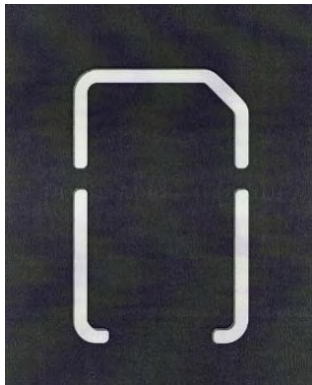


TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 2481567

BY O2 HOLDINGS LIMITED

**TO REGISTER THE FOLLOWING SERIES OF TWO TRADE MARKS IN
CLASSES 9, 38, 41 AND 42:**



TRADE MARKS ACT 1994

IN THE MATTER OF Application Number 2481567

By O2 Holdings Limited

To register the following series of two trade mark in classes 9, 38, 42 and 42



Background

1. On 5 March 2008, O2 Holdings Limited ("the applicant") applied to register trade mark application number 2481567, represented above, for the following goods and services:

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash

registers; calculating machines, data processing equipment and computers; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PC's, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; computer software onto CD Rom, SD-Card; glasses, spectacle glasses, sunglasses, protective glasses; contact lenses; parts and fittings for all the aforesaid goods.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; internet portal services; mobile telecommunications network services; fixed line telecommunication services, provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to internet protocol TV; provision of access to internet protocol TV; internet access services; email and text messaging service; monitoring services relating to telecommunications networks and apparatus; information and advisory services relating to the aforesaid.

Class 41: Education; providing of training; development of technical expertise; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; sporting and cultural activities; provision of news information; information services provided by means of telecommunication networks relating to

telecommunications; entertainment provided by means of television; entertainment provided by means of IPTV; provision of entertainment by means of television and internet protocol television; information and advisory services relating to the aforesaid.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; engineering services; computer programming; programming services; technical consulting and expert activities; rental of data processing apparatus and computers; projection and planning of equipment for telecommunication; weather forecasting; research in the field of telecommunication technology.

2. On 4 April 2008, the Intellectual Property Office issued an examination report in response to the application. In the report, an objection was raised under sections 3(1)(b) and (c) of the Trade Marks Act 1994 ("the Act"), on the basis that the mark consists exclusively of the silhouette of a SIM card, being a sign which may serve in trade to designate the kind and intended purpose of the goods and services.

3. Following some exchanges of correspondence in which the substantive objection was ultimately maintained, the Mr Julius Stobbs ("the agent") requested an *ex parte* hearing which then took place on 5 November 2008. At the hearing, the agent questioned the validity of the objection raised, submitting that the examiner had raised a broad objection against all goods and services claimed, failing to identify which of the goods and services were subject to an objection on absolute grounds, and which, if any, were considered acceptable.

4. In my written record of the hearing, I clarified this point by stating that the objection only related to those products which are either (i) SIM cards *per se*; or (ii) other telecommunications apparatus and related services which rely upon the use of SIM cards. In that context, the objection was confirmed as relating to the following goods and services only:

- Class 09: Apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; data processing equipment and computers; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunications apparatus; mobile telecommunications handsets; computer hardware; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PC's, mobile telephones, laptop computers; telecommunications network apparatus; driver software for telecommunications networks and for telecommunications apparatus; computer software onto CD Rom, SD-Card.
- Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; internet portal services; mobile telecommunications network services; fixed line telecommunication services, provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to internet protocol TV; internet access services; email and text messaging service; monitoring services relating to telecommunications networks and apparatus; information and advisory services relating to the aforesaid.
- Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; projection and planning of equipment for telecommunication; research in the field of telecommunication technology.

5. As the applicant failed to forward any further submissions within the allotted period after the hearing, the application was partially refused on 13 July 2009. The agent

subsequently submitted a form TM5 requesting a statement of reasons for the registrar's decision.

6. I am now asked under section 76 of the Trade Marks Act 1994, and rule 69 of the Trade Marks Rules 2008, to state in writing the grounds of my decision and the materials used in arriving at it. No formal evidence of use for the purpose of demonstrating acquired distinctiveness has been put before me. Therefore, I have only the *prima facie* case to consider.

The applicant's case for registration

7. In response to the examination report, the agent presented a number of written arguments, the most pertinent of which were as follows:

"The mark covered by this application does give an indication that SIM cards are relevant, but the mark is not a simple depiction of a SIM card, nor is it a silhouette of a SIM card... The breaks in the lines mean that there is no complete and full depiction of a SIM card in this case."

"Members of the public are fully aware of what a SIM card looks like. They will see this device, recognise the overall shape of a SIM card, but will look at it and see that it is a very unusual and odd depiction of such a thing. It is not accurate, it is schematic and stylised, and does not actually form a clear representation of such a thing."

8. At the oral hearing the agent broadly reiterated these arguments, referring me to the overall shape of the device applied for, and emphasising that the mark did not constitute a naturalistic representation of a SIM card as viewed at the point of sale. I was also referred to the decision of Mr Simon Thorley QC in the Pestle and Mortar case (O-201-02) whereby, sitting as the Appointed Person, Mr Thorley accepted for registration a mark consisting of a stylised line drawing of a pestle and mortar presented in a circle, in respect of *inter alia* pharmaceutical products and pharmacy services. The agent submitted that this earlier acceptance drew parallels with the current application, and should be taken as a valid precedent.

Distinction between section 3(1)(b) and section 3(1)(c)

9. In the examination report, the examiner failed to make any distinction between (i) those goods and services which are subject to an objection under sections 3(1)(c) and (b) (where it is generally accepted that any sign falling foul of the provisions of section 3(1)(c) is also more than likely to be devoid of any distinctive character pursuant to section 3(1)(b)); and (ii) those goods and services which fall foul of section 3(1)(b) *only*.

10. Brought up by the agent at the hearing, I consider this to be an important issue relating to the Registrar's ultimate partial refusal of the case, and one which needs to be clarified in this decision. In my assessment, the mark consists of a two dimensional representation of a three dimensional object i.e. a SIM card. This assumption formed the basis for both the examiner's initial assessment, and for my maintenance of the objection at a hearing. As such, a section 3(1)(c) objection would appear to be more appropriate where the mark is to be used in respect of those goods for which it constitutes a direct two-dimensional representation i.e. SIM cards. Used in this respect, the mark is considered to represent, and therefore designate, a characteristic of such goods, giving rise to an objection under the provision of section 3(1)(c) of the Act.

11. The same is not necessarily so in respect of goods and services which are only *related to* telecommunications and/or those which make use of SIM card technology. For such goods, a two-dimensional representation of a SIM card may not serve to actually designate a characteristic of those goods, but is nevertheless unlikely to be perceived *prima facie* as an indicator of trade origin. In such cases, the mark would fall foul of the provisions set out in section 3(1)(b) alone. (Further support for this approach can be found in decision O-127-07 of Professor Ruth Annand sitting as the Appointed Person, which addressed applications for a mobile phone device *at al* - see paragraphs 37 - 39 in particular. More detailed reference to this decision is made at paragraph 29 below).

12. This was the reasoning I used in maintaining the objection at the hearing, and will therefore serve the basis for this written decision. To make the decision as clear

as possible, I will firstly address the section 3(1)(c) objection, pointing out which goods are subject to such an objection, and providing my reasons for reaching that conclusion. I will then do the same in respect of those goods and services which are subject to the section 3(1)(b) objection only.

The Law in relation to section 3(1)(c)

13. Section 3(1)(c) of the Act reads as follows:

"3.-(1) The following shall not be registered-

(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."

Decision - section 3(1)(c)

14. In a judgement issued by the European Court of Justice on 23 October 2003, Wm. Wrigley Jr. Company v Office for Harmonisation in the Internal Market (Trade Marks and Design) (OHIM), case 191/01 P (the DOUBLEMINT case), the Court gives guidance on the scope and purpose of Article 7(1)(c) of the Community Trade Marks Regulation (equivalent to section 3(1)(c) of the Trade Marks Act). Paragraphs 28 - 32 of this judgement are reproduced below:

"28. Under Article 4 of Regulation No 40/94, a Community trade mark may consist of signs capable of being represented graphically, provided that they are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

29. Article 7(1)(c) of Regulation No 40/94 provides that trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value,

geographic origin, time of production of the goods or service are not to be registered.

30. Accordingly, signs and indications which may serve in trade to designate the characteristics of the goods or service in respect of which registration is sought are, by virtue of Regulation No 40/94, deemed incapable, by their very nature, of fulfilling the indication-of-origin function of the trade mark, without prejudice to the possibility of their acquiring distinctive character through use under article 7(3) of Regulation No 40/94.
31. By prohibiting the registration as Community trade marks of such signs and indications, Article 7(1)(c) of Regulation No 40/94 pursues an aim which is in the public interest, namely that descriptive signs or indications relating to characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see *inter alia* in relation to the identical provisions of article 3(1)(c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of Member States relating to trade marks (OJ 1989 L 40. p.1), *Windsurfing Chiemsee*, paragraph 25, and Joined Cases C-53/01 to C-55/01 *Linde and others* [2003] ECR I-0000, paragraph 73).
32. In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at

least one of its possible meanings designates a characteristic of the goods or services concerned.

15. Section 3(1)(c) of the Act excludes signs which may serve, in trade, to designate the kind of the goods and/or services, or other characteristics of the goods and/or services. It follows that in order to decide this issue, it must first be determined whether the mark designates a characteristic of the goods and services in question. In theory, it is far easier for a word mark to denote characteristics of a good or service, than it is for a figurative mark to perform this function. Traders tend to use language as a means of describing the qualities and characteristics of their goods and services for obvious reasons. At the same time, it is not impossible for a wholly-figurative sign to be descriptive of goods and services - particular where such a sign constitutes a two-dimensional representation of the product being offered for sale. Support for this position can be found in the decision of the High Court of Justice in the appeal by Dyson Limited against a decision of the Registrar [2003] EWHC 1062 (Ch). In this case, the Honourable Justice Patten confirmed that the application to register a clear bin for vacuum cleaners was caught by the provision of Section 3(1)(c) of the Act. I consider this to be a clear authority for the proposition that a functional non-verbal sign may be excluded under section 3(1)(c) of the Act.

16. Having set out some of the relevant jurisprudence and guidance which applies to this case, I now turn to the mark applied for. The mark consists of a rectangular background, visible in which are three "white lines" of pre-determined shape. In essence, these white lines combine to outline a smaller rectangular shape, notable for the fact that the upper right hand corner has a small diagonal, rather than perpendicular, shape.

17. Issued as part of the examination process, the examiner's letter of 2 July 2008 contained three Internet extracts all containing representations of SIM cards (see Appendix at the end of this decision). In all three cases, the SIM cards shown appear to be broadly rectangular in shape, with a small diagonal embellishment on their upper right-hand corner. Furthermore, those extracts show the SIM cards all being incorporated into a larger sheet of plastic (about the size of a credit card), wherein the SIM card's edges are perforated to enable the purchaser to "push-out" or "cut-

out" the SIM card from its plastic mounting card after purchase. From my own use of such products, I am aware that SIM cards are generally very small items - usually no bigger than a fingernail. I therefore presume that the provision and presentation of SIM cards as part of larger "mounting cards" is to overcome the practical difficulties of selling something so small. One assumes that, presented in the manner shown on the Internet references, SIM cards are much easier to package, transport, market and sell.

18. Of the three internet references supplied, the perforation pattern displayed on one of the mounting cards is identical to the three-line arrangement found on the mark applied for. The other two references show perforations which are similar, but not identical. Therefore, given that this application contains a claim to telecommunications apparatus and services, I am positive that the mark is *intended* to represent a SIM card as it appears at the point of sale. The outer dark-shaded area represents the surface of the mounting card, the white lines represent the perforations, and the inner blue area represents the actual SIM card (with the small blue areas representing those parts which are snapped or broken in order to detach the small card away from its mount).

19. At the hearing, Mr Stobbs submitted that SIM cards are usually provided as part of a mobile phone purchase, and are therefore not commonly sold in isolation. Reference was also made to the overall rectangular shape and relative proportions of the mark which, it was submitted, were different from the credit card/SIM card proportions shown in the Internet references. In relation to the first point, I am not persuaded that SIM cards are solely provided as part of packages. SIM cards are interchangeable by nature and, due to their size, may be easily lost or damaged. Indeed, there is a significant business in retaining one's phone whilst replacing the SIM card as to improve the conditions of use of the phone. I therefore consider it highly feasible that such goods could be sold as individual items. In relation to the second point, I do not find that a difference in relative proportions prevents the mark from being perceived as anything other than, in the agent's words "a complete and full depiction of a SIM card". The material aspect of the product presented for sale is the SIM card itself i.e. the "inner portion" as displayed on the mark applied for. The

size and dimensions of the outer card onto which the SIM card is mounted are not determinative upon the perception of the relevant consumer.

20. Having set out my reasons concluding that the mark constitutes a two-dimensional representation of a SIM card as it appears in trade, the next issue is whether that conclusion renders it objectionable under section 3(1)(c) of the Act.

21. It is well established in respect of the assessment of distinctiveness that such matters must be determined by reference to the likely reaction of an average consumer of the goods and services in question, who is deemed to be reasonably well informed, reasonably observant and circumspect. Considering the prevalence of mobile telephones and telecommunications apparatus and services in modern everyday life, I would consider the average consumer in this case to be both the general public and the specialist purchaser/user of telecommunications services. Individual SIM cards are relatively cheap to purchase and, considering the frequency with which many consumers exchange and/or update their mobile phones in order to keep up with the latest technology, I would expect a medium level of consumer attention to be applied at the time of purchasing such products.

22. Considering all of the above, I fully believe that the relevant consumer would immediately perceive the sign applied for as nothing more than a two-dimensional representation of an unmarked SIM card. From the internet evidence used by the examiner, SIM cards are commonly sold as part of a perforated plastic card, and always appear to utilise the rectangular shape with diagonal upper-right corner as shown in the mark applied for. Therefore, where the mark is used in respect of goods which, when encountered in three-dimensional form, appear identical to the mark applied for, that mark *must* be found to designate a characteristic of these goods. Clearly such a sign would designate the kind of the goods, and must therefore fall foul of section 3(1)(c) of the Act (and by implication therefore, section 3(1)(b) of the Act).

23. The mark only falls foul of this provision where it is to be used in respect of those goods it visually represents i.e. SIM cards. Therefore, the section 3(1)(c) objection

applies specifically to the following class 9 terms, all of which must include SIM cards *per se* within the scope of their coverage:

Class 9: Apparatus for recording, transmission or reproduction of sound or images; data processing equipment; apparatus for the transmission of sound and image; telecommunication apparatus; mobile telecommunication apparatus; computer hardware; telecommunications network apparatus; parts and fittings for all the aforesaid goods.

24. In relation to the goods set out in the previous paragraph, I have concluded that the mark applied for consists exclusively of a sign which may serve in trade to designate a characteristic of the goods in class 9, and is debarred from registration under section 3(1)(c) of the Act.

The Law in relation to section 3(1)(b)

25. Section 3(1)(b) of the Act reads as follows:

3.-(1) The following shall not be registered-

(b) trade marks which are devoid of any distinctive character.

Decision - section 3(1)(b)

26. In assessing whether the mark applied for falls foul of section 3(1)(b), I refer to a judgement issued by the European Court of Justice in Joined Cases C-53/01 to C-55/01 *Linde AG, Windward Industries Inc and Rado Uhren AG* (8 April 2003) where, in paragraphs 37, 39 to 41, and 47, the following is stated:

"37. It is to be noted at the outset that Article 2 of the Directive provides that any sign may constitute a trade mark provided that it is, first, capable of being represented graphically and, second, capable of distinguishing

the goods and services of one undertaking from those of other undertakings.

39. Next, pursuant to rule 1 Article 3(1)(b) of the Directive, trade marks which are devoid of distinctive character are not to be registered or if registered are liable to be declared invalid.
40. For a mark to possess distinctive character within the meaning 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 products of other undertakings (see Philips, paragraph 35).
41. In addition, a trade mark's distinctiveness must be assessed by reference to, first, the goods or services in respect of which registration is sought and, second, the perception of the relevant persons, namely the consumers of the goods or services. According to the Court's case law, that means the presumed expectations of an average consumer of the category of goods or services in question, who is reasonably well informed and reasonably observant and circumspect (see Case C-210/96 Gut Springenheide and Tusky [1998] ECR I-4657, paragraph 31, and Philips, paragraph 63).
47. As paragraph 40 of this judgement makes clear, distinctive character means, for all trade marks, that the mark must be capable of identifying the product as originating from a particular undertaking, and those distinguishing it from those of other undertakings."

27. On the basis of those comments presented above, it is clear that any assessment of a mark's distinctiveness pursuant to section 3(1)(b) must take into account both the nature of the goods and services claimed, and the likely perception of the relevant consumer using those goods and services. By considering such factors, I will be able to determine the likelihood of any potential consumer perceiving

the sign applied for as a distinctive indicator of origin, or simply as an origin-neutral sign.

28. In addition to this assessment of consumer perception, I must also be aware that the test is one of immediacy or first impression as confirmed by the European Court of First instance which, in its decision on *Sykes Enterprises v OHIM (Real People Real Solutions)* [2002] ECT II-5179, stated the following:

"However, a sign which fulfils functions other than that of a trade mark is only distinctive for the purposes of Article 7(1)(b) of Regulation No 40/94 if it may be perceived immediately as an indication of the commercial origin of the goods or services in question, so as to enable the relevant public to distinguish, without any possibility of confusion, the goods or services of the owner of the mark from those of a different commercial origin."

29. As was indicated in the section 3(1)(c) assessment, I am conscious of the fact that the mark in question is entirely figurative and has not, under the provisions of section 3(1)(b), been objected to on the basis of its capacity to denote characteristics of the goods and services. In her decision of 11 May 2007 on cases 2360930, 2360936 et al, all of which constituted two dimensional representations of common screen icons such as a sealed envelope, a mobile telephone, and a series of speech bubbles, Professor Annand sitting as the Appointed Person considered the distinction between figurative-only marks and those containing textual elements and, more significantly, the distinctions between sections 3(1)(b) and 3(1)(c) as far as they relate to such figurative-only marks. In the hearing officer's original decision on those cases, the section 3(1)(c) objection had been extended to apply to those goods and services for which the mark was *not* considered to denote specific characteristics. As a consequence, at paragraph 37 of Professor Annand's subsequent decision on appeal, in relation to the "sealed envelope" icon, the following was stated:

"37. The authorities indicate that there may be difficulty in pinpointing the exact boundaries of "characteristics" for the purposes of section 3(1)(c). I accept that by the date of the Envelope Application, 15 April

2004, it is arguable that the device of an envelope fell within those boundaries in relation to e-mail services. However, I do not accept that just because goods and services can communicate with or be accessed by email, the device of an envelope designates a characteristic of such products. The same could be said of any goods or service... I believe that the Hearing Officer was again straying into section 3(1)(b) territory."

30. As regards section 3(1)(b), the issue therefore is not whether the two-dimensional representation of a SIM card is a representation of the actual goods, but rather whether such a device, used in respect of telecommunications apparatus and services (many of which function via the use of a SIM card) will be perceived as a symbol which simply lacks any capacity *prima facie* to distinguish the products of one trader from those of another. There is, I think, a high likelihood that images of SIM cards are likely to appear on the outer or inner surface of telecommunications apparatus - indicating, for example, where such a card should be placed or inserted. There is also a likelihood of such images appearing in instructional literature (advising the consumer on how to use the SIM card), and in promotional literature (indicating to the consumer what other peripherals and apparatus might be required in order to make a piece of telecommunications apparatus function effectively). The SIM card is a product which is highly recognisable to the relevant consumer on account of it always retaining the same shape regardless of its brand or manufacturer, and also on account of its fundamental functional role in the context of a mobile phone.

31. In that sense, even where the image of a SIM card is not a direct representation of the actual product tendered for sale (a scenario more relevant to section 3(1)(c) than section 3(1)(b)), the sign would still be perceived as nothing more than a functional symbol. This in itself is sufficient basis for an objection under section 3(1)(b). In the aforementioned decision relating to applications for computer icons, Professor Annand made the following comments specifically in relation to the "sealed envelope":

"42. ...It is uncontroversial that the average consumer in this case is a reasonably well-informed and reasonably observant and circumspect member of the general public whose level of sophistication and/or attention will vary according to the product purchased. That average consumer will be familiar with the use in trades covered by the specifications of application number 2360944 (and indeed in trades generally) of envelope devices in order succinctly and non-verbally to convey information about mail (traditional and electronic) and messaging. I take judicial notice of the fact that he or she will also be familiar with the practice in all walks of life of using letter or picture icons visually to convey functional information e.g. road and public conveniences signs (Case T-215/03, *Sigla SA v OHIM*, 22 March 2007, paragraph 45).

44. ...(the average consumer) will understand the mark as indicating something to do with mail/email/messages depending on the context in which it is used. That is simply because the mark consists of a picture of an envelope, which the average consumer will recognise as a functional communication symbol."

32. In the same way, I believe that the relevant consumer will (i) identify the mark filed as being a SIM card presented in a perforated mounting card; (ii) understand the relationship between this product and the goods and services claimed; and (iii) consequently perceive the sign as nothing more than a functional communication symbol - conveying messages relating to the products' compatibility with and/or suitability with SIM cards. There may well be more than one specific functional message perceived by the relevant consumer. However, in all cases, the sign would not be perceived as having any distinctive character.

33. The mark falls foul of section 3(1)(b) alone where the mark does not represent any specific characteristic of the product, but instead fails to indicate any trade origin on account of it being perceived as nothing more than a functional symbol. Therefore, the specific section 3(1)(b) objection applies to the following terms:

- Class 9: Magnetic data carriers; computers; mobile telecommunications handsets; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PC's, mobile telephones, laptop computers; drivers software for telecommunications networks and for telecommunications apparatus; computer software onto CD Rom, SD-card; parts and fittings for all the aforesaid goods.
- Class 38: Telecommunications; telecommunications services; mobile telecommunication services; telecommunications portal services; internet portal services; mobile telecommunications network services; fixed line telecommunication services, provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to internet protocol TV; provision of access to internet protocol TV; internet access services; email and text messaging service; monitoring services relating to telecommunications networks and apparatus; information and advisory services relating to the aforesaid.
- Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; projection and planning of equipment for telecommunication; research in the field of telecommunication technology.

34. In relation to the goods and services set out in the previous paragraph, I have concluded that the mark applied for consists of a sign which is devoid of any distinctive character, and which is therefore debarred from registration under section 3(1)(b) of the Act.

Conclusion

34. In this decision I have considered all of the documents filed by the applicant and all of the arguments submitted to me in relation to this application and, for the reasons provided, it is partially refused for all of the goods and services listed at paragraphs 23 and 33 above. This refusal is under the terms of section 37(4) of the Act, where the mark applied for fails to qualify under sections 3(1)(b) and 3(1)(c).

Dated this 27th day of July 2009

Nathan Abraham

For the Registrar

The Comptroller-General

APPENDIX

This appendix consists of three documents used by examiner as support for the initial section 3(1)(b) and (c) objection. These documents were forwarded to the agent under cover of examiner's letter dated 2 July 2008.

The documents are screen prints taken from the following three website addresses:

- (i) http://www.gsm-technology.com/multicom/pimg/SIMMAX12in1B_400.gif
- (ii) <http://dabbler.pinkandyellow.com/wp-content/uploads/2007/06/sim-card.jpg>
- (iii) <http://www.mobilecomms-technology.com/projects/du-gsm/du-gsm5.html>



Taken from:

http://www.gsm-technology.com/multicom/pimg/SIMMAX12in1B_400.gif



Taken from:

<http://dabbler.pinkandyellow.com/wp-content/uploads/2007/06/sim-card.jpg>



Taken from:

<http://www.mobilecomms-technology.com/projects/du-gsm/du-gsm5.html>