

**O-708-18**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No. 3233412  
BY DONGXIA DATONG (BEIJING) MANAGEMENT AND CONSULTING CO. LIMITED  
TO REGISTER THE TRADE MARK**

The trade mark consists of the lowercase letters 'ofo' in a bold, sans-serif font. The first 'o' is a simple circle. The 'f' is a vertical stem with a horizontal bar at the top. The second 'o' is a simple circle.

**IN CLASSES 12, 35, 38, 39 & 42  
AND**

**IN THE MATTER OF OPPOSITION  
THERE TO UNDER No. 410814 BY  
IMAGINATION INDUSTRIES LIMITED**

**BACKGROUND**

1) On 25 May 2017, Dongxia Datong (Beijing) Management and Consulting Company Limited (hereinafter the applicant) applied to register the trade mark shown on the front cover in respect of the following goods:

In Class 12: Bicycles; Direction indicators for bicycles; Electric bicycles; Motor cars; Pushchairs; Bicycle tyres; Vehicle seats; Electric vehicles; Pumps for bicycle tyres; Non-skid devices for vehicle tyres.

In Class 35: Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Providing business information via a web site; Provision of commercial and business contact information; Provision of an on-line marketplace for buyers and sellers of goods and services; Sales promotion for others; Updating and maintenance of data in computer databases; Sponsorship search; Personnel management consultancy; Advertising; Publicity.

In Class 38: Communications by telephone; Message sending; Providing access to databases; Providing user access to global computer networks; Providing online forums; Streaming of data; Communications by computer terminals; Providing internet chatrooms; Transmission of electronic mail; Electronic bulletin board services [telecommunications services]; Satellite transmission; Paging services [radio, telephone or other means of electronic communication].

In Class 39: Car sharing services; Bicycle rental; Vehicle rental; Passenger transport; Taxi transport; Piloting; Car parking; Rental of warehouses; Courier services [messages or merchandise]; Providing driving directions for travel purposes.

In Class 42: Technical research; Creating and maintaining web sites for others; Software as a service [SaaS]; Computer software design; Maintenance of computer software; Providing search engines for the internet; Vehicle roadworthiness testing; Industrial design; Conversion of data or documents from physical to electronic media; Conversion of computer programs and data, other than physical conversion; Computer programming; Consultancy in the design and development of computer hardware.

2) The application was examined and accepted, and subsequently published for opposition purposes on 18 August 2017 in Trade Marks Journal No.2017/033.

3) On 17 November 2017 Imagination Industries Ltd (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the following trade marks:

Mark	Number	Dates of filing and registration	Class	Specification relied upon
OVO	3205321	06.01.17 21.04.17	12	Motor vehicles; electric vehicles; electric motor land vehicles; electric motor vehicle bodies; brake pads and brake linings, all for vehicles; brake callipers, braking installations, bumper bars, clutches, differential gears, drive gears, drive shafts, engines and motors, gear change selectors, transmissions, transmission shafts, radiator grills, radiator caps, hydraulic cylinders and motors, couplings and carrying bearings, all for vehicles; chassis for vehicles; manual and power steering apparatus, personal safety restraints, seats, sliding roofs, steering columns, all for vehicles; vehicle wheel hubs; vehicle wheels; deflectors, direction indicators, doors, hatches, upholstery, handles for doors, horns, mirrors (retrovisors), luggage carriers, ski carriers, mud-guards, anti-skid chains, head rests, safety belts, safety seats for children, mud-flaps, roof-racks, shock absorbers, springs, stabiliser bars, starter motors, steering wheels, steering linkages, suspensions, torsion bars, tow bars, windows, window winding mechanisms, windscreen wipers, all for vehicles; arm rests for vehicles; balance weights for vehicle wheels; mechanical controls for engines, brakes, clutches, accelerators and for transmissions, mountings for engines, all for vehicles; protective covers, reservoirs for fluids, storage boxes and storage compartments, wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; starters for vehicles; parts and fittings for electric vehicles; none of the aforesaid goods being electric bicycles or unicycles or parts thereof.
			35	Billing and accounting services; business consultation services; arranging subscriptions to telephone or Internet services for others; managing telephone or Internet services for others; operation and administration of telephone and Internet systems and networks for others; the bringing together, for the benefit of others, of telephone, broadband, electricity and utility services namely electricity, gas and water supply, enabling customers to conveniently view and purchase those services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.
			36	Investment services; financing services; insurance services; financial grant services; financial leasing; equipment financing services; financing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; processing electronic payments made through prepaid cards; fundraising services; charitable

				fundraising services; charitable collections; organisation of charitable collections; organisation of charitable fundraising activities and events; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.
			37	Installation, integration, repair, maintenance and upgrading of computers, computer hardware, electrical and electronic equipment, energy generation and storage equipment, monitoring equipment, metering equipment and power systems; installation, integration, repair, maintenance and upgrading of electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; installation, integration, repair, maintenance and upgrading services in the field of industrial technology; maintenance of household technology systems, devices and apparatus; computer and telephone battery recharge services; vehicle battery charging; leasing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; maintaining and regulating electric battery systems for storage, discharge, supply, transmission and stabilisation of electricity; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.
			38	Telecommunication services; electronic communication services; data transmission services; mobile telephone services; satellite communication services; Internet access services; monitoring, processing, broadcasting and reception of signals and data processed by computers or by telecommunications apparatus and instruments; video messaging services; video conferencing services; video messaging services; video telephone services; operation of telecommunications networks; rental of telecommunications apparatus, equipment and installations; delivery of digital music by telecommunications; telecommunication of information (including web pages, computer programs and any other data); transmission of news and current affairs information; telecommunication access services; computer network communication services; provision of facilities for electronic or on-line interactive discussions and conversations; leasing access time to computer databases; operation of telephone and broadband systems and networks for others; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.
			39	Energy supply and distribution; supply, transmission, storage and distribution of electricity, gas and water; information, consultancy and advisory services relating to all of the aforesaid services.
			42	Research, design and development services; design consultancy services; engineering services; surveying and exploration services; technology consultancy services; technical monitoring services; monitoring of electric battery systems for storing and supplying electricity; optimising electric battery systems for storage, discharge, supply, transmission and stabilisation of electricity; measurement

				<p>services; product testing services; design and development of computer software; computer software design services; technology audit services; quality audit services; technical project management services; technical project planning services; advisory services relating to energy consumption and energy efficiency; advisory services relating to the environment and environmental impact; energy usage monitoring services, namely recording and monitoring data relating to energy consumption in buildings; network planning services; installation, repair and maintenance of computer software; technical support services; computer and network diagnostics services; technical integration of computer systems and networks; computer software integration services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>
OVO	EU 16231052	06.01.17 12.06.17	12	<p>Motor vehicles; electric vehicles; electric motor land vehicles; electric motor vehicle bodies; brake pads and brake linings, all for vehicles; brake callipers, braking installations, bumper bars, clutches, differential gears, drive gears, drive shafts, engines and motors, gear change selectors, transmissions, transmission shafts, radiator grills, radiator caps, hydraulic cylinders and motors, couplings and carrying bearings, all for vehicles; chassis for vehicles; manual and power steering apparatus, personal safety restraints, seats, sliding roofs, steering columns, all for vehicles; vehicle wheel hubs; vehicle wheels; deflectors, direction indicators, doors, hatches, upholstery, handles for doors, horns, mirrors (retrovisors), luggage carriers, ski carriers, mud-guards, anti-skid chains, head rests, safety belts, safety seats for children, mud-flaps, roof-racks, shock absorbers, springs, stabiliser bars, starter motors, steering wheels, steering linkages, suspensions, torsion bars, tow bars, windows, window winding mechanisms, windscreen wipers, all for vehicles; arm rests for vehicles; balance weights for vehicle wheels; mechanical controls for engines, brakes, clutches, accelerators and for transmissions, mountings for engines, all for vehicles; protective covers, reservoirs for fluids, storage boxes and storage compartments, wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; starters for vehicles; parts and fittings for electric vehicles; none of the aforesaid goods being electric bicycles or unicycles or parts thereof.</p>
			35	<p>Billing and accounting services; business consultation services; arranging subscriptions to telephone or Internet services for others; managing telephone or Internet services for others; operation and administration of telephone and Internet systems and networks for others; the bringing together, for the benefit of others, of telephone, broadband, electric and utility services, enabling consumers to conveniently compare and purchase those services; all of the aforesaid services relating to the electricity, gas, water, telephone and Internet industries; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>
			38	<p>Telecommunication services; electronic communication services; data transmission services; mobile telephone services; satellite</p>

				<p>communication services; Internet access services; monitoring, processing, broadcasting and reception of signals and data processed by computers or by telecommunications apparatus and instruments; video messaging services; video conferencing services; video messaging services; video telephone services; operation of telecommunications networks; rental of telecommunications apparatus, equipment and installations; delivery of digital music by telecommunications; telecommunication of information (including web pages, computer programs and any other data); transmission of news and current affairs information; telecommunication access services; computer network communication services; provision of facilities for electronic or on-line interactive discussions and conversations; leasing access time to computer databases; operation of telephone and broadband systems and networks for others; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>
			39	<p>Energy supply and distribution; supply, transmission, storage and distribution of electricity, gas and water; leasing services relating to electric battery systems for the storage, supply and transmission of electricity; information, consultancy and advisory services relating to all of the aforesaid services.</p>
			42	<p>Research, design and development services; design consultancy services; engineering services; surveying and exploration services; technology consultancy services; technical monitoring services; monitoring of electric battery systems for storing and supplying electricity; optimising electric battery systems for storage, discharge, supply, transmission and stabilisation of electricity; measurement services; product testing services; design and development of computer software; computer software design services; technology audit services; quality audit services; technical project management services; technical project planning services; advisory services relating to energy consumption and energy efficiency; advisory services relating to the environment and environmental impact; energy usage monitoring services, namely recording and monitoring data relating to energy consumption in buildings; network planning services; installation, repair and maintenance of computer software; technical support services; computer and network diagnostics services; technical integration of computer systems and networks; computer software integration services; leasing services relating to electric battery systems for the discharge and stabilisation of electricity; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet; all of the aforesaid services in the fields of energy and electricity production, generation, storage, transmission, supply and distribution, electric batteries and electric vehicles.</p>

4) The grounds of opposition are in summary:

- a) the opponent contends that the mark applied for and its marks are similar and that all the goods and services applied for are identical and/or similar. As such it contends that the application offends against Section 5(2)(b) of the Act.
- b) The opponent contends that it has a reputation under its marks and, as such, use of the mark in suit upon the goods and services applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark. The opponent has invested in creating its reputation which the applicant is attempting to free-ride upon. Use of the mark in suit could tarnish the earlier mark, as well as dilute its capacity to distinguish the opponent's goods and services. The mark in suit therefore offends against section 5(3) of the Act.

5) On 4 January 2018 the applicant filed a counterstatement, which basically denied all the grounds pleaded. The applicant did acknowledge that some of the goods and services were identical, whilst others were similar but also claimed a third group of goods and services which are not similar. It contends that it chose its mark as it resembles a bicycle "the letters "o" on either side resemble bicycle wheels, and the letter "F" resembles the bicycle frame. Also the letter "F" with the arc at the top and the short line in the middle resembles the body outline of a cyclist." It denies the mark are similar. Only the opponent filed evidence; both parties seek an award of costs in their favour. Neither side wished to be heard but both provided written submissions which I shall refer to as and when necessary.

#### OPPONENT'S EVIDENCE

6) The opponent filed two witness statements. The first, dated 19 March 2018, is by Laura Foster, the opponent's Trade Mark Attorney and consists of submissions. The second witness statement, dated 16 March 2018, is by Vincent Casey a Director of the opponent company a position he has held since December 2017 having previously been the opponent's Corporate Financial Director since November 2013. From his statement I take the following:

The opponent has traded under the marks OVO and OVO ENERGY since 2009 and is one of the leading independent energy suppliers in the UK, and also has a reputation in the field of charging of electric vehicles. They have moved away from carbon sources to zero emission

generation and are leaders in the smart meter field. They have over half a million customers and revenue of over £700 million per annum. It is one of the top ten domestic energy suppliers in the UK. It has advertised on social media, radio television and postal advertising. They have sponsored events such as elite women's cycling events and have also won numerous awards from the energy industry.

## DECISION

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

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

(a) .....

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

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

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

9) The opponent is relying upon its trade marks listed in paragraph 3 above which are clearly earlier filed trade marks. The interplay between the date of the instant mark being published (18 August



2017) and the opponent's marks being registered (21 April 2017 and 12 June 2017) means that the proof of use requirements do not bite.

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

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

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

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

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

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

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

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

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

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### **The average consumer and the nature of the purchasing process**

11) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade.

12) The goods and services of both parties are varied and numerous, they range from bicycles to vehicles, advertising to transport and communications to technical research. The consumers for such goods and services would be the general UK public including businesses. The types of goods and services will typically be offered for sale in retail outlets, in brochures and catalogues as well as on the internet. The initial selection is therefore primarily visual. It is clear that some of the goods and services will be researched or discussed with a member of staff. The latter, along with personal recommendations, bring aural considerations into play.

13) Clearly, the average consumer's level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive items such as a child's bicycle the average consumer will pay attention to considerations such as whether it is age appropriate and whether it is suitable for the child. **Overall the average consumer for these types of goods and services is likely to pay an average to high degree of attention to the selection of such goods and services.**

### **Comparison of goods and services**

14) In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*, the CJEU stated at paragraph 23 of its judgement:

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

15) Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

16) In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

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

17) In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) OHIM*) case T-133/05, the General Court (“GC”) stated:

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T110/01 *Vedial V OHIM France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

18) I also take into account the case of *Commercy AG, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-316/07, where the General Court pointed out that:

“43. Consequently, for the purposes of applying Article 8(1)(b) of Regulation No 40/94, it is still necessary, even where the two marks are identical, to adduce evidence of similarity between the goods or services covered by them (see, to that effect, order of 9 March 2007 in Case C-196/06 P *Alecansan v OHIM*, not published in the ECR, paragraph 24; and Case T-150/04 *Mülhens v OHIM – Minoronzoni(TOSCA BLU)* [2007] ECR II-2353, paragraph 27).”

19) I shall compare the specification for the opponent’s mark 3205321 to that of the instant mark. Both of the opponent’s marks are registered for a number of classes. Mark 3205321 is registered for more classes of goods and services than the opponent’s mark EU 16231052 and so provides the opponent with its strongest case. Where the opponent’s two marks are registered for the same class of goods or service there are, in some classes, minor variations in the specifications. However, in my view, these variations do not provide the opponent with a stronger case and so there is no need to compare both of the opponent’s marks specifications to that of the instant mark. The specifications of both sides are reproduced below for ease of reference:

Opponent’s goods and services	Applicant’s goods and services
Class 12: Motor vehicles; electric vehicles; electric motor land vehicles; electric motor vehicle bodies; brake pads and brake linings, all for vehicles; brake callipers, braking installations, bumper bars, clutches, differential gears, drive gears, drive shafts, engines and motors, gear change selectors, transmissions, transmission shafts, radiator grills, radiator caps, hydraulic cylinders and motors, couplings and carrying bearings, all for vehicles; chassis for vehicles; manual and power steering apparatus, personal safety restraints, seats, sliding roofs, steering columns, all for vehicles; vehicle wheel hubs; vehicle wheels; deflectors, direction indicators, doors, hatches, upholstery, handles for doors, horns, mirrors (retrovisors), luggage carriers, ski carriers, mud-guards, anti-skid chains, head rests, safety belts, safety seats for children, mud-flaps, roof-racks, shock absorbers, springs, stabiliser bars, starter motors, steering wheels, steering linkages,	In Class 12: Bicycles; Direction indicators for bicycles; Electric bicycles; Pushchairs; Bicycle tyres; Pumps for bicycle tyres;  <b><i>Motor cars; Vehicle seats; Electric vehicles; Non-skid devices for vehicle tyres.</i></b>

<p>suspensions, torsion bars, tow bars, windows, window winding mechanisms, windscreen wipers, all for vehicles; arm rests for vehicles; balance weights for vehicle wheels; mechanical controls for engines, brakes, clutches, accelerators and for transmissions, mountings for engines, all for vehicles; protective covers, reservoirs for fluids, storage boxes and storage compartments, wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; starters for vehicles; parts and fittings for electric vehicles; none of the aforesaid goods being electric bicycles or unicycles or parts thereof.</p>	
<p>Class 35: Billing and accounting services; business consultation services; arranging subscriptions to telephone or Internet services for others; managing telephone or Internet services for others; operation and administration of telephone and Internet systems and networks for others; the bringing together, for the benefit of others, of telephone, broadband, electricity and utility services namely electricity, gas and water supply, enabling customers to conveniently view and purchase those services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p> <p>Class 36: Investment services; financing services; insurance services; financial grant services; financial leasing; equipment financing services; financing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; processing electronic payments made through prepaid cards; fundraising services; charitable fundraising services; charitable collections; organisation of charitable collections; organisation of charitable fundraising activities and events; information,</p>	<p>In Class 35: Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Providing business information via a web site; Provision of commercial and business contact information; Provision of an on-line marketplace for buyers and sellers of goods and services; Sales promotion for others; Updating and maintenance of data in computer databases; Sponsorship search; Personnel management consultancy; Advertising; Publicity.</p>

<p>consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>	
<p>Class 38: Telecommunication services; electronic communication services; data transmission services; mobile telephone services; satellite communication services; Internet access services; monitoring, processing, broadcasting and reception of signals and data processed by computers or by telecommunications apparatus and instruments; video messaging services; video conferencing services; video messaging services; video telephone services; operation of telecommunications networks; rental of telecommunications apparatus, equipment and installations; delivery of digital music by telecommunications; telecommunication of information (including web pages, computer programs and any other data); transmission of news and current affairs information; telecommunication access services; computer network communication services; provision of facilities for electronic or on-line interactive discussions and conversations; leasing access time to computer databases; operation of telephone and broadband systems and networks for others; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>	<p>In Class 38: Providing access to databases;</p> <p><b><i>Communications by telephone; Message sending; Providing user access to global computer networks; Providing online forums; Streaming of data; Communications by computer terminals; Providing internet chatrooms; Transmission of electronic mail; Electronic bulletin board services [telecommunications services]; Satellite transmission; Paging services [radio, telephone or other means of electronic communication].</i></b></p>
<p>Class 39: Energy supply and distribution; supply, transmission, storage and distribution of electricity, gas and water; information, consultancy and advisory services relating to all of the aforesaid services.</p> <p>Class 37: Installation, integration, repair, maintenance and upgrading of computers, computer hardware, electrical and electronic equipment, energy generation and storage</p>	<p>In Class 39: Car sharing services; Bicycle rental; Vehicle rental; Passenger transport; Taxi transport; Piloting; Car parking; Rental of warehouses; Courier services [messages or</p>

<p>equipment, monitoring equipment, metering equipment and power systems; installation, integration, repair, maintenance and upgrading of electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; installation, integration, repair, maintenance and upgrading services in the field of industrial technology; maintenance of household technology systems, devices and apparatus; computer and telephone battery recharge services; vehicle battery charging; leasing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity; maintaining and regulating electric battery systems for storage, discharge, supply, transmission and stabilisation of electricity; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>	<p>merchandise]; Providing driving directions for travel purposes.</p>
<p>Class 42: Research, design and development services; design consultancy services; engineering services; surveying and exploration services; technology consultancy services; technical monitoring services; monitoring of electric battery systems for storing and supplying electricity; optimising electric battery systems for storage, discharge, supply, transmission and stabilisation of electricity; measurement services; product testing services; design and development of computer software; computer software design services; technology audit services; quality audit services; technical project management services; technical project planning services; advisory services relating to energy consumption and energy efficiency; advisory services relating to the environment and environmental impact; energy usage monitoring services, namely recording and monitoring data relating to energy consumption in buildings; network planning services; installation, repair and maintenance of computer</p>	<p>In Class 42: Software as a service [SaaS]; Providing search engines for the internet; Vehicle roadworthiness testing; Conversion of data or documents from physical to electronic media; Conversion of computer programs and data, other than physical conversion;</p>



<p>software; technical support services; computer and network diagnostics services; technical integration of computer systems and networks; computer software integration services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet.</p>	
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20) The applicant accepted that the goods and services in bold/italics above are identical to those of the opponent. I will consider the remainder of each class of goods and services individually.

21) I turn first to the goods in class 12. The applicant contends that its goods “In Class 12: Bicycles; Direction indicators for bicycles; Electric bicycles; Pushchairs; Bicycle tyres; Pumps for bicycle tyres;” are not similar to the opponent’s goods and in particular relies upon the limitation in the opponent’s specification which states: “none of the aforesaid goods being electric bicycles or unicycles or parts thereof”. For its part, the opponent contends that the limitation relates only to parts for electric bicycles or unicycles. I do not accept the opponent’s claim as the limitation, to my mind, applies to the whole of the class 12 specification. Whilst the limitation rules out a finding that the applicant’s goods are identical to those of the opponent, I must still consider whether they are similar. The usual definition of the term “vehicle” would, in my opinion, incorporate motorbikes and bicycles. The opponent however has a registration only for “Motor vehicles; electric vehicles; electric motor land vehicles; electric motor vehicle bodies” that is powered vehicles. This specification would include motorbikes but, because of the limitation, not electric bicycles. However, motorbikes must be regarded as similar to a medium degree to bicycles and electric bicycles as they have two wheels, a set of handlebars, saddle, are both modes of transport and have been known to be manufactured by the same company. Similarly, the opponent’s specification includes a wide range of parts for vehicles and these are, in my opinion similar to a medium degree to the applicant’s “Bicycle tyres; Pumps for bicycle tyres”. Clearly, the applicant’s goods “Direction indicators for bicycles” is incorporated in the term “direction indicators, ..... all for vehicles;” in the opponent’s specification and be regarded as **identical**. I do not accept that any of the opponent’s goods are similar to the applicant’s “Pushchairs” and this must be **regarded as not similar**.

22) Moving onto the class 35 services. I fully accept the opponent’s contention that its specification of

*“the bringing together, for the benefit of others, of telephone, broadband, electricity and utility services namely electricity, gas and water supply, enabling customers to conveniently view and purchase those services”* fully encompasses the applicant’s services of *“Provision of an on-line marketplace for buyers and sellers of goods and services”*. Similarly, I accept that the opponent’s services of *“business consultation services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet”* are encompassed in the applicant’s services of *“Providing business information via a web site; Provision of commercial and business contact information”*. **These services must all be considered identical.** The opponent also contended that its following services in class 36 *“Investment services; financing services; financial grant services”* are similar to the applicant’s *“Sponsorship search”* but gives no reasons why this should be so regarded. Further, it contends that its *“organisation of charitable fundraising activities and events”* are *“invariably associated with advertising and publicity services due to the fact that these services can all be for the same intended purpose”*. Just because one might seek to publicise/advertise a charity fundraising event does not equate to offering advertising or publicity services. **I do not accept these contentions and regarded these services as not similar to those of the opponent.**

23) I now turn to the services in class 38. The applicant accepts that all of its services in this class are identical to those of the opponent save for *“Providing access to databases”*. For their part, the opponent contends that its services of *“Internet access services; leasing access time to computer databases; telecommunication access services”* must encompass the services identified by the applicant. I accept the opponent’s contention as it would seem to me that the opponent’s services between them cover all aspects of accessing a database. **These services must therefore be regarded as identical.**

24) Moving onto the class 39 services. Here the applicant does not accept any similarity between its services and those of the opponent. The opponent contends that the following goods in class 12: *“Motor vehicles; electric vehicles; parts and fittings for electric vehicles”* and the following services in class 37: *“vehicle battery charging; leasing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilisation of electricity”* are identical/similar to the applicant’s services since *“they might be expected to be marketed or provided by the same or economically linked undertakings”*. The opponent offers no evidence that vehicle manufacturers offer

car sharing schemes or any of the other services in class 39. To my mind, the goods and services identified by the opponent are **not similar to the services applied for by the applicant.**

25) Lastly, I turn to consider the class 42 services. The opponent contends that its services of “product testing services” encompasses the applicant’s “Vehicle roadworthiness testing”. Also that the terms “design and development of computer software; technical integration of computer systems and networks; computer software integration services; information, consultancy and advisory services relating to the aforesaid services, all of the aforesaid services also available online from a computer database or the Internet” in the opponent’s specification encompass the following of the applicant’s services “Software as a service [SaaS]; Providing search engines for the internet; Conversion of data or documents from physical to electronic media; Conversion of computer programs and data, other than physical conversion”. I fully agree with the opponent that the services it has identified fully encompass the applicant’s services and must therefore be **regarded as identical.**

26) For ease of reference I have set out my findings in the table below:

Class	Identical	Similar to a medium degree	Not similar
12	Motor cars; Vehicle seats; Electric vehicles; Non-skid devices for vehicle tyres. Direction indicators for bicycles;	Bicycles; Electric bicycles; Bicycle tyres; Pumps for bicycle tyres;	Pushchairs;
35	Provision of an on-line marketplace for buyers and sellers of goods and services; Providing business information via a web site; Provision of commercial and business contact information”.		Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Sales promotion for others; Updating and maintenance of data in computer databases; Sponsorship search; Personnel management consultancy; Advertising; Publicity.

38	<p>Communications by telephone; Message sending; Providing user access to global computer networks; Providing online forums; Streaming of data; Communications by computer terminals; Providing internet chatrooms; Transmission of electronic mail; Electronic bulletin board services [telecommunications services]; Satellite transmission; Paging services [radio, telephone or other means of electronic communication]. Providing access to databases;</p>		
39			<p>Car sharing services; Bicycle rental; Vehicle rental; Passenger transport; Taxi transport; Piloting; Car parking; Rental of warehouses; Courier services [messages or merchandise]; Providing driving directions for travel purposes.</p>
42	<p>Technical research; Creating and maintaining web sites for others; Computer software design; Maintenance of computer software; Industrial design; Computer programming; Consultancy in the design and development of computer hardware. Vehicle roadworthiness testing; Software</p>		



	as a service [SaaS]; Providing search engines for the internet; Conversion of data or documents from physical to electronic media; Conversion of computer programs and data, other than physical conversion		
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**Comparison of trade marks**

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

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

28) The marks of the two parties are as follows:

Applicant's mark	Opponent's mark
	

29) Both are short marks consisting of only three letters. Both are invented words with no meaning. It is accepted that the shorter a mark the more prominent any difference becomes. The applicant contends that it chose its mark as it resembles a bicycle stating in its counterstatement that “the letters “o” on either side resemble bicycle wheels, and the letter “F” resembles the bicycle frame. Also

the letter “F” with the arc at the top and the short line in the middle resembles the body outline of a cyclist.” Whilst I accept that the letter “f” has a small degree of stylisation I do not accept that the average consumer will view the mark as representing either a bicycle or a rider on a bicycle, even if used upon bicycles.

30) Visually, both marks start and end in a letter “O” and differ in their middle letters “f” and “v” respectively. Whilst the applicant’s mark appears to be in lower case and the opponent’s in upper case this is to be disregarded as fair and notional use of the opponent’s mark would allow it to be in lowercase. There are differences and similarities in the visual appearances of the marks. Aurally, the start and end would be identical, and the middle letters are both “soft” with little difference between their sounds. Neither mark has any conceptual meaning. **Overall, the marks are similar to a medium degree.**

### **Distinctive character of the earlier trade mark**

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

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the

relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

32) The word “OVO” has no meaning for any of the goods or services for which it is registered. The mark is clearly inherently distinctive to an average to high degree in respect of all its goods and services. The evidence filed is sufficient to persuade me that the opponent’s mark should enjoy enhanced distinctiveness only in respect of the provision of electricity. **I find that the opponent’s mark has an average to high degree of inherent distinctiveness but can only benefit from enhanced distinctiveness through use in respect of its class 39 services.**

### **Likelihood of confusion**

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

- the average consumer is a member of the general public, who will select the goods and services by predominantly visual means, although not discounting aural considerations, and that they will pay an average to high degree of attention to the selection of such goods and services.
- the opponent’s mark (3205321) has an average to high degree of inherent distinctiveness, but can only benefit from an enhanced distinctiveness through use in respect of its class 39 services.

- The marks are similar to a medium degree.
- The goods and services of the two parties are identical / similar or not similar as set out in paragraph 26 above.

34) Taking all of the above into account there is a likelihood of consumers being confused into believing that following goods and services applied for under the mark in suit and provided by the applicant are those of the opponent or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) in respect of these goods and services succeeds.**

- **In Class 12:** Motor cars; Vehicle seats; Electric vehicles; Non-skid devices for vehicle tyres. Direction indicators for bicycles; Bicycles; Electric bicycles; Bicycle tyres; Pumps for bicycle tyres.
- **In Class 35:** Provision of an on-line marketplace for buyers and sellers of goods and services; Providing business information via a web site; Provision of commercial and business contact information.
- **In Class 38:** Communications by telephone; Message sending; Providing user access to global computer networks; Providing online forums; Streaming of data; Communications by computer terminals; Providing internet chatrooms; Transmission of electronic mail; Electronic bulletin board services [telecommunications services]; Satellite transmission; Paging services [radio, telephone or other means of electronic communication]. Providing access to databases.
- **In Class 42:** Technical research; Creating and maintaining web sites for others; Computer software design; Maintenance of computer software; Industrial design; Computer programming; Consultancy in the design and development of computer hardware. Vehicle roadworthiness testing; Software as a service [SaaS]; Providing search engines for the internet; Conversion of data or documents from physical to electronic media; Conversion of computer programs and data, other than physical conversion.

35) Taking all of the above into account there is no likelihood of consumers being confused into believing that following goods and services applied for under the mark in suit and provided by the



applicant are those of the opponent or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) in respect of these goods and services fails.**

- **In Class 12:** Pushchairs.
- **In Class 35:** Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Sales promotion for others; Updating and maintenance of data in computer databases; Sponsorship search; Personnel management consultancy; Advertising; Publicity.
- **In Class 39:** Car sharing services; Bicycle rental; Vehicle rental; Passenger transport; Taxi transport; Piloting; Car parking; Rental of warehouses; Courier services [messages or merchandise]; Providing driving directions for travel purposes.

36) I note that the applicant has provided the following fall-back position.

Class 12	Vehicle seats, <i>namely seats for bicycles and electric bicycles</i> ; Non-skid devices for <del>vehicle</del> <i>bicycle and electric bicycle</i> tyres.
Class 35	Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Providing business information via a web site <i>for use in facilitating the provision of vehicle rental services</i> ; Provision of commercial and business contact information <i>for use in facilitating the provision of vehicle rental services</i> ; Provision of an on-line marketplace for buyers and sellers <i>of vehicle rental services</i> ; Sales promotion <i>of vehicle rental services</i> ; Updating and maintenance of data in computer databases; Sponsorship search; <del>Personnel management consultancy</del> ; Advertising; Publicity; <i>none of the aforesaid services relating to the electric power industry.</i>
Class 38	<del>Communications by telephone</del> ; Message sending <i>for use in facilitating the provision of vehicle rental services</i> ; Providing access to databases; Providing user access to global computer networks <i>for use in facilitating the provision of vehicle rental services</i> ; Providing online forums <i>for use in facilitating the provision of vehicle rental services</i> ; Streaming of data <i>for use in facilitating the provision of vehicle rental services</i> ; <del>Communications by computer terminals</del> ; Providing internet chatrooms <i>for use in facilitating the provision of vehicle rental services</i> ; Transmission of electronic mail <i>for use in facilitating the provision of vehicle rental services</i> ; Electronic bulletin board services [telecommunications services] <i>for use in facilitating the provision of vehicle rental services</i> ; <del>Satellite transmission</del> ; Paging services [radio, telephone or other means of electronic communication] <i>for use in facilitating the provision of vehicle rental services</i> ; <i>none of the aforesaid services relating to virtual reality devices; none of the aforesaid services relating to the recording, capturing, storing, processing, editing, displaying, transmission, reproduction or play back of audio, video or images; none of the aforesaid services relating to the electric power industry.</i>
Class 42	Technical research; Creating and maintaining web sites for others; Software as a service [SaaS], <i>namely software for use in facilitating the provision of vehicle rental services</i> ; Computer software design, <i>namely designing computer software for use in facilitating the provision of vehicle rental services</i> ; Maintenance of computer software <i>used in facilitating the provision of vehicle rental services</i> ; Providing search engines for the internet; Vehicle roadworthiness

	<p>testing; Industrial design; Conversion of data or documents <i>relating to the provision of vehicle rental services</i> from physical to electronic media; Conversion of computer programs and data <i>relating to the provision of vehicle rental services</i>, other than physical conversion; Computer programming services <i>provided to facilitate to the provision of vehicle rental services</i>; Consultancy in the design and development of computer hardware <i>used to facilitate the provision of vehicle rental services</i>; <i>none of the aforesaid services relating to virtual reality devices</i>; <i>none of the aforesaid services relating to the recording, capturing, storing, processing, editing, displaying, transmission, reproduction or play back of audio, video or images</i>; <i>none of the aforesaid services relating to the electric power industry</i>.</p>
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37) It is clear that the suggested amendments to the class 12 specification does not assist the applicant as the offending goods set out in paragraph 34, would still be regarded as similar to those of the opponent to a medium degree and thus give rise to a likelihood of confusion.

38) The amendments to the class 35 services all comprise of linking them to “vehicle rental services” and also excluding any services to do with the “electric power industry”. The problem for the applicant here is that the opponent’s services are not limited in any manner whatsoever and so the opponent’s specification would include services connected with “vehicle rental services”. The result therefore would remain the same. The same contentions apply to the restrictions suggested by the applicant in respect of its class 38 and class 42 services. Once again the applicant is restricting its services but there are such restrictions upon the services for which the opponent’s mark is registered and so the narrower focus of the applicant’s services would still be encompassed by the broader range of the opponent’s registered specification. The result would remain the same.

39) The applicant’s fallback position does not alter the results of my earlier findings that there is a likelihood of confusion in respect of the goods and services set out in paragraph 34 above.

40) The opponent also raised a ground of opposition under section 5(3) which reads:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

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

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

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

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

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

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

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

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

42) The opponent has shown that it has a reputation only as a supplier of electricity to households. I note the following comment from Mr Geoffrey Hobbs Q.C. (sitting as a Deputy Judge) in *Electrocoin Automatics Limited and Coinworld Limited and Others* [2005] FSR 7:

“102. I think it is clear that in order to be productive of advantage or detriment of the kind prescribed, ‘the link’ established in the minds of people in the market place needs to have an effect on their economic behaviour. The presence in the market place of marks and signs which call each other to mind is not, of itself, sufficient for that purpose.”

43) It seems to me that the opponent has singularly failed to show that the use of the mark in suit on the goods and services which are dissimilar to its own would cause detriment. I believe that this is a case where use of the mark in suit on items such as “electric vehicles” would call to mind the opponent's mark and its reputation for electrical supply. However, I do not believe that it will affect the consumers economic behaviour or damage the opponent's mark by tarnishing or blurring. The

opposition under Section 5(3) of the Act fails in respect of all the goods and services set out in paragraph 35 above.

## CONCLUSION

44) The opposition under Section 5(2)(b) was mainly successful. The mark will be refused for all goods and services apart from those listed below:

- **In Class 12:** Pushchairs.
- **In Class 35:** Rental of advertising space; On-line advertising on a computer network; Pay per click advertising; Sales promotion for others; Updating and maintenance of data in computer databases; Sponsorship search; Personnel management consultancy; Advertising; Publicity.
- **In Class 39:** Car sharing services; Bicycle rental; Vehicle rental; Passenger transport; Taxi transport; Piloting; Car parking; Rental of warehouses; Courier services [messages or merchandise]; Providing driving directions for travel purposes.

## COSTS

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

Expenses	£200
Preparing a statement and considering the other side's statement	£400
Preparing evidence & filing written submissions	£600
<b>TOTAL</b>	<b>£1200</b>

46) I order Dongxia Datong (Beijing) Management and Consulting Co. Ltd to pay Imagination Industries Ltd the sum of £1200. 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 8<sup>th</sup> day of November 2018**

**George W Salthouse**  
**For the Registrar,**  
**the Comptroller-General**