O/244/19

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3267378 BY KISHORE DEVSHI

TO REGISTER:

VERTCOIN

VERT COIN

AS A SERIES OF TRADE MARKS IN CLASS 9

AND

IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 411734 BY VERTCOIN LLC

Background and pleadings

1. Kishore Devshi (the applicant) applied to register **VERTCOIN** and **VERT COIN** as a series of Trade Marks in the UK on 31 October 2017. The series was accepted and published as No. 3267378 in the Trade Marks Journal on 24 November 2017 in respect of the following goods:

   Class 9

   Computer software; computer hardware; software for commerce over a global communications network; software relating to digital and virtual currency; software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual currency and taxes, digital and virtual currency and barter transactions, acquiring digital and virtual currency, the use of digital and virtual currency electronically, and the use of digital and virtual currency as an alternative to traditional currency to obtain goods or services; money counting and sorting machines; automated teller machines; software for online messaging; money counting and sorting machines; counters; meters.

   As nothing turns on the differences between these marks, I shall refer to them in the singular and in the one-word form.

2. Vertcoin LLC (the opponent) opposes the trade mark series on the basis of Sections 3(1)(b), (c) and (d) of the Trade Marks Act 1994 (the Act). It pleads that it is devoid of any distinctive character for the applied-for goods, is exclusively descriptive and is a generic term in the context of the applied-for goods.

3. The applicant filed a counterstatement denying the claims made.

4. Both sides filed evidence in these proceedings. This will be summarised to the extent that is considered necessary. Both the opponent and the applicant filed written submissions on 6 August 2018 and 5 October 2018 respectively. These will not be summarised but will be referred to as and where appropriate during this decision.

5. No hearing was requested and so this decision is taken following a careful perusal of the papers.

6. In these proceedings, the opponent is represented by Page White & Farrer and the applicant by Trade Mark Wizards Limited.

Evidence

Opponent's evidence-in-chief

7. The opponent's evidence-in-chief comes from Mr James Lovejoy, a Lead Developer for Vertcoin LLC. It is dated 1 August 2018.

8. Mr Lovejoy states that Vertcoin LLC is an unincorporated not-for-profit organisation based in the US that develops and promotes vertcoin, "a peer-to-peer cryptocurrency and software project" that was created in 2014.[1] Mr Lovejoy describes a cryptocurrency thus:

> "It is a currency operated over the internet, and uses cryptography, the process of converting legible information into decipherable code, to secure and verify transactions and to control the creation of new units of a particular cryptocurrency. The system is designed to be secure and is often anonymous."

9. He goes on to explain how they work:

> "Cryptocurrencies use decentralised technology to allow users to make secure payments and store money without the need to use their name or a bank, as is necessary with conventional currency. In a decentralised network, participants called 'miners' do the job of verifying and confirming transactions by solving a cryptographic puzzle, essentially providing a bookkeeping service.

[1] Exhibit JL2.

> Miners review transactions, mark them as legitimate and spread them across the network. Afterwards, every node of the network adds it to its database. Once the transaction is confirmed it becomes unforgeable and irreversible and a miner receives a reward, plus the transaction fees. Once the transaction is confirmed, it is broadcast on the Blockchain, which is a public ledger of all transactions that have taken place within the network, which is available to everyone."

10. Vertcoin has been designed so that this mining can be carried out by an individual at home. Mr Lovejoy draws a contrast between vertcoin and the first cryptocurrency, bitcoin, for which much of the mining is now done by centralised pools with custom-built mining software.

11. Mr Lovejoy states that vertcoin is traded around the world, including in the UK. His exhibits are directed towards showing that the term "vertcoin" is used in a generic and descriptive way. I shall return to these exhibits later in my decision where appropriate.

Applicant's evidence

12. The applicant's evidence comes from Kishore Devshi. It is dated 5 October 2018. Mr Devshi notes the registration of a US service mark for **VERTCOIN**. This application was made by a Mr Eric Kubik, who, like Mr Lovejoy, is a Lead Developer for Vertcoin. The application was made on 12 December 2017 and the mark was registered on 17 July 2018 for *Financial services namely, providing a virtual currency for use by members of an on-line community via a global network; Financial services, namely, providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network.* The registry entry for US Service Mark 5518809 is provided in Annex 1 to Mr Devshi's witness statement.

Opponent's evidence-in-reply

13. The opponent's evidence-in-reply comes from Mr Eric Kubik. It is dated 21 November 2018. In his witness statement, Mr Kubik confirms that he filed an application at the US Patent and Trademark Office (USPTO) as a preventative measure after he became aware of the contested UK application.

Preliminary issue

14. The applicant submits that the registration of **VERTCOIN** as a US service mark is an indication that the opponent believes that the sign is capable of acting as a trade mark. The position under US law has no bearing on the current proceedings, so I shall take no account of this registration in my decision. In any event, the explanation by Mr Kubik about the filing of the US application is not implausible. It does not follow, in my view, that the opponent is unable to argue that this UK application for goods lacks distinctiveness.

Legislation

15. Section 3(1) of the Act states that:

> "3(1) The following shall not be registered –
>
> a) signs which do not satisfy the requirements of section 1(1),
> b) trade marks which are devoid of any distinctive character,
> c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
> d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade:

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

16. The relevant date for assessing all the section 3(1) grounds of opposition is the date of application for the contested mark: 31 October 2017.

Decision

17. The opponent has made claims on section 3(1)(b), (c) and (d) grounds. It submits that:

> "… it is not possible for the sign VERTCOIN/VERT COIN to be owned by a single entity or individual. The word 'vertcoin' (or 'vert coin') is a wholly descriptive and non-distinctive word which should remain free for all traders to use."

18. In *Koninklijke KPN Nederland NV v Benelux-Merkenbureau (POSTKANTOOR)*, Case C-363/99, the Court of Justice of the European Union (CJEU) stated that:

> "… it is clear from Article 3(1) of the Directive that each of the grounds for refusal listed in that provision is independent of the others and calls for a separate examination (see, inter alia, *Linde*, paragraph 67), That is true in particular of the grounds for refusal listed in paragraphs (b), (c) and (d) of Article 3(1), although there is a clear overlap between the scope of the respective provisions (see to that effect Case C-517/99 *Merz & Krell* [2001] ECR I-6959, paragraphs 35 and 36)."[2]

19. In assessing the claims, I keep in mind the comments of the CJEU in *Libertel Groep BV v Benelux-Merkenbureau*, Case C-104/01:

[2] Paragraph 67.

> "It is settled case-law that the essential function of a trade mark is to guarantee the identity of the origin of the marked goods or service to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin (see *Canon*, paragraph 28, and Case C-517/99 *Merz & Krell* [2001] ECR I-6959, paragraph 22). A trade mark must distinguish the goods or services concerned as originating from a particular undertaking. In that connection, regard must be had both to the ordinary use of trade marks as a badge of origin in the sectors concerned and to the perception of the relevant public."[3]

Section 3(1)(d)

20. I shall first consider the opponent's claim under section 3(1)(d) that:

> "VERTCOIN/VERT COIN is a generic term in the context of the applied for goods. VERTCOIN/VERT COIN is used and/or is required for use generically by other traders for the specified goods and services."

21. In *Telefon & Buch Verlagsgesellschaft GmbH v OHIM*, Case T-322/03, the General Court summarised the case law of the EU courts under the equivalent of section 3(1)(d) of the Act as follows:

> "49. Article 7(1)(d) of Regulation No. 40/94 must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 *Merz & Krell* [2001] ECR I-6959, paragraph 31, and Case T-237/01 *Alcon v OHIM – Dr Robert Winzer Pharma (BSS)* [2003] ECR II-411, paragraph 37). Accordingly, whether a mark is customary can only be assessed, firstly,

[3] Paragraph 62.

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

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

51. Furthermore, although there is a clear overlap between the scope of Article 7(1)(c) and Article 7(1)(d) of Regulation N 40/94, marks covered by Article 7(1)(d) are excluded from registration not on the basis that they are descriptive, but on the basis of current usage in trade sectors covering trade in the goods or services for which the marks are sought to be registered (see, by analogy, *Merz & Krell*, paragraph 35, and *BSS*, paragraph 39).

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

22. The goods for which the series of marks is sought to be registered are as listed in paragraph 1 of this decision. These comprise:

- software specifically related to activities involving digital and virtual currency (*software relating to digital and virtual currency; software for digital and virtual currency, merchant services, exchange of digital and virtual currency to traditional currency, digital and virtual currency and*

taxes, digital and virtual currency and barter transactions, acquiring digital and virtual currency, the use of digital and virtual currency electronically, and the use of digital and virtual currency as an alternative to traditional currency to obtain goods or services);

- software for more general purposes (*computer software; software for commerce over a global communications network; software for online messaging*);
- *computer hardware*;
- machines for currency-related purposes (*money counting and sorting machines, automated teller machines*); and
- more general equipment (*counters, meters*).

23. The relevant public for these goods is a business, although members of the general public will also buy computer hardware and software. With regard to the goods related to digital and virtual currencies, the opponent submits that the relevant public "consists of knowledgeable and well-informed members of the ordinary and professional public" and that the general public is becoming more aware of different types of cryptocurrency.

24. It has not, however, adduced any evidence that supports this statement. Exhibit JL1 contains an article from www.moneysavingexpert.com, which, it seems to me, is written for a general audience. It is dated 30 November 2017, a month after the relevant date. The author suggests that the potential investor would need to do a lot more research and that the demand for bitcoin is most likely to be driven by speculators. While he does state that "Bitcoin is now at a point where the mainstream public are becoming much more aware of it", there is no data on the level of awareness and, in any event, awareness does not necessarily imply membership of the relevant public.

25. In my view, the relevant public is mainly specialist, consisting of financial traders or other professionals and IT experts. The fact that vertcoin has been specifically designed to be resistant to centralised mining is mentioned in the evidence as a

distinguishing characteristic of this particular cryptocurrency.[4] This suggests to me that cryptocurrencies in general are still mainly the domain of specialists. That said, there may also be a small number of the relevant public who are members of the general public, although they are likely to have a relatively sophisticated awareness of the field.

26. I must now consider whether the term "vertcoin" is customary in the current language or in the *bona fide* and established practices of the trade. The opponent adduces as evidence that the term is used in this way in the witness statement of Mr Adam Stuart Collier, Director of Crypex Limited trading as Vertpig, a cryptocurrency exchange dealing in vertcoin.[5] Mr Collier states that the exchange was released in February 2018, and in its first month of trading over 250 UK residents used the platform and traded over £100,000 worth of vertcoin. He continues:

> "I am aware of other merchants and brokers in the UK and elsewhere using the term vertcoin/vert coin as a descriptor for a type of the cryptocurrency, e.g. bittylicious.com. Although I cannot confirm when these other entities started trading in vertcoin, I became aware of other companies/businesses offering services related to vertcoin around August 2017 when I first discovered vertcoin as a cryptocurrency."[6]

I note that Vertpig was launched after the relevant date.

27. Elsewhere, the evidence shows that as of 20 July 2018, vertcoin was being traded on 12 exchanges (with three – Vertpig, Coinegg and BitClude – based in the UK) and by 5 brokers (with one, Bittylicious, in the UK).[7] It is not clear how much trading has been done by UK residents or businesses; neither is it clear how many of these exchanges and brokers were trading in vertcoin at the relevant date. The evidence does not persuade me that the word "vertcoin" has become customary

[4] See, for example, Exhibit JL6.
[5] Exhibit JL12. The witness statement is dated 26 July 2018.
[6] Exhibit JL12, paragraph 5.
[7] Exhibit JL8.

in the *bona fide* and established practices of the trade relating to digital and virtual currencies, still less in the other goods specified in the application.

28. The ground under section 3(1)(d) fails.

Section 3(1)(c)

29. I turn now to the opponent's claim under section 3(1)(c) that the word "vertcoin" is "exclusively descriptive, in the context of the applied for goods, in wholly describing a form of cryptocurrency". The opponent does not clarify which characteristic of the goods it is claiming "vertcoin" designates.

30. The case law under section 3(1)(c) (corresponding to Article 7(1)(c) of the Community Trade Mark Regulation, now the EU Trade Mark Regulation) was set out by Arnold J in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

> "91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z.o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:
>
> > '33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), see, by analogy, [2004] ECR I-1699, paragraph 19, as regards Article 7 of Regulation No 40/94, see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co*

(C-191/01 P) [2004] 1 W.L.R. 1728, [2003] E.C.R. I-12447, [2004] E.T.M.R. 9; [2004] R.P.C. 18, paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).

36. … due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 33, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P), paragraph 43).

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

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that

it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

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

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

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No. 40/94 to ensure that

the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

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

50. The fact that the legislature chose to use the word “characteristic” highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).’

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

31. The CJEU held that the characteristic should be "easily recognisable by the relevant class of persons". It is not apparent to me what characteristic the opponent is alleging to be designated, and I remind myself of the comments of Ms Anna Carboni, sitting as the Appointed Person, in *Pooja Sweets & Savouries*, BL O/195/15:

"43. The CJEU has stressed that the prohibition on registering marks that designate characteristics of goods and services should not be applied to situations where one would have to stretch the imagination to discern the alleged characteristic. For example, in 10.03.2011, C-51/10 P, *"1000"* ECLI:EU:C:2011:139 at §50, the Court said:

'50. The fact that the legislature chose the word "characteristic" highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provisions laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

32. It seems to me that this is a situation where one would be stretching the imagination to discern the alleged characteristic. It does not seem to me that the term “vertcoin” might describe any characteristic of the goods in question, in a way that is recognisable to the relevant public. It is a neologism which I consider would be unfamiliar to the average consumer of the goods at the relevant date. Of course, I accept that a neologism could in time become a known word in its own right and could potentially then describe some characteristic of the goods. However, on the basis of the evidence before me, there is nothing to suggest that this was the case before the relevant date and there was nothing to suggest that at the relevant date the mark needed to be kept free for the future use of others.

33. The ground under section 3(1)(c) also fails.

Section 3(1)(b)

34. The final ground to assess is section 3(1)(b). The opponent claims the sign lacks inherent distinctiveness and is therefore incapable of distinguishing the applied-for goods from those of others.

35. The principles to be applied under this section were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG*, Case C-265/09 P:[8]

> “29. … the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5809, paragraph 32).
>
> 30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

[8] The court refers to Article 7(1)(b) of the Community Trade Mark Regulation. This is identical to Article 3(1)(b) of the Trade Marks Directive and section 3(1)(b) of the Act.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

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

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

36. I see no reason why the word "vertcoin" in itself would not be able to function as a trade mark. The opponent has provided no further reason beyond the alleged descriptiveness or alleged generic nature of the word for making this claim. I have

already found that the word is neither descriptive nor customary in the current language or in the *bona fide* and established practices of the trade. The section 3(1)(b) ground therefore fails.

Outcome

37. The opposition has failed and the series of trade marks may, subject to a successful appeal, proceed to registration.

Costs

38. The applicant has been successful and is entitled to a contribution towards its costs. In the circumstances I award the applicant the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

    Preparing a statement and considering the other side's statement: £200
    Preparing evidence and considering and commenting on the other side's evidence: £500

    Total: £700

39. I therefore order Vertcoin LLC to pay Kishore Devshi the sum of £700. The above sum should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of May 2019

Clare Boucher
For the Registrar,
The Comptroller-General