

O-062-18

TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO3183533
BY ADIL AKHTER
TO REGISTER

MUSLIM MATCH

AS A TRADE MARK
IN CLASS 45
AND OPPOSITION THERETO (UNDER NO. 408077)
BY
MATCH.COM, L.L.C.

BACKGROUND AND PLEADINGS

1. On 1 September 2016 Adil Akhter, ('the applicant') applied to register **MUSLIM MATCH** for the following services in class 45:

Marriage guidance services; personal advice services relating to matrimonial matters (non-legal); marriage bureau services; marriage agency services; marriage guidance counselling; relationship counselling; providing information and advice on relationships and marriage; organising and arranging marriages; providing social introduction and marriage-arranging services; match-making services; computer dating services; provision of dating agency services via the Internet; providing information regarding on-line dating and introduction services; Adoption agency services; Dating agency services; Dating services; Dating services provided through social networking; Divorce mediation services; Internet based dating, matchmaking and personal introduction services; Internet based matchmaking services; Internet based personal introduction services; Internet dating services; Legal advice; Legal advice and representation; Legal information services; Marriage agencies; Marriage bureau services; Marriage bureaus; Marriage counselling and coaching; Marriage guidance counselling; Matchmaking services; Matrimonial agencies; Mediation; On-line social networking services; Online social networking services accessible by means of downloadable mobile applications; Organization of religious meetings; Personal gift selection for others; Personal introduction agency services; Personal introduction services by computer; Personal legal affairs consultancy; Providing clothing to needy persons [charitable services]; Providing information about religion; Providing wedding officiant services; Provision of emotional support for families; Social introduction agencies; Social networking services; Social work services; Video dating services; Wedding chapel services; Dating agency services; Dating services; Dating services provided through social networking; Religious services.

2. The trade mark was published on 16 September 2016. Match.com, L.L.C. ('the opponent') opposed the application under sections 5(2)(b), 5(3) and 5(4)(a) of the

Trade Marks Act 1994 ('the Act') on the basis of their earlier UK trade mark no. 3097217 and EU trade mark no. 182253.

Opponent's trade marks	Services relied on
<p data-bbox="204 418 443 450">UK TM 3097217</p>  <p data-bbox="204 672 576 703">Filing Date: 3 March 2015</p> <p data-bbox="204 781 715 813">Registration Date: 31 October 2015</p>	<p data-bbox="809 418 1374 1330">Class 45: Providing social introduction and date-arranging services; administering personality and physical attractiveness testing and creating personality and physical attractiveness profiles of others; dating agency services; match-making services; computer dating services; provision of dating agency services via the Internet; provision of dating agency services via television, radio and telephone; agency services which arrange personal introductions; social escorting services; information and advisory services relating to the aforesaid services; providing information regarding on-line dating and introduction services.</p>
<p data-bbox="204 1355 480 1386">EU TM no. 182253</p> <p data-bbox="204 1464 507 1509">MATCH.COM</p> <p data-bbox="204 1601 544 1632">Filing date: 1 April 1996</p> <p data-bbox="204 1657 667 1688">Registration date: 9 March 2004</p>	<p data-bbox="809 1355 1358 1498">Class 42: Information and consultancy services in the nature and field of on-line dating and introduction services.</p>

3. The opponent's above mentioned trade marks are both earlier marks, in accordance with Section 6 of the Act. As the registration procedure for the EU trade mark was completed more than 5 years prior to the publication date of the

applicant's mark, that mark is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the services it relies on.

4. The applicant filed a counterstatement in which it denied the grounds of opposition and requested that the opponent produce evidence to demonstrate proof of use.

5. In these proceedings, the applicant is professionally represented by Trade Mark Wizards Limited and the opponent by Barker Brettell LLP.

6. The opponent filed evidence and written submissions. The applicant filed nothing beyond the counterstatement. Neither party requested to be heard. I now make this decision based on the papers before me.

OPPONENT'S EVIDENCE

7. A witness statement was filed by Evdokia Moustaka, the legal affairs manager of Match.com International Limited, which is stated to be part of the same group as the opponent, Match.com, LLC.

8. Ms Moustaka states that Match.com is one of a number of online dating platforms offered by the opponents and as such it is not possible to present turnover figures specifically for the UK or any other EU member state. The worldwide turnover for the group is stated to be \$788.2m for 2013, \$836.5m for 2015 and \$909.6m for 2015. The first quarter revenue for 2016 is stated to be \$260.4m

9. Ms Moustaka has stated that the opponent had a current market share in the UK of 13.08% in March 2016 up from 8.49% in March 2013 and 6.09% in March 2012. In addition a number of hyperlinks were provided to online media articles featuring the opponent to set the context of the UK dating industry.

10. The declarant also states that the opponent has corporate offices in the UK and a number of EU member states as well as EEA countries.

11. The declarant is unable to provide figures for the number of user registrations and subscriptions for its services as this information is considered too confidential. The number of monthly active users in the UK has been provided (a monthly active user is defined as someone who has been active on the site in the 28 days prior to the analytic measure date). In October 2013 this figures was 488,944. At the same date in 2014 it was 460,768 and in 2015 it was 505,875.

12. Exhibit EM1 consists of a witness statement dated 31/1/2012 made by Victor Abbey, the previous legal affairs manager for the opponent, in an earlier opposition case. The format, structure and content of the statement is broadly similar to the statement by Ms Moustaka.

13. Exhibit EM2 is comprised of online media articles from The Independent and Telegraph newspapers and Marie Claire magazine dated between 2014 and 2016. All the articles mention the opponent's mark MATCH.COM in the context of on-line dating.

14. Exhibit EM3 is a report about the opponent's customer analytics during March 2016 from Experian Hitwise, a company specialising in corporate intelligence reports and web traffic indications. The report mentions the opponent's mark MATCH.COM.

15. Exhibit EM4 consists of information about Vizeum and BARB, companies who provide corporate intelligence on TV audience viewing figures.

16. Exhibit EM5 contains information on Kantar Media, MMS and TNS who provide customer intelligence on media advertising strategies for the opponent in Denmark, Sweden and Norway.

17. Exhibit EM6 contains information on the opponent's PR agency, Brands2life.

18. Exhibit EM7 contains articles featuring the opponent's mark MATCH.COM from the Daily Star Online dated September 2012, Daily Mail Online dated May 2016 and Daily Mirror Online dated February 2015.

19. Exhibit EM8 contains information on Retriever, the company responsible for providing media monitoring and research to the opponent in the Nordic countries.

20. Exhibit EM9 comprises copies of the opponent's Norwegian, Swedish and Finnish Facebook® pages (undated). The opponent's *match* mark appears in each screenshot as does the MATCH.COM mark.

21. Exhibit EM10 contains information on Facebook® active user statistics and demographics dated September 2015. These statistics indicate that there are 1.4bn monthly active Facebook® users, those users spent 640 million minutes on the site each month and that 48% of all Facebook® users log in on any given day.

22. Exhibit EM11 consists of screenshots of the opponent's Danish, Swedish, Norwegian and UK YouTube® channels. The Danish screenshot is dated June 2014 and has 510,824 views and 56 subscribers. The Swedish screenshot is dated January 2014 with 1,537,069 views and 151 subscribers. The Norwegian is dated January 2014 with 665,173 views and 47 subscribers. The UK screenshot is dated December 2009 with 8,144,123 views and 799 subscribers. The opponent's *match* mark appears in each screenshot as does the MATCH.COM mark.

23. Exhibit EM12 consists of undated screenshots of the opponent's Swedish, Danish and UK Instagram® sites. The opponent's *match* mark appears in each screenshot as does the MATCH.COM mark.

24. Exhibit EM13 consists of screenshots of the opponent's Danish, Swedish, Norwegian, Finnish and UK Twitter channels. The Danish screenshot indicates that it joined Twitter in November 2013 and has 5 followers. The Swedish Screenshot indicated that it joined in January 2010 and has 25 followers. The Norwegian screenshot indicates that it joined in April 2009 and has 19 followers. The Finnish screenshot indicates that it joined in December 2013 and has 4 followers. The UK screenshot indicates that it joined in March 2011 and has 12.1k followers. The opponent's *match* mark appears in each screenshot as does the MATCH.COM mark.

25. Exhibit EM14 consists of information relating to Commission Junction which are the opponent's affiliate marketing partners.

26. Exhibit EM15 consists of screenshots dated 2016 from a comparison website for online dating companies. Both the opponent's marks feature on the comparison list.

27. Exhibit EM16 consists of information relating to The Affiliate People who provide marketing services for the opponent.

28. Exhibit EM17 consists of information relating to Freedating.co.uk, a website which promotes the opponent's on line dating services. Both the opponent's marks feature on the undated screenshot.

29. Exhibits EM18 and 19 consist of information relating to Tradedoubler, AdService and EuroAds which promote the opponent's services in UK and other EU member states.

30. Exhibit 20 consists of undated screenshot examples of the opponent's specific community online dating services, namely for gay and lesbian singles, black singles, Christian and Polish singles. Both the opponent's marks feature on the screenshots.

31. Exhibit 21 consists of stills from the opponent's 2014 - 2016 TV advertisement campaigns taken from their YouTube channel. The stills themselves show the MATCH.COM mark at the bottom of the screen in the phrase "see match.com for details".

32. Exhibit 22 consist of a list of UK online dating sites which highlight two specific Muslim online dating providers, Muslima.Com and Singlemuslim.Com, and which the declarant states is an indication that,

"it is possible to present a distinct Muslim offering successfully without using my company's registered trademarks".

33. Exhibit 23 consists of screenshots of the advertising posters used on the opponent's London Underground advertising campaign from 2014-2016. Both the opponent's marks are featured.

34. Exhibit 24 is a copy of a previously issued UK opposition decision (O-054-17) dated February 2017 involving the current opponent. In particular the declarant draws my attention to paragraph 50 of that decision which states:

“it is clear from the evidence that the opponent is one of the leading players in the online dating world. The opponent's earlier MATCH.COM mark will be very well known. Whilst the use of the mark is as a whole, it is, I think, fair to assume that the distinctiveness of the word MATCH per se will have increased”

The declarant states this indicates the strength of the opponent's reputation.

35. Exhibit 25 is a copy of a previously issued EU opposition decision (opposition no. B 002645953) dated March 2017 involving the current opponent. In particular the declarant draws my attention to extracts from pages 7 and 15 of that decision which state:

“ on the basis of the evidence submitted and bearing in mind the large territory and population (more than 63,000,000) of the United Kingdom, it is considered that the earlier trade mark [MATCH.COM] has a reputation in the European Union (and the United Kingdom) for all the services for which the opponent has claimed reputation, namely information and consultancy services in the nature and field of on-line dating and introductions services”
(from page 7)

And:

“Therefore the contested sign would receive an unfair boost...due to the efforts of the opponent, not those of the applicant, the contested sign starts off with an immediate degree of recognition. Overall, the contested sign's

association with the opponent's earlier well known sign make the contested sign easier for the relevant consumer to remember and recognise and, given this, the contested sign would exploit the attractive powers or distinctiveness of the earlier mark. The contested sign will thus benefit from the repute of the earlier mark" (from page 15)

The declarant states this indicates the strength of the opponent's reputation.

PROOF OF USE

36. The first issue is whether, or to what extent, the opponent has shown genuine use of the earlier EU mark. The relevant statutory provisions are as follows:

"Raising of relative grounds in opposition proceedings in case of non-use

6A- (1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the period of five years ending with the date of publication of the

application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a Community trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services”.

37. Section 100 of the Act is also relevant, which reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it”.

38. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. summarised the case law on genuine use of trade marks. He said:

“217. In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch); [2013] F.S.R. 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed Person in *Pasticceria e Confetteria Sant Ambroeus Srl v G&D Restaurant Associates Ltd (SANT AMBROEUS Trade Mark)* [2010] R.P.C. 28 at [42] of the jurisprudence of the CJEU in *Ansul BV v Ajax Brandbeveiliging BV (C-40/01)* [EU:C:2003:145]; [2003] E.T.M.R. 85, *La Mer Technology Inc v Laboratories Goemar SA (C-259/02)* [EU:C:2004:50]; [2004] E.T.M.R. 47 and *Silberquelle GmbH v Maselli-Strickmode GmbH (C495/07)*[EU:C:2009:10]; [2009] E.T.M.R.28 (to which I added references to *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (C-416/04 P)* [EU:C:2006:310]). I also referred at [52] to the judgment of the CJEU in *Leno Merken BV v Hagelkruis Beheer BV (C149/11)* EU:C:2012:816; [2013] E.T.M.R. 16 on the question of the territorial extent of the use. Since then the CJEU has issued a reasoned Order in *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (C-141/13 P)* EU:C:2014:2089 and that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd (O/528/15)* [2016] E.T.M.R. 8.

218. [...]

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein RadetskyOrder v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of

the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]”.

39. As the opponent’s trade mark is an EU Trade Mark, the comments of the Court of Justice of the European Union (“CJEU”) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C149/11, are relevant. It noted that:

“36. It should, however, be observed that [...] the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use”.

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as

'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark".

And

"55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)".

40. The court held that:

"Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to 'genuine use in the Community' within the meaning of that provision.

A Community trade mark is put to 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the

main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity”.

41. In *London Taxi*, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

“228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33][40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use".

42. The General Court restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM. This applies even where there are no special factors, such as the market for the goods/services being limited to that area of the Union.

43. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods at issue in the Union during the relevant 5 year period. In making the required assessment I am required to consider all relevant factors, including:

i) The scale and frequency of the use shown

- ii) The nature of the use shown
- iii) The goods and services for which use has been shown
- iv) The nature of those goods/services and the market(s) for them
- iv) The geographical extent of the use shown.

SUFFICIENCY OF USE

44. Although no turnover figures are provided specifically for the UK or other EU member states, evidence has been provided indicating that the opponent has up to 500,000 active UK users of its online dating website and that the registration fee is stated in sterling at approximately £12.99 per month with variations depending on different promotional campaigns. There is also evidence to show that the opponent has been extremely active in promoting the MATCH.COM mark in multiple media, namely online, social media, TV, radio and poster campaigns throughout the UK. The declarant also stated that the opponent had a market share in the UK of 6.09% in March 2012, 8.49% in March 2013 and 13.08% in March 2016. There is evidence to support that the earlier EU trade mark is used for all the services it is registered for. I am more than satisfied that there has been genuine use of the EU mark including longstanding and extensive use in the UK.

SECTION 5(2)(B)

45. Section 5(2)(b) of the Act is as follows:

“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.

46. The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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.

The principles

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

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

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

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

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

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

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

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

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

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

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

COMPARISON OF SERVICES

47. The services to be compared are:

Opponent's services	Applicant's services
UK TM 3097217 Class 45: Providing social introduction and date-arranging services; administering personality and physical attractiveness testing and creating personality and physical attractiveness profiles of others; dating agency services; match-making services; computer dating services; provision of dating agency services via the Internet;	Class 45: Marriage guidance services; personal advice services relating to matrimonial matters (non-legal); marriage bureau services; marriage agency services; marriage guidance counselling; relationship counselling; providing information and advice on relationships and marriage; organising and arranging marriages; providing social introduction and marriage-

provision of dating agency services via television, radio and telephone; agency services which arrange personal introductions; social escorting services; information and advisory services relating to the aforesaid services; providing information regarding on-line dating and introduction services.

EU TM 182253

Class 42: Information and consultancy services in the nature and field of on-line dating and introduction services

arranging services; match-making services; computer dating services; provision of dating agency services via the Internet; providing information regarding on-line dating and introduction services; Adoption agency services; Dating agency services; Dating services; Dating services provided through social networking; Divorce mediation services; Internet based dating, matchmaking and personal introduction services; Internet based matchmaking services; Internet based personal introduction services; Internet dating services; Legal advice; Legal advice and representation; Legal information services; Marriage agencies; Marriage bureau services; Marriage bureaus; Marriage counselling and coaching; Marriage guidance counselling; Matchmaking services; Matrimonial agencies; Mediation; On-line social networking services; Online social networking services accessible by means of downloadable mobile applications; Organization of religious meetings; Personal gift selection for others; Personal introduction agency services; Personal introduction services by computer; Personal legal affairs consultancy; Providing clothing to needy persons [charitable services]; Providing information about religion; Providing

	wedding officiant services; Provision of emotional support for families; Social introduction agencies; Social networking services; Social work services; Video dating services; Wedding chapel services; Dating agency services; Dating services; Dating services provided through social networking; Religious services.
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48. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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”.

49. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- 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 services
- 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.

50. I will address the applicant's specification and, where appropriate, will group terms together.¹

match-making services; computer dating services; provision of dating agency services via the Internet; Dating agency services; Dating services; Dating services provided through social networking; Internet based dating, matchmaking and personal introduction services; Internet based matchmaking services; Internet based personal introduction services; Internet dating services; Matchmaking services; On-line social networking services; Online social networking services accessible by means of downloadable mobile applications; Personal introduction agency services; Personal introduction services by computer; providing information regarding on-line dating and introduction services; providing information and advice on relationships; providing social introduction services; Social introduction agencies; Social networking services; Video dating services; Dating agency services; Dating services; Dating services provided through social networking

51. The earlier EU mark covers 'information and consultancy services', however it goes on to qualify these services being in the 'nature and field of on-line dating and introduction services'. Therefore being in the nature of on-line dating and introductions means that its very nature is that of an on-line dating and introduction service. The earlier UK mark broadly covers dating, introduction and match making services. I find these services to be identical to the applicant's services outlined above.

¹ *Separode Trade Mark* BL O-399-10

providing information and advice on marriage; providing marriage-arranging services; organising and arranging marriages; marriage bureau services; marriage agency services; personal advice services relating to matrimonial matters (non-legal); organising and arranging marriages; Marriage agencies; Marriage bureau services; Marriage bureaus; Matrimonial agencies;

52. The opponent identified the above marriage related services as being highly similar to their own. I agree that marriage agencies and bureaus are establishments that arrange introductions between single people seeking a marriage partner. They are therefore 'introduction' services which are covered by the opponent's services. With regard to the information and advice services, these may be part and parcel of introduction services for those wishing to marry and therefore identical or at least highly similar to the opponent's services.

Relationship counselling; Marriage guidance counselling; Marriage counselling and coaching; Marriage guidance counselling; Marriage guidance services; Divorce mediation services; Adoption agency services; Legal advice; Legal advice and representation; Legal information services; Mediation; Organization of religious meetings; Personal gift selection for others; Personal legal affairs consultancy; Providing clothing to needy persons [charitable services]; Providing information about religion; Providing wedding officiant services; Provision of emotional support for families; Social work services; Wedding chapel services; Religious services;

53. The opponent identified the above services as being highly similar to their own on the basis that they focus on personal relationships and interpersonal skills. In my experience the above services are usually provided by trained professionals with a particular specialism. The respective purpose of the services differs and they are unlikely to share trade channels. I cannot see that there is any competitive or complementary relationship in play and there is nothing in the evidence before me to indicate otherwise. These services are not similar to the opponent's services.

AVERAGE CONSUMER AND THE PURCHASING ACT

54. I must now consider the role of the average consumer and how the services are likely to be purchased. 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*.

55. 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.”

56. The average consumer for the contested services are members of the general public. The opponent submits that:

“the average consumer is therefore likely to be multitasking to some extent; whether commuting on the train and using the online platform or watching the television and using the online platform. The result is a lower level of attention and a greater likelihood for the services to be confused”.

57. It is feasible that consumers can now access online services quickly and more easily through portable devices, and may therefore be able to multitask in the manner suggested by the opponent. However I do not accept that a lower level of attention will be paid. A dating/introduction site user will likely be paying a subscription fee and will be interacting with their own and other user's profiles. I would expect at least

a normal level of attention to be paid by the consumer when using such services. The purchasing act will be mainly visual by consumers browsing websites, or the images and content generated by users. However I do not discount that aural considerations such as word of mouth recommendations may also play a part.

COMPARISON OF THE MARKS

58. The marks to be compared are:

Opponent's marks	Applicant's mark
	Muslim Match
MATCH.COM	

59. 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.”

60. It would be wrong, therefore, artificially to 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.

61. The opponent's UK mark consists of the word **match** in a stylised lower case font with a heart device positioned at the top right of the letter 'h'. It is a general rule of thumb that words speak louder than devices. I consider that rule to be applicable here. The heart device plays a subordinate role as it is smaller relative to the size of the word and being placed at the end of the word. Although both elements are distinctive and have a visual impact, it is the **match** element which is more dominant and by which the mark is likely to be referred to and which carries the greater weight in the overall impression of the mark.

62. The opponent's EU mark consists of the word **MATCH** in capital letters and the internet domain name suffix **.COM**. The overall impression of the opponent's EU mark will be dominated by the word **MATCH** given that the **.COM** element merely indicates a domain name and will therefore have much less impact in the overall impression.

63. The applicant's mark consist of two words in title case **Muslim Match**. Whilst both words contribute to the overall impression, the word **Muslim** merely indicates that the services are those aimed at the Muslim community and serves to qualify the word **Match**. I find that '**Match**' has the greater weight in the overall impression.

64. In a visual comparison of the marks, the point of similarity is the word **MATCH**. It is the only word of the opponent's UK mark and the first word of the EU mark. It is the second word of the applicant's mark. There are points of visual difference such as the heart device and domain name suffix in the opponent's mark and the additional word **Muslim** in the applicant's mark. Overall I find there to be a medium degree of visual similarity between the applicant's mark and both of the opponent's marks.

65. In an aural comparison, the applicant's mark will be vocalised in full as **Muslim Match**. The opponent's UK mark will be vocalised as **match**. It is unlikely that the device will be vocalised. The EU mark will be vocalised in full including the domain suffix '.com'. In each case the word **match** will be pronounced in the same way. I find there to be a medium degree of aural similarity between the applicant's mark and both of the opponent's marks.

66. In a conceptual comparison, the opponent's marks will bring to mind the concept of a match or matching something or someone. The heart device may bring to mind the concept of love. The addition of the internet domain name suffix '.com' in the opponent's EU mark will also impart a message of being a website address. For the applicant's mark, the concept will be that of something or someone being a match in relation to Muslims. Overall I find there to be a medium degree of conceptual similarity.

DISTINCTIVE CHARACTER OF THE EARLIER MARKS

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

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

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

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

68. The opponent’s evidence showed some use of its earlier UK **match**[♥] mark. However it was not clear from the evidence when this mark was introduced or the extent to which it was used prior to the relevant date so I can only consider the inherent distinctiveness of this mark. The earlier UK mark consists of an ordinary dictionary word plus the device of a heart. The word ‘match’, in the context of the opponent’s services, is a well-known expression which has weak distinctiveness for obvious reasons. The heart device does not have any unusual presentation or stylisation and is not highly distinctive for dating services. Overall I find there to be a low level of inherent distinctiveness.

69. Turning to the EU mark, this is inherently low in distinctiveness. However bearing in mind my earlier comments made in the context of assessing proof of use, I am satisfied that the extent to which the **Match.com** mark has been used in the UK is such that it enjoys a high degree of enhanced distinctiveness in relation to online dating services.

LIKELIHOOD OF CONFUSION

70. I must now draw together my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors:

- a) The interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Meyer Inc*).

- b) The principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*).
- c) The factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*).

71. In addition I keep in mind that in relation to the matter of indirect confusion, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, Mr Iain Purvis Q.C. as the Appointed Person 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).”

72. First, I will consider the likelihood of confusion in respect of the opponent’s EU mark. I have found that some of the respective services are identical or highly similar. In addition I found that the average consumer is a member of the general public who will select the services by primarily visual means whilst paying at least a normal degree of attention during the purchasing process. I also found that the earlier EU mark has a high level of enhanced distinctiveness. With regard to the comparison of the marks, I have found that they are visually, aurally and conceptually similar to a medium degree.

73. Taking all these factors into account, I do not consider there to be a likelihood of direct confusion between the applicant’s mark and the opponent’s mark, on the part of an average consumer paying a normal degree of attention. However I do find that the applicant’s mark is likely to be perceived as a brand extension of the opponent’s mark. Consumers are likely to be confused in to believing that the respective services come from the same or linked economic undertakings on the basis that the applicant’s services are merely an extension of the opponent’s services that are targeted specifically at the Muslim community. Consequently I find that there is a likelihood of indirect confusion.

74. The opposition under section 5(2)(b) on the basis of the EU mark succeeds against the following services:

match-making services; computer dating services; provision of dating agency services via the Internet; Dating agency services; Dating services; Dating services provided through social networking; Internet based dating, matchmaking and personal introduction services; Internet based matchmaking services; Internet based

personal introduction services; Internet dating services; Matchmaking services; On-line social networking services; Online social networking services accessible by means of downloadable mobile applications; Personal introduction agency services; Personal introduction services by computer; providing information regarding on-line dating and introduction services; providing information and advice on relationships; providing social introduction services; Social introduction agencies; Social networking services; Video dating services; Dating agency services; Dating services; Dating services provided through social networking; providing information and advice on marriage; providing marriage-arranging services; organising and arranging marriages; marriage bureau services; marriage agency services; personal advice services relating to matrimonial matters (non-legal); organising and arranging marriages; Marriage agencies; Marriage bureau services; Marriage bureaus; Matrimonial agencies;

75. As for the applicant's services which I found not to be similar to the opponent's services, there can be no likelihood of confusion in respect of those services as per the decision in Waterford (Waterford Wedgwood plc v OHIM – C-398/07P (CJEU)

76. The opponent is in no stronger position as regards its UK mark.

SECTION 5(4)(a)

77. The opponent relies upon the sign MATCH.COM under this ground and its claim is materially the same as that advanced under section 5(2)(b) such that I cannot see that it is any stronger position here against the services which have survived the ground under section 5(2)(b).

SECTION 5(3)

78. I must now consider Section 5(3). I will do so only in relation to the services which have survived the opposition under section 5(2)(b). The opponent relies solely upon its EU mark MATCH.COM under this ground. The relevant part of the Act states:

“(3) A trade mark which-

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

79. The leading cases are the following judgments of the CJEU: 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 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 public calls 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 risk that this will happen in future; *Intel, paragraphs 76 and 77*.

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of

a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

REPUTATION

80. In *General Motors* the CJEU stated:

“The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products of services covered by that trade mark”.

81. Given my earlier finding regarding the use of MATCH.COM, I find that this mark has the required reputation in respect of online dating services and that the reputation is a strong one.

LINK

82. In addition to having a reputation, a link must be made between the applicant's trade mark and the earlier mark. In Case C-408/01, *Addidas-Salomon*, the CJEU held that:

“29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23). The existence of such a link must, just like a likelihood of confusion in the context of Article 5(1)(b) of the Directive, be appreciated globally, taking into account all factors relevant to the circumstances of the case (see, in respect of the likelihood of confusion, *SABEL*, paragraph 22, and *Marca Mode*, paragraph 40).”

83. In *Intel* the CJEU provided further guidance on the factors to consider when assessing whether a link has been established. It stated:

“41 The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case...

42 Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark’s reputation;
- the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;
- existence of the likelihood of confusion on the part of the public”.

84. Most of the above factors have already been assessed under section 5(2)(b). Regarding the first factor, I have found the marks to be visually, aurally and conceptually similar to a medium degree. As to the second factor, the respective services are not similar. In respect of the third and fourth factors, the opponent’s mark has a strong reputation and a high degree of distinctiveness through the use made of it in relation to online dating services. Lastly as regards the fifth factor I have found there to be no likelihood of confusion in respect of the relevant services.

85. Considering all of the factors, I have come to the view that whilst the earlier mark has a strong reputation and high degree of distinctiveness in relation to online dating

services, I do not consider that the mark will be brought to mind by the average consumer in respect of the dissimilar services of the application which have survived the 5(2) ground. This is so despite the medium degree of visual, aural and conceptual similarity between the marks. A link will not be made. In the alternative, if a link were to be made, it is likely to be so weak so as to be incapable of giving rise to any heads of damage under this ground. The common presence of the inherently weak word 'Match' is likely to be put down to mere coincidence and nothing more.

CONCLUSION

86. The opposition has succeeded against the following services:

match-making services; computer dating services; provision of dating agency services via the Internet; Dating agency services; Dating services; Dating services provided through social networking; Internet based dating, matchmaking and personal introduction services; Internet based matchmaking services; Internet based personal introduction services; Internet dating services; Matchmaking services; On-line social networking services; Online social networking services accessible by means of downloadable mobile applications; Personal introduction agency services; Personal introduction services by computer; providing information regarding on-line dating and introduction services; providing information and advice on relationships; providing social introduction services; Social introduction agencies; Social networking services; Video dating services; Dating agency services; Dating services; Dating services provided through social networking; providing information and advice on marriage; providing marriage-arranging services; organising and arranging marriages; marriage bureau services; marriage agency services; personal advice services relating to matrimonial matters (non-legal); organising and arranging marriages; Marriage agencies; Marriage bureau services; Marriage bureaus; Matrimonial agencies;

87. The opposition fails against the following services:

Relationship counselling; Marriage guidance counselling; Marriage counselling and coaching; Marriage guidance counselling; Marriage guidance services; Divorce

mediation services; Adoption agency services; Legal advice; Legal advice and representation; Legal information services; Mediation; Organization of religious meetings; Personal gift selection for others; Personal legal affairs consultancy; Providing clothing to needy persons [charitable services]; Providing information about religion; Providing wedding officiant services; Provision of emotional support for families; Social work services; Wedding chapel services; Religious services

COSTS

88. As both parties have had a reasonable degree of success, I do not consider it appropriate to favour either party with an award of costs

Dated this 26th day of January 2018.

**June Ralph
For the Registrar
The Comptroller-General**