhibitions for educational purposes;Arranging of exhibitions for training purposes;Arranging of festivals for educational purposes;Arranging of festivals for training purposes;Arranging of games;Arranging of lectures;Arranging of presentations for educational purposes;Arranging of seminars;Arranging of seminars relating to education;Arranging of seminars relating to training;Arranging professional workshop and training courses;Arranging teaching programmes;Arranging technical instruction courses;Audio production;Audio recording and production;Boarding school services;Boarding schools;Book and review publishing;Book publishing;Books (publication of-);Books (Publication of -);Business educational services;Business training services;Career advisory services (education or training advice);Career and vocational counselling;Career counseling [education];Career counselling [training and education advice];Career information and advisory services (educational and training advice);Certification of education and training awards;Charitable services, namely education and training;Club education services;Commercial training services;Commissioned writing [plays, musicals, for publications etc];Commissioning of artist works;Competitions (organising of education-);Computer assisted education services;Computer assisted teaching services;Computer assisted training services;Computer based educational services;Computer based training;Computer education training;Computer education training services;Computer training;Computer training advisory services;Computer training services;Computerised training;Computerised training in career counselling;Conducted basic literacy courses (provision of-);Conducting courses, seminars and workshops;Conducting instructional courses;Conducting of business conferences;Conducting of correspondence courses;Conducting of courses;Conducting of educational conferences;Conducting of educational courses;Conducting of exhibitions for educational purposes;Conducting of instructional seminars;Conducting of seminars and congresses;Conducting seminars;Conducting training seminars;Conducting training seminars for clients;Conducting workshops [training];Conference display services relating to adult basic education;Conference services;Conferences (Arranging and conducting of -);Conferences, exhibitions and seminars;Consultancy services relating to engineering education;Consultancy services relating to the education and training of management and of personnel;Consultancy services relating to the training of employees;Consultancy services relating to training;Consultation services relating to business education;Consultation services relating to the publication of books;Consultation services relating to the publication of magazines;Consultation services relating to the publication of written texts;Correspondence courses;Correspondence courses, distance learning;Correspondence courses (provision of -);Correspondence school services;Correspondence schools;Courses of instruction (provision of-);Courses (training-) relating to philosophical subjects;Courses (training-) relating to religious subjects;Courses (training-) relating to research and development;Courses (training-) relating to science;Demonstration [for instructional purposes];Design of educational courses, examinations and qualifications;Developing educational manuals;Development of educational materials;Dissemination of educational material;Distance learning services;Editing of texts (except publicity texts);Editing of written text;Editing of written texts;Editing or recording of sounds and images;Educating at senior high schools;Educating at university or colleges;Education;Education academy services;Education academy services for teaching acting;Education academy services for teaching art history;Education academy services for teaching construction drafting;Education academy services for teaching languages;Education advisory services relating to accountancy;Education and training;Education courses relating to automation;Education courses relating to the travel industry;Education examination;Education in movement awareness;Education in road safety;Education in the field of art rendered through correspondence courses;Education in the field of computing;Education in the field of computing science;Education in the field of data processing;Education information;Education (information relating to -);Education information services;Education (religious-);Education (Religious -);Education services;Education services for imparting data processing teaching methods;Education services for imparting language teaching methods;Education services for managerial staff;Education services in the nature of courses at the university level;Education services provided by holiday resort establishments;Education services provided by radio;Education services provided by television;Education services provided by television programmes;Education services provided by tourist resort establishments;Education services related to the arts;Education services relating to business franchise management;Education services relating to business training;Education services relating to commerce;Education services relating to communication skills;Education services relating to computer software;Education services relating to computer systems;Education services relating to computers;Education services relating to conservation;Education services relating to conservation of the environment;Education services relating to cooking;Education services relating to customer satisfaction;Education services relating to data processing;Education services relating to design;Education services relating to fashion;Education services relating to food technology;Education services relating to health;Education services relating to hygiene;Education services relating to industry;Education services relating to languages;Education services relating to management;Education services relating to music;Education services relating to nutrition;Education services relating to painting;Education services relating to photography;Education services relating to physical fitness;Education services relating to quality services;Education services relating to religion;Education services relating to road safety;Education services relating to sports;Education services relating to the abuse of addictive substances;Education services relating to the abuse of drugs;Education services relating to the agricultural industry;Education services relating to the application of computer software;Education services relating to the application of computer systems;Education services relating to the cinema;Education services relating to the development of childrens' intellectual faculties;Education services relating to the development of childrens' mental faculties;Education services relating to the horticultural industry;Education services relating to the provision of restaurant services;Education services relating to the training of personnel in food technology;Education services relating to the use of computers in business;Education services relating to the veterinary profession;Education services relating to therapeutic treatments;Education services relating to vocational training;Education services relating to waiting;Education services relating to water;Educational advisory services;Educational assessment services;Educational consultancy services;Educational courses (provision of-);Educational courses relating to design;Educational courses relating to finance;Educational courses relating to insurance;Educational courses relating to the travel industry;Educational demonstrations;Educational establishments providing courses of instruction (services of-);Educational examination;Educational examination services;Educational examination services (information relating to -);Educational information provided on-line from a computer database or the internet;Educational information services;Educational institute services;Educational instruction;Educational research;Educational seminars;Educational services;Educational services for providing courses of education;Educational services for providing courses of instruction;Educational services for teaching manual writing;Educational services for teaching transcription techniques;Educational services for the dramatic arts;Educational services for the teaching of languages;Educational services in the nature of correspondence courses;Educational services in the nature of correspondence schools;Educational services provided by a school;Educational services provided by institutes of further education;Educational services provided by institutes of higher education;Educational services provided for children;Educational services provided for teachers of children;Educational services provided to industry;Educational services relating to business;Educational services relating to the teaching of foreign languages;Educational services relating to the teaching of french;Educational services relating to the writing of computer programs;Educational testing;Electronic online publication of periodicals and books;Electronic publication;Electronic publication services;Electronic publications (not downloadable);Electronic publishing;Electronic publishing services;Electronic text publishing services;Employment training;Engineering training college

services;English language education services;Entertainment, education and instruction services;Examination services (educational -);Exhibition services for educational purposes;Exhibitions (arranging-) for educational purposes;Exhibitions (conducting-) for educational purposes;Exhibitions (Organization of -) for cultural or educational purposes;Exhibitions (organization of-) for cultural or educational purposes;Film production for educational purposes;Foreign language education services;Freelance journalism;Guidance (Vocational -) [education or training advice];Guidance (vocational-)[education or training advice];Health education;Higher education services;Information about education;Information (education-);Information (Education -);Information on education;Information relating to education, provided on-line from a computer database or the internet;Information relating to sports education;Information services relating to books;Information services relating to education;Information services relating to schools;Institutes of education (services provided by-);Instruction in gymnastics;Instruction in languages;Instruction in music;Instruction in the use of computers;Interactive and distance learning courses and sessions provided on-line via a telecommunications link or computer network or provided by other means;Interviewing of contemporary figures for educational purposes;Issue of publications;Job training services;Language instruction;Language teaching;Language teaching services;Language training;Language tuition;Lingual education;Linguistic classes;Magazine publishing;Magazines (publication of -);Micro-publishing;Motion picture film production;Motion picture production;Movement tuition for pre-school children;Music instruction;Music tuition by correspondence courses;Musical education services;Musical events (arranging of-);News reporting;Newspaper publication;Newspaper publishing;News-reporting services;Nursery school services;Nursery school services [educational];Nursery schools;Online electronic publishing of books and periodicals;On-line publication of electronic books and journals;On-line publication of electronic books and journals (non-downloadable);On-line publishing services;Organisation of competitions and awards;Organisation of competitions (education or entertainment);Organisation of competitions for education or entertainment;Organisation of conferences relating to education;Organisation of conferences relating to training;Organisation of conferences relating to vocational training;Organisation of continuing educational seminars;Organisation of correspondence courses;Organisation of courses using distance learning methods;Organisation of courses using open learning methods;Organisation of educational seminars;Organisation of examinations [educational];Organisation of examinations to grade level of achievement;Organisation of exhibitions for cultural and educational purposes;Organisation of exhibitions for cultural or educational purposes;Organisation of exhibitions for educational purposes;Organisation of games;Organisation of games and competitions;Organisation of language courses;Organisation of meetings and conferences;Organisation of seminars;Organisation of seminars and conferences;Organisation of seminars relating to education;Organisation of seminars relating to training;Organisation of symposia relating to education;Organisation of symposia relating to training;Organisation of teaching activities;Organisation of tournaments;Organisation of training courses;Organising competitions;Organising of business training;Organising of competitions for education;Organising of conferences for educational purposes;Organising of conferences relating to education;Organising of education competitions;Organising of education conferences;Organising of education conventions;Organising of education exhibitions;Organising of education seminars;Organising of educational conferences;Organising of educational congresses;Organising of educational exhibitions;Organising of educational games;Organising of educational lectures;Organising of educational seminars;Organising of educational seminars relating;Organising of exhibitions for educational purposes;Organising of games;Organising of meetings in the field of education;Organising of shows for educational purposes;Organising of sporting contests;Organising of sporting events;Organising of sports events;Organising of sports events and of sports competitions;Organization of competitions [education or entertainment];Organization of education competitions;Organization of educational conferences;Organization of educational congresses;Organization of educational symposia;Organization of exhibitions for cultural and educational purposes;Organization of exhibitions for cultural or educational purposes;Organization of exhibitions for educational purposes;Organizing community sporting and cultural events;Perceptual teaching services;Perceptual tuition services;Personal development courses;Personal development training;Personnel training;Physical education programmes;Physical education services;Physical fitness education services;Physical fitness instruction;Physical fitness instruction for adults and children;Physical health education;Planning of conferences for educational purposes;Planning of lectures for educational purposes;Planning of seminars for educational purposes;Postgraduate training courses;Preparation of radio and television programmes;Preparation of radio programmes;Preparation of television programmes;Preparation of texts for publication;Preparatory schools;Pre-school education;Pre-school teaching;Primary education services;Primary education services relating to literacy;Production and distribution of radio programmes;Production and distribution of television programmes;Production of animated and live action programmes;Production of animation;Production of course material distributed at management courses;Production of course material distributed at management lectures;Production of course material distributed at management seminars;Production of course material distributed at professional courses;Production of course material distributed at professional lectures;Production of course material distributed at professional seminars;Production of course material distributed at vocational courses;Production of course material distributed at vocational lectures;Production of course material distributed at vocational seminars;Production of documentaries;Production of educational sound and video recordings;Production of educational television programmes;Production of films;Production of films for educational purposes;Production of live television programmes for education;Production of magazines;Production of plays;Production of radio and of television programmes;Production of radio and television programmes;Production of radio and television programs;Production of radio and television shows and programmes;Production of radio broadcasts;Production of teaching reports;Production of video tapes for corporate use in corporate educational training;Production of video tapes for corporate use in management educational training;Production (videotape film-);Production (Videotape film -);Professional consultancy relating to education;Professional training services;Providing computer assisted courses of instruction;Providing computer-delivered educational testing and assessments;Providing courses of instruction;Providing courses of instruction for young people;Providing courses of training;Providing courses of training for young people;Providing facilities for educational purposes;Providing of education;Providing of training;Providing on-line electronic publication [not downloadable];Providing online electronic publications;Providing on-line electronic publications;Providing on-line electronic publications, not downloadable;Providing on-line information and news in the field of employment training;Providing on-line publications;Providing on-line publications (non-downloadable);Providing on-line publications (not downloadable);Providing on-line reviews of books;Providing on-line videos, not downloadable;Providing training;Providing tutorial sessions in the field of mathematics;Provision and management of sporting events;Provision of childrens' educational services through play groups;Provision of courses of instruction;Provision of courses of instruction in languages;Provision of day-care [educational] units;Provision of education and training;Provision of education courses;Provision of education courses relating to computers;Provision of education on-line from a computer database or via the internet or extranets;Provision of educational examination facilities;Provision of educational examinations;Provision of educational examinations and tests;Provision of educational information;Provision of electronic publications (not downloadable);Provision of facilities for education;Provision of facilities for employment skills training;Provision of information relating to books;Provision of information relating to education;Provision of information relating to publishing;Provision of information relating to the facilities offered by independent schools;Provision of information relating to the location of independent schools;Provision of information relating to training;Provision of language schools and language courses;Provision of physical education;Provision of sporting competitions;Provision of sporting events;Provision of training;Provision of training and

	<p>education;Provision of training courses;Provision of training courses for young people in preparation for careers;Provision of training courses for young people in preparation for employment;Provision of training courses for young people in preparation for vocations;Provision of training courses in personal development;Provision of training services for business;Provision of tuition;Publication and editing of printed matter;Publication and edition of books;Publication of books;Publication of books, magazines, almanacs and journals;Publication of books, reviews;Publication of brochures;Publication of calendars of events;Publication of educational books;Publication of educational materials;Publication of educational printed matter;Publication of educational teaching materials;Publication of educational texts;Publication of electronic books and journals on-line;Publication of electronic magazines;Publication of electronic newspapers accessible via a global computer network;Publication of instructional literature;Publication of journals;Publication of leaflets;Publication of magazines;Publication of manuals;Publication of material which can be accessed from databases or from the internet;Publication of newspapers;Publication of newspapers, periodicals, catalogs and brochures;Publication of periodicals;Publication of posters;Publication of printed matter;Publication of printed matter and printed publications;Publication of printed matter relating to education;Publication of text books;Publication of texts;Publication of texts, books, journals;Publication of texts, books, magazines and other printed matter;Publication of texts, other than publicity texts;Publication of the editorial content of sites accessible via a global computer network;Publication of training manuals;Publication services;Publishing;Publishing by electronic means;Publishing, including online publishing;Publishing of books;Publishing of books and reviews;Publishing of books, magazines;Publishing of documents;Publishing of educational material;Publishing of educational matter;Publishing of electronic publications;Publishing of instructional books;Publishing of newsletters;Publishing of newspapers;Publishing of printed matter;Publishing of reviews;Publishing of stories;Publishing of web magazines;Publishing services;Publishing services carried out by computerised means;Publishing services for books;Publishing services for books and magazines;Publishing services (including electronic publishing services);Religious education;Religious educational services;Religious training;Remedial tuition;Remedial tuition in language;Remedial tuition in speech;Residential education courses;Residential training courses;Review courses for state examinations;School courses relating to examination preparation;School courses relating to study assistance;School services;School services for the teaching of art;School services for the teaching of languages;Schools (boarding-);Schools (Boarding -);Schools (nursery-);Schools (Nursery -);Second language educational services;Secondary school educational services;Seminars;Seminars (arranging and conducting of-);Seminars (Arranging and conducting of -);Services for teaching languages;Services for the implementation of educational procedures;Services for the implementation of teaching procedures;Services for the provision of training in the use of computers;Services for the publication of books;Services for the publication of magazines;Setting of educational standards;Setting of training standards;Showing of prerecorded entertainment;Singing education;Sport camp services;Sport camps;Sporting activities;Sporting activities (organising of-);Sporting education services;Sporting event organization;Sports education services;Sports tuition;Sports tuition, coaching and instruction;Staff training in the use of electrical equipment;Staff training in the use of electronic equipment;Staff training services;Staff training services relating to modern office technology;Symposiums relating to education;Teacher training services;Teaching;Teaching academy services;Teaching and training in business, industry and information technology;Teaching assessments for counteracting learning difficulties;Teaching at elementary schools;Teaching at junior high schools;Teaching by correspondence courses;Teaching in the field of remedial reading;Teaching of foreign languages;Teaching of french to children through recreation;Teaching of languages;Teaching of life saving techniques;Teaching of meditation practices;Teaching services;Teaching services for communication skills;Teaching services relating to pedagogy techniques;Team building (education);Technological education services;Telephone information services relating to education;Texts (Publication of -), other than publicity texts;Texts (publication of-) other than publicity texts;Texts (Writing of -), other than publicity texts;Training;Training and education services;Training and further training consultancy;Training consultancy;Training courses;Training courses in strategic planning relating to advertising, promotion, marketing and business;Training courses (provision of-);Training for parents in parenting skills;Training for parents in the organisation of parent support groups;Training in administration;Training in business management;Training in business skills;Training in communication techniques;Training in philosophy;Training in the use of computers;Training of non-medical staff in the care of children;Training of sports teachers;Training of swimming teachers;Training of teachers;Training (Practical -) [demonstration];Training (practical-) [demonstration];Training relating to employment opportunities;Training relating to employment skills;Training services;Training services for personnel;Training services relating to speech;Tuition in music;Tuition in sports;Tutoring;Tutoring at cram schools;University education services;University services;Workshops (Arranging and conducting of -) [training];Workshops (arranging and conducting of-) [training];Workshops for educational purposes;Workshops for training purposes;Writing of texts, other than publicity texts;Writing of texts [other than publicity texts];Written training courses.</p>
<p>3045065</p>	<p>In Class 16: Activity books;Adhesive stickers;Adhesive-backed letters and numbers;Advertisement boards of card;Albums;Albums for stickers;Angle guides [drawing instruments];Angle plotters [drawing instruments];Arithmetical tables;Art paper;Art prints;Atlases;Attachments for pencils;Bibles;Binders;Binders for office use;Binders for the office;Binders (Loose-leaf -);Binders (office supplies);Binders [stationery];Binding materials for books and papers;Binding strips [bookbinding];Blackboard rulers;Book binding materials;Book bindings;Book covers;Book holders;Book jackets;Booklets;Books;Catalogues;Children's activity books;Children's comics;Children's storybooks;Colored craft and art sand;Coloring books;Colour pencils;Colour pens;Coloured pencils;Coloured pens;Colouring books;Colouring crayons;Colouring pencils;Colouring pens;Comic books;Comic strips;Comic strips' comic features;Comics;Compasses for drawing;Computer programmes in printed form;Computer programs in printed form;Computer reference manuals;Computer software in printed form;Copy books;Copybooks;Covering materials for books;Covers for books;Covers [stationery];Date stamps;Date stamps [daters];Day planners;Decorative pencil-top ornaments;Desk agendas;Desk diaries;Desk organisers;Desk pads;Desk top planners;Desk trays;Diaries;Diaries [printed matter];Dictionaries;Drawing books;Drawing instruments;Drawing instruments for blackboards;Drawing materials;Drawing materials for blackboards;Drawing pads;Drawing pens;Dry transfer characters;Dry transfer lettering;Erasers;Erasers (Writing board -);Event programs;Events programmes;Exercise books;Exercise-book covers;Extensions for pencils;Felt marking pens;Felt tip markers;Felt-tip pens;Fibertip pens;Figures made of paper;Figurines [statuettes] of papier mâché;Flags of paper;Flash cards;Flipcharts;Flyers;Folios;Forms, printed;Fountain pen ink cartridges;Fountain pens;Gel roller pens;Geographical maps;Glitter glue for stationery purposes;Glitter pens for stationery purposes;Globes;Globes (Terrestrial -);Handbooks [manuals];Handwriting specimens for copying;Highlighter pens;Highlighters;Highlighting markers;Highlighting pens;Histological sections for teaching purposes;Instructional and teaching material (except apparatus);Instructional material (except apparatus);Jackets for papers;Jackets of paper for books;Jotters;Leather book covers;Magazine supplements for newspapers;Magazines [periodicals];Manuals [handbooks];Manuscript books;Map cases;Maps;Maps (Geographical -);Maps made of flexible plastics;Marking inks;Marking pen refills;Marking pens [stationery];Marking stamps;Mechanical pencils;Modelling clays (Molds for -) [artists' materials];Modelling clays (Moulds for -) [artists' materials];Mounted and unmounted photographs;Mounted posters;Music in sheet form;Newsletters;Newspapers;Note books;Note pad holders;Note paper;Noteboards;Notebooks;Notelets;Notepads;Novels;Pads of paper;Pads [stationery];Pads (Writing -);Page holders;Page markers;Paint boxes;Paint boxes [articles for use in school];Paint brushes;Painting books;Painting sets for children;Paintings and calligraphic works;Paintings [pictures], framed or unframed;Pamphlets;Paper ;Paper;Paper badges;Paper for</p>

wrapping books;Paper name badges;Paper pennants;Paper sheets for note taking;Paper sheets [stationery];Paper signs;Paper stationery;Pencil ornaments [stationery];Personal organisers;Photographs;Photographs [printed];Picture books;Picture postcards;Pictures;Planners [printed matter];Pop-up books;Portraits;Postcards and picture postcards;Printed art reproductions;Printed awards;Printed calendars;Printed certificates;Printed matter;Printed music;Printed publications;Printed timetables;Propelling pencils;Prospectuses;Protective covers for books;Protractors [for stationery and office use];Publications (Printed -);Reading easels;Refills for ballpoint pens;Reinforced stationery tabs;Removable tattoos [decalcomania];Retractable pencils;Rosettes of paper;Route maps;Ruled paper [finished products];Rulers;Scented stationery;School yearbooks;Score books;Score cards;Score charts;Score sheets;Score-books;Score-cards;Scoring cards;Scrap books;Scrapbooks;Sculptures made from papier mache;Sharpeners (pencil-);Sheet music;Signboards of paper or cardboard;Silver paper;Sketch boards;Sketch books;Sketch pads;Sketchbooks;Sketching boards;Sketching pads;Small blackboards;Software programmes in printed form;Song books;Spiral-bound notebooks;Stationery;Stencils [stationery];Sticker activity books;Sticker albums;Stickers [decalcomanias];Stickers [stationery];Strips of fancy paper (tanzaku);Table place setting mats of cardboard;Table place setting mats paper;Tablemats of paper;Tables (Arithmetical -);Tables (Calculating -);Talking children's books;Temporary tattoos;Terrestrial globes;Textbooks;Timetables;Timetables (Printed -);Transfers;Transfers [decalcomanias];Transparencies [stationery];Unmounted and mounted photographs;User manuals;Wall calendars;Wall charts;Wall planners;Whiteboard erasers;Whiteboards;Whiteboards having magnetic properties;Wristbands for the retention of writing instruments;Writing instruments;Writing materials;Writing or drawing books;Writing pads;Writing paper;Writing paper holders;Writing paper pads;Writing stationery;Writing tablets;Writing utensils;Year planners.

In Class 41: Academic examination services;Academies [education];Academy education services;Academy services (education-);Adult education services;Adult education services relating to accounting;Adult education services relating to auditing;Adult education services relating to banking;Adult education services relating to commerce;Adult education services relating to environmental issues;Adult education services relating to management;Adult training;Adult tuition;Advisory services relating to education;Advisory services relating to publishing;Advisory services relating to training;Analyzing educational tests scores and data for others;Arrangement of conferences for educational purposes;Arrangement of conventions for educational purposes;Arrangement of seminars for educational purposes;Arrangement of sports competitions;Arrangement of training courses in teaching institutes;Arranging and conducting award ceremonies;Arranging and conducting competitions;Arranging and conducting conferences;Arranging and conducting conferences and seminars;Arranging and conducting educational conferences;Arranging and conducting of colloquiums;Arranging and conducting of commercial, trade and business conferences;Arranging and conducting of conferences;Arranging and conducting of educational seminars;Arranging and conducting of seminars;Arranging and conducting of symposiums;Arranging and conducting of training workshops;Arranging and conducting of workshops;Arranging and conducting of workshops [training];Arranging and conducting seminars;Arranging and conducting workshops;Arranging conferences;Arranging for students to participate in educational activities;Arranging for students to participate in educational courses;Arranging of an annual educational conference;Arranging of competitions for education or entertainment;Arranging of competitions for educational purposes;Arranging of competitions for training purposes;Arranging of conferences relating to education;Arranging of conventions for business purposes;Arranging of conventions for educational purposes;Arranging of courses of instruction;Arranging of demonstrations for educational purposes;Arranging of demonstrations for training purposes;Arranging of displays for educational purposes;Arranging of displays for training purposes;Arranging of exhibitions for educational purposes;Arranging of exhibitions for training purposes;Arranging of festivals for educational purposes;Arranging of festivals for training purposes;Arranging of games;Arranging of lectures;Arranging of presentations for educational purposes;Arranging of seminars;Arranging of seminars relating to education;Arranging of seminars relating to training;Arranging professional workshop and training courses;Arranging teaching programmes;Arranging technical instruction courses;Audio production;Audio recording and production;Boarding school services;Boarding schools;Book and review publishing;Book publishing;Books (publication of-);Books (Publication of -);Business educational services;Business training services;Career advisory services (education or training advice);Career and vocational counselling;Career counseling [education];Career counselling [training and education advice];Career information and advisory services (educational and training advice);Certification of education and training awards;Charitable services, namely education and training;Club education services;Commercial training services;Commissioned writing [plays, musicals, for publications etc];Commissioning of artist works;Competitions (organising of education-);Computer assisted education services;Computer assisted teaching services;Computer assisted training services;Computer based educational services;Computer based training;Computer education training;Computer education training services;Computer training;Computer training advisory services;Computer training services;Computerised training;Computerised training in career counselling;Conducted basic literacy courses (provision of-);Conducting courses, seminars and workshops;Conducting instructional courses;Conducting of business conferences;Conducting of correspondence courses;Conducting of courses;Conducting of educational conferences;Conducting of educational courses;Conducting of exhibitions for educational purposes;Conducting of instructional seminars;Conducting of seminars and congresses;Conducting seminars;Conducting training seminars;Conducting training seminars for clients;Conducting workshops [training];Conference display services relating to adult basic education;Conference services;Conferences (Arranging and conducting of -);Conferences, exhibitions and seminars;Consultancy services relating to engineering education;Consultancy services relating to the education and training of management and of personnel;Consultancy services relating to the training of employees;Consultancy services relating to training;Consultation services relating to business education;Consultation services relating to the publication of books;Consultation services relating to the publication of magazines;Consultation services relating to the publication of written texts;Correspondence courses;Correspondence courses, distance learning;Correspondence courses (provision of -);Correspondence school services;Correspondence schools;Courses of instruction (provision of-);Courses (training-) relating to philosophical subjects;Courses (training-) relating to religious subjects;Courses (training-) relating to research and development;Courses (training-) relating to science;Demonstration [for instructional purposes];Design of educational courses, examinations and qualifications;Developing educational manuals;Development of educational materials;Dissemination of educational material;Distance learning services;Editing of texts (except publicity texts);Editing of written text;Editing of written texts;Editing or recording of sounds and images;Educating at senior high schools;Educating at university or colleges;Education;Education academy services;Education academy services for teaching acting;Education academy services for teaching art history;Education academy services for teaching construction drafting;Education academy services for teaching languages;Education advisory services relating to accountancy;Education and training;Education courses relating to automation;Education courses relating to the travel industry;Education examination;Education in movement awareness;Education in road safety;Education in the field of art rendered through correspondence courses;Education in the field of computing;Education in the field of computing science;Education in the field of data processing;Education information;Education (information relating to -);Education information services;Education (religious-);Education (Religious -);Education services;Education services for imparting data processing teaching methods;Education services for imparting language teaching methods;Education services for managerial staff;Education services in the nature of courses at the university level;Education

services provided by holiday resort establishments;Education services provided by radio;Education services provided by television;Education services provided by television programmes;Education services provided by tourist resort establishments;Education services related to the arts;Education services relating to business franchise management;Education services relating to business training;Education services relating to commerce;Education services relating to communication skills;Education services relating to computer software;Education services relating to computer systems;Education services relating to computers;Education services relating to conservation;Education services relating to conservation of the environment;Education services relating to cooking;Education services relating to customer satisfaction;Education services relating to data processing;Education services relating to design;Education services relating to fashion;Education services relating to food technology;Education services relating to health;Education services relating to hygiene;Education services relating to industry;Education services relating to languages;Education services relating to management;Education services relating to music;Education services relating to nutrition;Education services relating to painting;Education services relating to photography;Education services relating to physical fitness;Education services relating to quality services;Education services relating to religion;Education services relating to road safety;Education services relating to sports;Education services relating to the abuse of addictive substances;Education services relating to the abuse of drugs;Education services relating to the agricultural industry;Education services relating to the application of computer software;Education services relating to the application of computer systems;Education services relating to the cinema;Education services relating to the development of childrens' intellectual faculties;Education services relating to the development of childrens' mental faculties;Education services relating to the horticultural industry;Education services relating to the provision of restaurant services;Education services relating to the training of personnel in food technology;Education services relating to the use of computers in business;Education services relating to the veterinary profession;Education services relating to therapeutic treatments;Education services relating to vocational training;Education services relating to waiting;Education services relating to water;Educational advisory services;Educational assessment services;Educational consultancy services;Educational courses (provision of-);Educational courses relating to design;Educational courses relating to finance;Educational courses relating to insurance;Educational courses relating to the travel industry;Educational demonstrations;Educational establishments providing courses of instruction (services of-);Educational examination;Educational examination services;Educational examination services (information relating to -);Educational information provided on-line from a computer database or the internet;Educational information services;Educational institute services;Educational instruction;Educational research;Educational seminars;Educational services;Educational services for providing courses of education;Educational services for providing courses of instruction;Educational services for teaching manual writing;Educational services for teaching transcription techniques;Educational services for the dramatic arts;Educational services for the teaching of languages;Educational services in the nature of correspondence courses;Educational services in the nature of correspondence schools;Educational services provided by a school;Educational services provided by institutes of further education;Educational services provided by institutes of higher education;Educational services provided for children;Educational services provided for teachers of children;Educational services provided to industry;Educational services relating to business;Educational services relating to the teaching of foreign languages;Educational services relating to the teaching of french;Educational services relating to the writing of computer programs;Educational testing;Electronic online publication of periodicals and books;Electronic publication;Electronic publication services;Electronic publications (not downloadable);Electronic publishing;Electronic publishing services;Electronic text publishing services;Employment training;Engineering training college services;English language education services;Entertainment, education and instruction services;Examination services (educational -);Exhibition services for educational purposes;Exhibitions (arranging-) for educational purposes;Exhibitions (conducting-) for educational purposes;Exhibitions (Organization of -) for cultural or educational purposes;Exhibitions (organization of-) for cultural or educational purposes;Film production for educational purposes;Foreign language education services;Freelance journalism;Guidance (Vocational -) [education or training advice];Guidance (vocational-)[education or training advice];Health education;Higher education services;Information about education;Information (education-);Information (Education -);Information on education;Information relating to education, provided on-line from a computer database or the internet;Information relating to sports education;Information services relating to books;Information services relating to education;Information services relating to schools;Institutes of education (services provided by-);Instruction in gymnastics;Instruction in languages;Instruction in music;Instruction in the use of computers;Interactive and distance learning courses and sessions provided on-line via a telecommunications link or computer network or provided by other means;Interviewing of contemporary figures for educational purposes;Issue of publications;Job training services;Language instruction;Language teaching;Language teaching services;Language training;Language tuition;Lingual education;Linguistic classes;Magazine publishing;Magazines (publication of -);Micro-publishing;Motion picture film production;Motion picture production;Movement tuition for pre-school children;Music instruction;Music tuition by correspondence courses;Musical education services;Musical events (arranging of-);News reporting;Newspaper publication;Newspaper publishing;News-reporting services;Nursery school services;Nursery school services [educational];Nursery schools;Online electronic publishing of books and periodicals;On-line publication of electronic books and journals;On-line publication of electronic books and journals (non-downloadable);On-line publishing services;Organisation of competitions and awards;Organisation of competitions (education or entertainment);Organisation of competitions for education or entertainment;Organisation of conferences relating to education;Organisation of conferences relating to training;Organisation of conferences relating to vocational training;Organisation of continuing educational seminars;Organisation of correspondence courses;Organisation of courses using distance learning methods;Organisation of courses using open learning methods;Organisation of educational seminars;Organisation of examinations [educational];Organisation of examinations to grade level of achievement;Organisation of exhibitions for cultural and educational purposes;Organisation of exhibitions for cultural or educational purposes;Organisation of exhibitions for educational purposes;Organisation of games;Organisation of games and competitions;Organisation of language courses;Organisation of meetings and conferences;Organisation of seminars;Organisation of seminars and conferences;Organisation of seminars relating to education;Organisation of seminars relating to training;Organisation of symposia relating to education;Organisation of symposia relating to training;Organisation of teaching activities;Organisation of tournaments;Organisation of training courses;Organising competitions;Organising of business training;Organising of competitions for education;Organising of conferences for educational purposes;Organising of conferences relating to education;Organising of education competitions;Organising of education conferences;Organising of education conventions;Organising of education exhibitions;Organising of education seminars;Organising of educational conferences;Organising of educational congresses;Organising of educational exhibitions;Organising of educational games;Organising of educational lectures;Organising of educational seminars;Organising of educational seminars relating;Organising of exhibitions for educational purposes;Organising of games;Organising of meetings in the field of education;Organising of shows for educational purposes;Organising of sporting contests;Organising of sporting events;Organising of sports events;Organising of sports events and of sports competitions;Organization of competitions [education or entertainment];Organization of education competitions;Organization of educational conferences;Organization of educational congresses;Organization of educational symposia;Organization of exhibitions for cultural and educational purposes;Organization of exhibitions for cultural or educational purposes;Organization of exhibitions for educational purposes;Organizing community sporting and cultural events;Perceptual teaching

	<p>services;Perceptual tuition services;Personal development courses;Personal development training;Personnel training;Physical education programmes;Physical education services;Physical fitness education services;Physical fitness instruction;Physical fitness instruction for adults and children;Physical health education;Planning of conferences for educational purposes;Planning of lectures for educational purposes;Planning of seminars for educational purposes;Postgraduate training courses;Preparation of radio and television programmes;Preparation of radio programmes;Preparation of television programmes;Preparation of texts for publication;Preparatory schools;Pre-school education;Pre-school teaching;Primary education services;Primary education services relating to literacy;Production and distribution of radio programmes;Production and distribution of television programmes;Production of animated and live action programmes;Production of animation;Production of course material distributed at management courses;Production of course material distributed at management lectures;Production of course material distributed at management seminars;Production of course material distributed at professional courses;Production of course material distributed at professional lectures;Production of course material distributed at professional seminars;Production of course material distributed at vocational courses;Production of course material distributed at vocational lectures;Production of course material distributed at vocational seminars;Production of documentaries;Production of educational sound and video recordings;Production of educational television programmes;Production of films;Production of films for educational purposes;Production of live television programmes for education;Production of magazines;Production of plays;Production of radio and of television programmes;Production of radio and television programmes;Production of radio and television programs;Production of radio and television shows and programmes;Production of radio broadcasts;Production of teaching reports;Production of video tapes for corporate use in corporate educational training;Production of video tapes for corporate use in management educational training;Production (videotape film-);Production (Videotape film -);Professional consultancy relating to education;Professional training services;Providing computer assisted courses of instruction;Providing computer-delivered educational testing and assessments;Providing courses of instruction;Providing courses of instruction for young people;Providing courses of training;Providing courses of training for young people;Providing facilities for educational purposes;Providing of education;Providing of training;Providing on-line electronic publication [not downloadable];Providing online electronic publications;Providing on-line electronic publications;Providing on-line electronic publications, not downloadable;Providing on-line information and news in the field of employment training;Providing on-line publications;Providing on-line publications (non-downloadable);Providing on-line publications (not downloadable);Providing on-line reviews of books;Providing on-line videos, not downloadable;Providing training;Providing tutorial sessions in the field of mathematics.</p>
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