

O-413-17

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION 3155893
BY THE TRAVEL ADVENTURE LIMITED
TO REGISTER THE FOLLOWING TRADE MARK IN CLASSES 39, 41 & 43:**



AND

**OPPOSITION THERETO (NO. 406707) BY
ROTTERDAM LEISURE HOLDING B.V.**

Background and pleadings

1. This dispute concerns whether trade mark no. 3155893 should be registered. The mark is set out below together with the services which stood at the time of the hearing before me:



Class 39: Transport; travel arrangement; travel information; all in relation to trips for pre-assembled groups; such trips to include geography, science, history, business studies and sports trips, and such pre-assembled groups to include school and college groups, clubs, societies and social groups.

Class 41: Education; providing of training; entertaining; sporting and cultural activities all in relation to trips for pre-assembled groups.

Class 43: Services for providing food and drink; temporary accommodation; restaurant, bar and catering services; provision of holiday accommodation; booking and reservation services for restaurants and holiday accommodation; all in relation to trips for pre-assembled groups.

2. The mark was filed on 12 March 2016 by Travel Adventure Limited (“the applicant”) and was published for opposition purposes on 8 April 2016.

3. Rotterdam Leisure Holding B.V. (“the opponent”) opposes the registration of the mark under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following three earlier marks:

- i) International registration 972762 for the mark **GOGO** which designated the EU for protection on 14 January 2008, with protection being conferred on 23 July 2009. The mark is relied upon (and a statement of use made) in respect of various services in classes 39, 41 and 43. Given the date on

which protection was conferred, this mark is subject to the use conditions set out in section 6A of the Act.

- ii) EUTM¹ registration 9099623 for the mark  which was filed on 12 May 2010 and registered on 24 December 2012. The mark is registered (and relied upon) for various services in classes 39, 41 & 43. Given its date of registration, the mark is not subject to the use conditions and may be relied upon for all of the services for which it is registered.
- iii) EUTM 2629400 for the mark **GOGO TOURS** which was filed on 25 March 2002 and registered on 26 August 2003. The mark is relied upon for various services in classes 39, 41 & 43. Given its date of registration, the mark is subject to the use conditions set out in section 6A of the Act. In its pleadings, the opponent only claims a reputation (for the purposes of section 5(3)) in relation to the class 39 services.

4. The opponent considers that the marks are “near identical”, that the services are identical or similar, and that there exists a likelihood of confusion. The opponent also considers its marks to benefit from a reputation and it relies on all three heads of damage under section 5(3), namely unfair advantage, tarnishing and dilution.

5. The applicant filed a counterstatement in which it put the opponent to proof of use in relation to marks i) and iii). It does not believe the marks to be “materially similar”. It states that the earlier marks are descriptive and lack distinctiveness. It states that the word GO is an instruction to move and describes a form of travelling; therefore, marks incorporating the word GO are common in both the English language and the travel industry. It states that the “sensual connotations” of GOGO (as in GOGO dancer) suit the opponent because it targets the youth market and the mark is entirely different “from the Latinate term COGO”. It is added that this is particularly so because the applicant’s target customers are likely to be school teachers or hobbyists (hobbyists in what is not clear). It is stated that because the marks are low in distinctiveness, a

¹ European Union Trade Mark

high level of proof of confusion is required. Similarity of services is denied, with the applicant highlighting that it conducts study tours whereas the opponent targets the youth market. The applicant denies the other claims and puts the opponent to proof.

6. Both sides filed evidence, with the opponent's evidence being accompanied by a set of written submissions. A hearing took place before me on 31 August 2017 at which the applicant was represented by Ms Gledhill of Harper James Solicitors and at which the opponent was represented by Ms Tate of Groom Wilkes & Wright LLP.

7. I note that in her skeleton argument Ms Gledhill set out a restricted specification which she confirmed at the hearing was to be considered as a fall-back position. I return to this later. The day following the hearing, the applicant's representative emailed the tribunal indicating that it "...wishes to unconditionally limit its class 39 specification", setting out a class 39 specification that was different again to the unconditional fall-back position. I sense that the further revision was as much to appease the opponent with a view to a possible agreement being reached as it was to overcome the legal basis for the opposition. I take this view because I indicated to the representatives at the hearing that if the fall-back specification that had been put on the table by the applicant was to lead to any form of communication between the parties with regard to a possible settlement, they had until close of play on 1 September 2017 to advise me of this so that I could delay the issuing of my decision, which would otherwise be issued the following week. That said, the unconditional limitation needs to be considered in some manner. My approach in dealing with this is to consider the opposition on the basis of the specifications as they stood at the hearing and on which I heard submissions. Depending on the outcome, I will return to the unconditional limitation later.

The evidence

The opponent's evidence

8. This comes in the form of a witness statement from Mr Marcellinus Neomagus, Chief Financial Officer of the Opponent. It is stated that the opponent began trading in 1991 and has operated since then under the brands GOGO (word and logo) and

GOGO TOURS. It trades, it is claimed, in a number of EU countries, but the UK is not identified as one. It provides travel services for young adults, with Mr Neomagus listing a large range of specific services it offers in classes 39, 41 and 43. The assertion of specific use is very broad with no real commentary, such use will, therefore, need to be borne out by the accompanying evidence. He then repeats that young adults are its core market and that its trade marks reflect a youthful and vibrant image. The domain name www.gogo.nl has been owned since 1995. Mr Neomagus discusses a previous conflict with the applicant, however, as this has no impact on whether there exists a likelihood of confusion, and very little impact on the ground under section 5(3), I will return to his comments only if it is necessary to do so. Mr Neomagus also sets out the competing marks, but as I have already done so myself, I need not summarise this part of his evidence.

9. Turnover figures are provided in Exhibit MLN3a between the years 2007 and 2015. In the last three years turnover was spread across 9 EU countries (the UK is not one) with annual turnover being between 66.5 and 67.9 million Euro. Between 2010 and 2012 the only figures specifically identified are from the Netherlands (but, strangely, no specific figures for the Netherlands are listed for 2013-2015) and range between 58 and 63 million Euro. For this period there is also a sub-column total but no figures are provided to understand what such figures relate to (the figures range between 26 and 20 million Euro). Between 2007 and 2009 only unspecified subtotal figures are provided which range between 13 and 18 million Euro. Whilst it is clear that substantial sales have been made, the table itself leaves a lot to be desired in terms of understanding exactly what is going on. At the hearing Ms Tate accepted that the opponent's customers were mainly from the Netherlands (or at least Dutch speaking people), with the sales in other EU countries relating to resort based revenue (to those customers) once they had travelled.

10. Exhibit MLN4 is an extract from the opponent's website which is said to show where the opponent operates "in the EU and beyond". It shows the names of a number of countries (Spain, Greece, Portugal, Bulgaria, Turkey, Malta and Croatia) as destinations for holidays. Reference is made to "Holidays always include travel, accommodation and transfer". A further page also provides text which states "Your travel agent in the Netherlands GOGO" with various contact details being provided.

11. Reference is made to the advertising of the opponent's services. Expenditure between 2012 and 2015 is given, broken down across eight EU countries (not including the UK). The figures range from £8.7 million at the lowest (in 2014) to £15 million at the highest (in 2013). Details are then provided of the various ways in which advertising and promotion takes place, as follows:

- Business literature (Exhibit MLN5) – this includes letter headed paper, order forms and membership cards (which are presumably issued to the customers). The logo version of the mark is most commonly used. Also provided are what are described as excursion contracts. The contracts are between what appears to be the group of companies to which the opponent belongs and activity providers such as nightclubs. An example of how this operates is that the opponent's customers acquire one of its membership cards which enables the customer to gain access to a nightclub on certain nights and which also includes a drinks voucher. The opponent and the nightclub then promote each other.
- Promotional literature (MLN6) – this contains, ostensibly, a number of the same (or very similar) leaflets, featuring the logo mark. None of the text has been translated so it is difficult to understand exactly what services are being promoted/offered, beyond being some form of holiday promotion. The leaflets are said to have been used in 6 EU countries (not including the UK). Whilst undated, they are said to be typical of the leaflets used to promote the services over the years and that hundreds and thousands would have been distributed.
- The GOGO website (Exhibit MLN7) – Website hits have ranged between 1.1 million and 2.2 million per year between 2010 and 2015. The exhibit includes archived web prints. They mainly depict the logo mark, but there is also frequent use of GOGO as a plain word, particularly when referencing the company itself. Some of the material is not in English so does little to assist. Of the material which is in English, it is clearly not written by a native English speaker. The opponent provides holidays with a focus on young people. There is frequent reference to party nights that are arranged such as "Totally Summer". There is reference to bus travel and insurance.

- Social media (Exhibit MLN8) - The opponent has a presence on all main social media platforms. It is highlighted that it has 1686 Twitter followers and that its videos on YouTube have received over 7 million views.
- Banners, billboards etc (Exhibit MLN9) – The logo mark is shown on various billboards, some of which seem to be at party events. Other uses include on the outside of a bus. However, as there is no information about the location of the advertising and its frequency, this evidence does not add much to the overall picture.
- Events (Exhibit MLN10) – Reference is made to various events used to promote the services which have been “hosted” by the opponent, including the Totally Summer event mentioned earlier. There are references on advertisements to the events being “presented” by GOGO (the logo form). Also provided are contracts relating to the event which demonstrate that they are organised by Sundio Group International GmbH which acts under the name GOGO. GOGO and a local company (in whatever country the event takes place) collaborate in the organisation of the event, although, the local partner appears primarily responsible for its actual production.

12. The opponent’s submissions are borne in mind, but I do not consider it necessary to summarise them separately here.

The applicant’s evidence

13. This comes from Ms Adrienne O’Hara, the applicant’s managing director². I note the following from her evidence:

- The applicant began trading in the UK in 1993 creating “tailor-made trips for school groups with an educational focus and tailor-made trips for leisure groups”. In 2016 it merged with a company in Ireland (BSGT (Ireland) Ltd) and

² There was a brief discussion at the hearing as to whether her evidence could be accepted as she is not, apparently, listed on Companies House as a current or past director. However, as no evidence was filed in relation to this by the opponent, nor the challenge made earlier in the proceedings, I dismissed any suggestion that her evidence should be ignored.

they decided to re-brand under the same name. COGO Travel was chosen as GO suggested “going” and CO is the Latin word for “gather together” and thus, as a whole, the mark implies group travel.

- Reference to the earlier dispute with the opponent is mentioned. As I have already stated, I do not intend to summarise this evidence, but will touch on it further if it becomes necessary to do so. Two points I note are that neither Ms O’Hara, nor anyone in her management group, had heard of the opponent. Further, that the applicant felt that co-existence was possible due to the different audiences, countries and marks.
- That six other businesses have used GOGO in their names, with prints being provided from the websites: gogotravel.co.uk, go-goscotland.com, gogomalta.com, gogoterme.com, gogo.bg and gogocorfu-villages.com. Prints from these website are provided in Exhibit AOHO7. It is not possible to ascertain from any of the prints the length of use of these names or where their business is conducted (although I note that one has a .co.uk address and one relates to tours in Scotland). Reference is also made to a North American travel company called gogoworldwidevacations which sends its customer to similar destinations as the opponent.
- Ms O’Hara comments on the opponent’s evidence relating to its claim to have traded throughout the EU. Her main point is that the evidence may just be of use to customers in the Netherlands, with the subsequent promotion etc being made in resorts to those customers.
- Ms O’Hara states that she is aware that the notional use of the marks must be considered but she regards it clear that the parties would never operate in the same field and she hopes “that some element of this reality can be reflected in the decision”.

The opponent's reply evidence

14. This comes, again, from Mr Neomagus. There are two main points in his reply evidence. First, in relation to comments about the untranslated parts of some of his evidence, he states that certain documents do not need translating because they aptly show the mark(s) in use. He does, though, provide some translations of certain parts of his earlier evidence which I will bear in mind and will refer to, to the extent necessary. His second point is to re-enforce his earlier evidence about use in other EU countries (beyond the Netherlands). He provides further flyers showing marks on billboards and other material in countries beyond the EU. However, what Mr Neomagus does not explicitly deal with is the suggestion by the applicant that its use is purely to customers in the Netherlands and that use in resort in other countries does not assist.

Possible further evidence

15. In her skeleton argument Ms Tate criticised the evidence of other traders using the name GOGO as “irrelevant, undated and uncorroborated”. Having had sight of this criticism Ms Gledhill sought leave to file a corroborative witness statement which, essentially, confirmed that the witness had emailed her with the respective web links etc and that, therefore, on the dates claimed, the websites did exist. I did not consider it necessary to take this evidence in because Ms Tate confirmed that her concerns were about what can be taken from the evidence filed as opposed to any suggestion that the witness should be disbelieved. No further comment on this is needed.

Section 5(3)

16. Section 5(3) of the Act reads:

“5-(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 Community trade mark, in the European Community) 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.”

17. The leading cases are the following CJEU judgments: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 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 later mark would cause an average consumer to bring the earlier mark to mind; *Adidas 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 likelihood 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*).

18. The earlier marks are either EUTMs or an International Mark upon which protection has been conferred in the EU. Therefore, in terms of reputation, the relevant test is to establish a reputation in a substantial part of the EU (which does not necessarily require any form of use or reputation in the UK). However, the problem

faced by the opponent is that even if I were to hold that the earlier mark had a reputation on account of its EU use, the necessary link must be made by the relevant public in the UK. I take account of the judgment of the CJEU in *Iron & Smith Kft v Unilever NV* C-125/14, where it stated:

“However, even if the earlier Community trade mark is not known to a significant part of the relevant public in the Member State in which registration of the later national mark has been applied for, it is conceivable that a commercially significant part of the latter may be familiar with it and make a connection between that mark and the later national mark.”

19. Having regard to the fact that no sales/promotion has taken place in the UK and that the opponent does not have the UK as one of its destinations, it is placed in a difficult position with regard to this ground of opposition. The highpoint of its case was put by Ms Tate on the basis of UK holidaymakers who visit the same European destinations as the opponent’s customers and who may also encounter the various paraphernalia used in resort. A point was also made about the potential for reference to the GOGO mark being made on social media, particularly given that its customers are young adults. Ms Gledhill submitted that this was all mere speculation and that the opponent’s witness had not addressed any of this.

20. I agree that the opponent’s position is a speculative one. There is no evidence to show what degree, if any, of overlap has actually taken place. Further, even if there is some overlap in resort, it is a stretch to assume that the UK holiday makers even encountered the paraphernalia, and a further stretch again to assume that they would have taken any cognisance of it. If social media recognition (in the UK) is to be relied upon then evidence should have been provided showing this. I am far from satisfied that a “commercially significant” part of the relevant public in the UK even know of the mark, let alone make the requisite link. **The claims under section 5(3) of the Act are dismissed.**

Section 5(2)(b)

21. Two of the earlier marks are subject to the use conditions, the other is not. Not only is the opponent's use criticised by the applicant, it is probable, based on what I have seen, that the opponent's specifications of those two marks would, at the very least, be subject to some form of trimming to reflect a fair specification. Therefore, I will begin my analysis with the mark which is not subject to the use conditions, returning to the other earlier marks only if it is necessary to do so.

22. Section 5(2)(b) of the Act states that:

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

(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.”

23. The following principles are gleaned from the judgments 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 greater 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.

Comparison of services

24. When making a comparison, all relevant factors relating to the services in issue should be taken into account. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU stated at paragraph 23 of its judgment:

“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.”

25. Guidance on this issue has also come from Jacob J In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 where the following factors were highlighted as being relevant when making the comparison:

“(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.”

26. In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06 it was stated:

“It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI) [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P Rossi v OHIM [2006] ECR I-7057; Case T-364/05 Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL) [2007] ECR II-757, paragraph 94; and Case T-443/05 El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños) [2007] ECR I-0000, paragraph 48).”

27. I also bear in mind the guidance given by Mr Daniel Alexander QC, sitting as the Appointed Person, in case B/L O/255/13 *LOVE* where he warned against applying too rigid a test:

“20. In my judgment, the reference to “legal definition” suggests almost that the guidance in Boston is providing an alternative quasi-statutory approach to evaluating similarity, which I do not consider to be warranted. It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together. I therefore think that in this respect, the Hearing Officer was taking too rigid an approach to Boston.”

28. In relation to understanding what terms used in specifications mean/cover, the case-law informs me that “in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade”³ and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning⁴. I also note the judgment of Mr Justice Floyd (as he then was) in *YouView TV Limited v Total Limited* where he stated:

“..... 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) (IPTRANSLATOR)* [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.”

29. It is also noteworthy that goods/services can be considered identical if one term falls within the ambit of the other (and vice versa), as per the decision in *Gérard Meric v Office for Harmonisation in the Internal Market, Case T- 133/05 (“Meric”)*:

“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 trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or

³ See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281

⁴ See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

30. At the hearing Ms Gledhill accepted that most of the applicant’s services were similar to those covered by the opponent’s specification, although she went on to say that where similar was not self-evident then the claim should be rejected. Despite this partial concession, it is still necessary to go through the applicant’s specification to ascertain what is identical, similar, or even not similar. I note that the earlier mark is registered for the following services:

Class 39: Arranging of tours and intermediary services in this field, also through travel bureaux and agencies; tour operator services; transport of travellers and passengers, including by train, plane, boat and coach; escorting of travellers, also using travel guides; reservation of seats on means of transport; organisation of visits and guided tours; rental of cars, bicycles and boats; courier services (mail or goods); mail services; travel reservation; repatriation of travellers (transport); arrangement of sightseeing; tourist information offices (excluding the booking of stays in hotels and in boarding-houses); parking space rental; information in the field of transport and travel.

Class 41: Education and recreation, including organization of recreation activities for travellers and tourists, including in culinary matters; entertainment; organization and holding of concerts, film presentations, organization and holding of theatrical performances, cinema services, as well as organizing and running cultural and recreation activities, all the above in the context of travel arrangements; club recreation and educational services; arranging and conducting colloquia, conventions, symposia, conferences and seminars on travel and tourism; film production; film rental; organization of competitions; organization of exhibitions in the field of tourism for cultural or educational purposes; video film rental not for advertising purposes about travel; publication of pamphlets and works not for advertising purposes about travel and tourism; holiday park services (relaxation purposes); rental of sports equipment (except vehicles) and

diving equipment; providing information to tourists and other persons on leisure and entertainment.

Class 43: Hotel room and stay booking, restaurant bookings and boarding-house stay bookings; intermediary services for the reservation of temporary accommodation; providing exhibition spaces; holiday home services; rental of temporary accommodation and role as intermediary in same; HoReCa (hotel, restaurant and cafe) services; restaurant services (providing food and drink); catering services.

31. In class 39 the applicant seeks registration for the following:

Transport; travel arrangement; travel information; all in relation to trips for pre-assembled groups; such trips to include geography, science, history, business studies and sports trips, and such pre-assembled groups to include school and college groups, clubs, societies and social groups.

32. The opponent's specification in class 39 includes "transport of travellers and passengers...", "travel reservation", various terms which constitute travel arrangement, and, "information in the field of transport and travel". Therefore, on the face of it, the applicant's services are identical on the inclusion basis. The various qualifications that have been added to the applicant's specification do nothing to overcome this. The qualification indicates that the services are for pre-arranged groups and that they include educational and sporting trips. However, all of this equally applies to the opponent's specification, albeit that they are included as opposed to explicitly stated. Whilst I understand and note the applicant's call for the reality of the situation [the different target audience] to be reflected in some way, the reality of the situation, for the purposes of this decision, is that these services are identical and the assessment must be based upon notional use of the competing marks being made in relation to the identical services at issue, and then determining whether there is a likelihood of confusion accordingly. **The class 39 services are identical.**

33. In class 41 the applicant seeks registration for the following terms:

Education; providing of training; entertaining; sporting and cultural activities all in relation to trips for pre-assembled groups.

34. The opponent's specification in class 41 includes "Education and recreation" (the explanation of certain included recreational activities in no way limits the scope of the term "education"), "entertainment" and "... as well as organizing and running cultural and recreational activities..". Given the comments I have already made regarding the applicant's limitation, and given the terms I have identified, I consider the services to be identical. I have noted that the opponent's specification does not mention sporting activities per se (as is sought by one of the applicant's terms) but I consider that the term "recreational activities" (as covered by the opponent's specification) to be broad enough to cover sport for recreational purposes. If I am wrong on that then I consider the services to be similar to a very high degree.

35. Finally, the applicant seeks registration for the following terms in class 43:

Services for providing food and drink; temporary accommodation; restaurant, bar and catering services; provision of holiday accommodation; booking and reservation services for restaurants and holiday accommodation; all in relation to trips for pre-assembled groups.

36. The services are, again, all identical to services within the opponent's specification. To explain on what basis, I break the applicant's specification down and then identify what in the opponent's specification (which I highlight in bold) creates such identity:

Services for providing food and drink - **HoReCa (hotel, restaurant and cafe) services; restaurant services (providing food and drink); catering services.**

Temporary accommodation - **rental of temporary accommodation....**

Restaurant, bar [services] - **HoReCa (hotel, restaurant and cafe) services; restaurant services (providing food and drink); catering services.**

Catering services – **catering services**

Provision of holiday accommodation - **rental of temporary accommodation...**

Booking and reservation services for restaurants and holiday accommodation -
**Hotel room and stay booking, restaurant bookings and boarding-house
stay bookings**

Average consumer and the purchasing act

37. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

38. The points I have made already about the identity of the services means that the same average consumer(s) is applicable to both parties. In relation to the class 39 services and the travel related services in class 43, the average consumer could be a member of the general public (even if booking on behalf of a group of like-minded individuals) or a person who works for a school or other educational establishment. Ms Tate submitted that the level of care and attention would be average, relying on a decision of the Opposition Division of the EUIPO in *Time Traveller Tours v Marco Rossi* (B 2439647). This decision is not, though, binding upon me and, in any event,

represents a factual finding in that case as opposed to a point of law. I consider that a reasonable degree of care will go into the selection process (slightly higher than average), although not, in my view, at the highest level. I think the same can be said in relation to educational services. In relation to the various entertainment and food/drink services, less of a degree (than the other services) of care and attention will be deployed but not the lowest level.

39. Marks in these fields will be encountered visually, by reading brochures, leaflets and pursuing websites. However, this is an area where aural use is also important due to the need (for some consumers) to speak to sales advisors (such as travel agents or other experts) either over the phone or in person, by way of booking the services over the phone and, as Ms Tate submitted, by word of mouth recommendations.

Comparison of marks

40. 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 the marks, 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.”

41. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore

contribute to the overall impressions created by the marks. The marks to be compared are:



v



42. In terms of overall impression, the opponent's mark comprises the word GOGO in squared-off font with a 9 pointed shape (reminiscent of the sun) to the left of the word, all contained within a rectangular shape (with a black contrast background). The rectangular shape is little more than a border and its contribution towards the overall impression of the mark is limited, whereas the stylised word and the 9 pointed shape both make a clear contribution to the overall impression of the mark. Ms Gledhill submitted that the shape dominates the mark. I do not agree. In my view, the word element clearly stands out more and is likely to be the primary focal point for the average consumer. The word GOGO is the dominant component, although I accept that the 9 pointed shape is far from negligible.

43. The applicant's mark comprises the word COGO with no other element. It is stylised on account of the font used (which itself is not particularly remarkable) and also its use of contrasting colours and shading. However, whilst the shading adds definition, it is not particularly striking. The contrasting colours are more striking, but I still consider that it is the word itself, COGO, that is by far the most dominant aspect of the mark and makes the greatest contribution to its overall impression. However, its stylistic elements are not negligible and must be taken into account in the comparison.

44. Aurally, the additional features of the mark will not be articulated, so one is left simply comparing the respective articulations of the words COGO/GOGO. In her skeleton Ms Gledhill stated that the way in which the marks would be articulated is

unknown, highlighting that the applicant filed no evidence in relation to this. Whilst I note this submission, it would in my view have been disproportionate to file evidence from a linguist or other suitably qualified individual. The types of words in issue are ones which the tribunal are fully able to consider without such expert evidence. Ms Tate's submission was more akin to my own view in that the most probable articulations of the marks would be:

CO (as in the abbreviation of the word company) – GO (as in the standard articulation of that word)

and

GO – GO (both syllables with the same standard articulation of the word GO)

45. The marks have the same audible length and phonetic structure. The second syllable in each is the same. The first syllable is similar on account of the C[UH]/G[UH] sound followed by an "OH" sound. I consider there to be a high degree of aural similarity.

46. Visually, there are some differences on account of the additional logo element of the opponent's mark, and the stylistic and presentational differences I have highlighted above. There is, though, some similarity on the basis of the more dominant elements of the marks (the words themselves) being of similar length, that both share the last 3 letters (-OGO) and that whilst the initial letters C/G are different letters, they nevertheless have some similarity with a curved left hand edge. Ms Gledhill made two points about the difference in the initial letters: i) that differences at the beginnings of marks are generally more noticeable and, ii) that differences (including a one letter difference) in a short word is likely to stand out more⁵. Whilst these points are noted they are just, of course, rules of thumb and each case (or in this case comparison) must be considered on its own merits. Overall, weighing the similarities and

⁵ Ms Gledhill cited the decision of the Appointed Person in *Ella Shoes 0/277/12* which, whilst disapproving the guidance in the *Inter-Ikea* case (that short marks differing in only one letter could not be highly similar), the Appointed Person still held that "a change of one letter in a mark which is only 4 letters long is clearly more significant than such a change in a longer mark".

differences, and bearing in mind the overall impressions, I consider there to be a medium degree of visual similarity.

47. Conceptually, Ms Gledhill argued that there was no conceptual similarity. She submitted that the opponent's mark had connotations of a lack of restraint and [a presence of] eroticism as that is the style of dancing employed by a gogo dancer. She said that this fitted with the party style holidays offered by the opponent. In her skeleton argument she additionally referred to the concept of the repeated word GO which had some resonance in the field of travel. She contrasted this with the applicant's mark which she said simply had a Latinate feel. However, I note from her skeleton argument that she also stated that, overall, the mark conjured a concept with a Latinate feel, based on i) Learnedness (because of the Latin feel), ii) coming together/togetherness (because of the CO element) and, iii) travel (because of the GO element). Ms Tate argued that the specific meaning of the word GOGO (as in the dancer) is likely to be lost on the average consumer and that any concept (of both marks) would be based upon the GO element.

48. When one is considering the conceptual meanings of marks, there are a number of points to bear in mind. First, one must exercise caution in assuming what the average consumer knows. By way of example, I note the decision in the *Chorkee* case (BL O-048-08), where Ms Anna Carboni, sitting as the Appointed Person, stated in relation to the word CHEROKEE:

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

37. I have no problem with the idea that judicial notice should be taken of the fact that the Cherokee Nation is a native American tribe. This is a matter that can easily be established from an encyclopaedia or internet reference sites to which it is proper to refer. But I do not think that it is right to take judicial notice of the fact that the average consumer of clothing in the United Kingdom would

be aware of this. I am far from satisfied that this is the case. No doubt, some people are aware that CHEROKEE is the name of a native American tribe (the Hearing Officer and myself included), but that is not sufficient to impute such knowledge to the average consumer of clothing (or casual clothing in the case of UK TM no. 1270418). The Cherokee Nation is not a common subject of news items; it is not, as far as I am aware, a common topic of study in schools in the United Kingdom; and I would need evidence to convince me, contrary to my own experience, that films and television shows about native Americans (which would have to mention the Cherokee by name to be relevant) have been the staple diet of either children or adults during the last couple of decades.”

49. One must also exercise caution in relation to the average consumer’s level of analysis. The average consumer is not engaging in an analytical exercise, they are simply seeing trade marks. Thus, any conceptual meanings must be capable of immediate grasp. Finally, universal knowledge (or lack of knowledge) is not necessary, as matters cannot always be dealt with in a binary manner. In *J.W.Spear & Sons Ltd and Others v Zynga Inc.* [2015] EWCA Civ 290, Floyd L.J. summed up the Court of Appeal’s earlier judgment in *Interflora Inc. and another v Marks and Spencer plc* [2014] EWCA Civ 1403 like this:

“37. In relation to what the court described as the crucial question, namely whether the average consumer, as a hypothetical person, necessarily has a single reaction and so precludes a consideration of the perceptions of a proportion of the relevant public the court in *Interflora* identified the following propositions:

i) the average consumer test provides the court with a perspective from which to assess the particular question it has to decide, for example whether a statement is liable to mislead purchasers.

ii) a national court may be able to assess this question without the benefit of a survey or expert evidence.

iii) a national court may nevertheless decide, in accordance with its own national law, that it is necessary to have recourse to an expert’s opinion

or a survey for the purpose of assisting it to decide whether the statement is misleading or not.

iv) absent any provision of EU law dealing with the issue, it is then for the national court to determine, in accordance with its own national law, the percentage of consumers misled by the statement that, in its view, is sufficiently significant in order to justify banning its use.”

50. The impact of the above judgment is that the ground of opposition may succeed if a sufficiently significant percentage of relevant consumers are confused, but it is not necessary that the majority of consumers are misled.

51. Considering firstly the opponent’s mark, whilst I accept that gogo dancers exist, I share Ms Tate’s concern as to how widespread this knowledge would be. The conceptual meaning is further weakened by the fact that the word DANCER is missing which may have given a greater cue to the average consumer to contextualise the mark in the way put forward. Thus, I do not consider that the average consumer will contextualise the mark on the basis of a gogo dancer (or exoticness/lack of restraint). However, even if I am wrong on that, the percentage of average consumers who would conceptualise on this basis is likely to be small. The fact that a small percentage of average consumers may see the conceptual meaning, which I accept would create a conceptual difference, a conceptual difference Ms Gledhill submits would help to avoid confusion (although I stress that I do not necessarily hold that it would), will not assist because it does not matter that a small percentage of average consumers are not confused when a bigger percentage may be. I consider instead that the average consumer will see the opponent’s mark as an invented word, albeit one in which the average consumer will recognise the association of the word GO with travel.

52. In terms of the applicant’s mark, I reject the submission that the average consumer will recognise a Latinate feel (or learnedness). I also reject any submission (although this was not pressed by Ms Gledhill) of coming together. Such perceptions require too great a depth of analysis and thought. It is possible that some average consumers will see the word COGO purely as an invented word. I will bear this in mind. However, in my view, the most probable perception will be a made up word, albeit one in which the

average consumer will recognise the inclusion of the word GO and the resonance of that word with regard to travel.

53. The net effect of my findings is that most average consumers will see some conceptual similarity based on the marks being invented words with an allusion to the word GO. That conceptual similarity is, though, fairly mild because neither mark has a strong overall concept. I accept that some average consumers will not see this conceptual similarity because the applicant's mark may be perceived as an invented word with no allusion to anything.

Distinctive character of the earlier mark

54. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). 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 *WindsurfingChiemsee 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).”

55. The applicant made a point in its counterstatement that marks with the word GO in them in the travel field are not greatly distinctive. Further, Ms Gledhill referred to the evidence of other traders using the name GOGO albeit she confirmed at the hearing that the evidence was relied upon to show that the earlier mark could not benefit from an enhanced distinctive character.

56. I have commented under section 5(3) about the link not being made by the relevant public in the UK. I consider an analogous position to apply when the opponent’s use is considered in the context of distinctive character. The likelihood of confusion is to be determined with reference to the average consumer in the UK. If the earlier mark’s reputation stems from use elsewhere then, on the face of it, it does not assist. As already discussed, I see no reason why the reputation of the opponent would bleed across to the UK. In any event, Ms Tate confirmed that the opponent was not seeking to rely on enhanced distinctive character (which means that it is not necessary to consider further the evidence about other traders using the name GOGO).

57. I consider that the earlier mark has an average level of inherent distinctive character. Even though the mark incorporates the word GO, any allusion this creates is mild. Whilst the overall getup of the mark adds slightly to the distinctiveness, this is not relevant because it is the common element’s distinctiveness which is pertinent in deciding whether there exists a likelihood of confusion.

Likelihood of confusion

58. The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. Confusion can be

direct (which effectively occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same, but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related). In terms of indirect confusion, this was dealt with by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 where he noted that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

59. It must be borne in mind that the services I am considering are identical. Thus, any submission based on the implausibility of the applicant offering the opponent’s services, or vice versa, is bound to fail. I must also bear in mind the level of care and attention I expressed earlier when the identical services in play are considered. I come to the view that whilst it is possible that the average consumer may recall that the competing marks have different forms of presentation (including a figurative element in the opponent’s mark) (although some average consumers, imperfectly recalling the marks, may not do so), the dominant parts of the mark COGO/GOGO may be the subject of imperfect recollection, with one mistaken as the other. This would be particularly the case for average consumers who conceptualised the words as invented, but with a nod towards the word GO. However, even for average consumers who may have regarded the applicant’s mark as purely invented, conceptual differences do not always succeed in having a counteractive effect (see the General Court’s decision in *Nokia Oyj v OHIM* Case T-460/07). The likelihood of confusion is re-enforced having regard to the high degree of aural similarity that I have assessed, which is important in this case given my earlier observations that both the visual and aural characteristics of marks in these fields are important. For these reasons, I come to the view that there is a likelihood of confusion. The opposition succeeds in relation to the applied for specifications as they now stand. Given this findings, I do not consider it necessary to consider the other two earlier marks.

Unconditional limitation/fall back specification

60. The fall-back position put forward in Ms Gledhill’s skeleton argument was made on the following basis:

“Please note that the Applicant would be prepared to limit the scope of its class 39 specification by amending it to the following:

Proposed Class 39 specification:

“Transport; travel arrangement; travel information; all in relation to trips for members of pre-existing pre-assembled school groups, college groups, clubs and societies; geography trips; science trips; history trips; business studies trips; sports trips; residential school trips; educational residential trips for clubs, and other organisations”.

The Applicant would also be prepared to add the narrower term “organising residential school trips and educational residential trips for clubs and other organisations” to its class 41 specification.”

61. I need spend little time in relation to this. This is because I have found the services to be identical on the basis of the inclusion principle. A further restriction to the applied for services will not assist because, whilst narrower in scope, they must still be included within the ambit of the competing services.

62. The unconditional limitation received after the hearing in which the applicant “...wishes to unconditionally limit its class 39 specification” was in respect of:

Class 39

"Educational residential trips for school pupils travelling under the supervision of their teaching staff; Educational and Cultural study tours for further and higher education student groups travelling under the leadership of their teacher or other adult supervisor; Residential trips for youth groups travelling under the leadership of their adult supervisor including guides, scouts, cadets and church groups; Residential trips for music, dance and sports groups travelling under the leadership of their teacher or other nominated responsible adult; Residential trips for adult social club groups; Residential trips for retired adult groups; Residential trips for family groups."

63. Whilst I would not ordinarily deal with such a matter without recourse to the other party, for the reasons already given in relation to the fall-back specification, this unconditional limitation likewise does not assist. Neither did the parties contact the

tribunal to request that my decision be delayed to enable them to discuss the matter further.

Outcome

64. The opposition has succeeded. Subject to appeal, the application to register the mark is refused in relation to all of its services.

Costs

65. The opponent has been successful, so it is entitled to a contribution towards its costs. Ms Gledhill submitted that large parts of the opponent's evidence (including translations of parts of the evidence) were not needed and that costs should reflect that. However, in my view it has not acted disproportionately and I will make what I consider to be the usual assessment on the scale. My assessment is set out below:

Official fee - £200

Preparing a statement of case and considering the counterstatement - £300

Filing evidence - £1000

Preparation for and attending the hearing - £500

Total - £2000

66. I order Travel Adventure Limited to pay Rotterdam Leisure Holding B.V. the sum of £2000 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 5th day of September 2017

Oliver Morris

For the Registrar,

The Comptroller-General