

O/230/20

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3308288

BY

REBECCA GREEN

TO REGISTER THE FOLLOWING TRADE MARK IN CLASSES 12, 22, 43

TOWPI

AND OPPOSITION THERETO (NO.414114)

BY

VILLAGE CENTER

Background and Pleadings

1. Rebecca Green (“the Applicant”) applied to register the UK trade mark no. 3308288 namely “TOWPI” on 2 May 2018, for goods and services in classes 12, 22 and 43, as set out below. It was accepted and published on 20 July 2018.

Class 12: Trailer tents; Trailers; Trailers for motor land vehicles; Transport trailers.

Class 22: Temporary structures made of fabrics; Tents; Tents for use as an adjunct to vehicles; Tents [not for camping]; Awnings and tarpaulins; Awnings for tents.

Class 43: Accommodation services for functions; Accommodation services for meetings; Banqueting services; Bar and restaurant services; Beer garden services; Business catering services; Camp services (Holiday -) [lodging]; Campground facilities (Providing -); Caravan park facilities (Provision of -); Catering (Food and drink -); Catering services; Corporate hospitality (provision of food and drink); Food preparation; Hire of pavilions; Hiring of furniture; Hospitality services [accommodation]; Hospitality services [food and drink]; Leasing of metal and non-metal transportable buildings; Letting of holiday accommodation; Marquee hire; Mobile catering; Providing food and drink for guests; Providing temporary accommodation; Providing temporary accommodation as part of hospitality packages; Providing temporary lodging at holiday camps; Provision of conference, exhibition and meeting facilities; Provision of food and drink; Provision of temporary lodgings; Temporary accommodation.

2. On 22 October 2018, Village Center (“the Opponent”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). Whilst the grounds of opposition originally included section 5(4)(a) of the Act, the Opponent failed to file evidence and this ground was subsequently deemed withdrawn by the Registry in its

letter dated 8 April 2019. The proceedings therefore continue on the basis of section 5(2)(b) only. The Opponent relies on its earlier EU registered trade marks as outlined below:¹

TOHAPI

EUTM no. 17940595

Filed: 7 August 2018

Registered: 15 January 2019

Priority date: 12 February 2018

Priority country: France

Relying on all goods and services in classes 12, 35, 39, 41 and 43

("First Earlier Mark")

TOHAPI, WHAT MATTERS

EUTM no. 16998445

Filed: 19 July 2017

Registered: 6 November 2017

Priority date: 14 February 2017

Priority country: France

Relying on all services in classes 35, 39 and 43

("Second Earlier Mark")

TOPI CLUB

EUTM no. 016784911

Filed: 30 May 2017

Registered: 25 September 2017

¹ By way of email dated 7 November 2018 the Opponent withdrew reliance on its earlier trade mark no.13788864.

Priority date: 8 December 2016
Priority country: France
Relying on all services in classes 35, 39 and 43
(“Third Earlier Mark”)

TOPI

EUTM no. EU016784704
Filed: 30 May 2017
Registered: 25 September 2017
Relying on all services in classes 35, 39 and 43
(“Fourth Earlier Mark”)

3. The Opponent claims that there is a likelihood of confusion under section 5(2)(b) of the Act, because the trade marks are similar and the Applicant’s mark is to be registered for goods and services identical with or similar to the goods and services for which the earlier marks are protected. I have set out the Opponent’s full specification in the annex attached to this decision.

4. The Applicant filed a defence and counterstatement denying the claims made and denying that there is any similarity between the marks or that there is any identity or similarity between the goods and services.

5. Both parties are legally represented; the Opponent by ip21 Ltd, the Applicant by Amgen Law. Only the Applicant filed evidence by way of a witness statement from Malcolm Innes dated 30 September 2019. Both parties filed written submissions during the evidence rounds, however, neither party requested a hearing or filed further submissions in lieu. Whilst I do not propose to summarise the submissions in full, I have taken them into account in reaching my decision and will refer to them where necessary. This decision is taken following a careful perusal of the papers.

Applicant's evidence

6. The Applicant's evidence consists of the written statement of Mr Malcolm Innes dated 30 September 2019 accompanied by one exhibit. Mr Innes is the general manager of TOWPI and the Applicant's father. He credits himself as the inventor of the "TOWPI tent" and states that his role within the business is taking bookings and erecting the tent.

7. Mr Innes describes the meaning of "TOWPI" as a fairly large marquee style tent which is collapsible into a specially designed trailer, a combination of the word "tow" and "pi/pee" (from tipi/tepee). He outlines that the tent is hired out for camping/glamping events, weddings (as a venue or accommodation) or as an additional space at venues.

8. He states that the Opponent places great emphasis on the phonetic comparison between the marks, which is heavily weighted in favour of the aural similarity between its TOHAPI/TOPI marks as opposed to the applied for mark TOWPI.

9. Mr Innes exhibits a USB drive to his statement marked "MI1/RG1" which is described as two videos taken from the Opponent's webpage and which he says demonstrates how the Opponent pronounces and uses its earlier marks. Mr Innes argues that the Opponent's TOHAPI mark refers to its business or brand as a whole, whereas TOPI appears to refer to a cat mascot. He states that the Opponent pronounces its marks as "toh-appy" and "top-ee". The exhibit appears to be a recording of a computer screen displaying a web video, taken from the Opponent's website. The video is in French with no translation, it is undated and of poor quality and appears to be of a kind ordinarily produced for promotional purposes.

Decision

10. The opposition is based on section 5(2)(b) of the Act, which states:

“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”.

11. In these proceedings, the Opponent is relying upon its EU trade mark registrations, shown above, which qualify as earlier marks under section 6 of the Act because they were applied for or had a priority date earlier than the Applicant’s contested mark. As all the Opponent’s marks have been registered or protection conferred for less than five years at the date the application was published they are not subject to the proof of use provisions contained in section 6A of the Act. Consequently, the Opponent is entitled to rely upon all the goods and services for which its marks are registered, without having to establish genuine use.

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

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 greater degree of similarity between the marks, and vice versa;

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

- (i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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 goods and services

13. When conducting a goods and services comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc* Case C-39/97, where 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”.

14. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat*, [1996] R.P.C. 281 namely:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

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

15. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

16. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

17. Also, in *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

18. The Applicant rejects similarity between the Opponent’s *trailer tents; trailers; trailers for motor land vehicles; transport trailers* within class 12 and the Applicant’s *temporary structures made of fabrics; tents; tents for use as an adjunct to vehicles; tents [not for camping] awnings and tarpaulins; awnings for tents* in class 22, taking the ordinary meaning of the terms. It submits that each of the Applicant’s terms should be considered specifically and not be expanded to encompass the specific uses within the Opponent’s goods or services in class 22. The Opponent on the other hand argues that the respective goods in class 12 are identical and that its *trailer tents* are similar to the Applicant’s class 22 goods. In relation to the services in class 43 the Opponent submits that if they are “not identical, then they are highly closely related”.²

19. I would emphasise, at this point, that despite the goods appearing in different class headings, this does not preclude a finding of identity/similarity. The purpose of the classification system is to determine the boundaries of infringement rights. A reference to a class heading may be appropriate as an aid, where the meaning of the disputed term is not sufficiently clear and precise.³ The assessment to be undertaken therefore, takes into account the meaning and scope of the respective terms in their entirety and is not based solely on the specific class heading in which they appear.⁴

² Para 12 of submissions 1 April 2019

³ *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)*, [2018] EWHC 3608 (Ch),

⁴ Article 33(7) EUTMR

The approach

20. I shall start by comparing the goods and services of the application against the goods and services of the first earlier mark in classes 12 and 43 as these specifications appear to provide the Opponent with its best case. As the services relied upon in class 43 of the third and fourth earlier marks are identical and nearly identical to the second earlier mark, I will consider those services together. I will only go on to consider the Opponent's remaining services if it becomes necessary to my assessment.

21. For the purposes of considering the issue of similarity of goods and services, it is permissible to groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.⁵

22. The respective goods and services are set out as follows:

Applicant's goods and services	Opponent's goods and services
Class 12: Trailer tents; Trailers; Trailers for motor land vehicles; Transport trailers.	<u>First Earlier mark</u> Class 12: Vehicles; Apparatus for locomotion by land, air or water; Motors for land vehicles; Suspension shock absorbers for vehicles; Bodies for vehicles; Anti-skid chains; Chassis or bumpers for vehicles; Sun-blinds adapted for automobiles; Safety belts for vehicle seats; Electric vehicles; Camping vehicles; Caravans; Mobile homes [caravans]; Camper vans; Trailer tents; Caravan spoilers; Levelling apparatus for caravans; Caravan storage

⁵ *Evonik Degussa GmbH v L G Chem Ltd (Separate Trade Mark)* BL O-399-10

	assemblies; Bicycles; Frames, stands, brakes, handlebars, rims, pedals, tyres, wheels and saddles for bicycles.
Class 22: Temporary structures made of fabrics; Tents; Tents for use as an adjunct to vehicles; Tents [not for camping]; Awnings and tarpaulins; Awnings for tents.	
Class 43: Accommodation services for functions; Accommodation services for meetings; Banqueting services; Bar and restaurant services; Beer garden services; Business catering services; Camp services (Holiday -) [lodging]; Campground facilities (Providing -); Caravan park facilities (Provision of -); Catering (Food and drink -); Catering services; Corporate hospitality (provision of food and drink); Food preparation; Hire of pavilions; Hiring of furniture; Hospitality services [accommodation]; Hospitality services [food and drink]; Leasing of metal and non-metal transportable buildings; Letting of holiday accommodation; Marquee hire; Mobile catering; Providing food and drink for guests; Providing temporary accommodation; Providing temporary accommodation as part of hospitality	<p><u>First Earlier Mark</u></p> <p>Class 43: Serving food and drinks; Temporary accommodation; Café services and restaurants; cocktail and lounge services; Coffee shop services; Café services; Cafés; Hotel catering services; Tourist restaurants; Snack-bars; Lounge bars; Take-away food and drink services; Providing of food and drink via a mobile truck; Catering; Canteens; Restaurant reservation services; Accommodation bureaux (hotels, boarding houses, campsites); Temporary accommodation reservations; Booking of temporary accommodation via the Internet; Hotel reservations; Arranging of accommodation for holiday makers; Booking of campground accommodation; Booking of campsite accommodation; Rental of temporary accommodation; Providing temporary</p>

<p>packages; Providing temporary lodging at holiday camps; Provision of conference, exhibition and meeting facilities; Provision of food and drink; Provision of temporary lodgings; Temporary accommodation.</p>	<p>housing accommodations; Arranging of accommodation for holiday makers; Arranging of accommodation for tourists; Resort lodging services; Tourist camp services [accommodation]; Providing campground facilities; Provision of caravan park facilities; Rental of temporary accommodation in the form of villas and bungalows; Rental of portable buildings; Providing temporary trailer park facilities; Hotel services; Hotels and motels; Resort hotel services; Resort hotel services; Boarding houses; tourist hostel services; Providing accommodation in hotels and motels; Temporary accommodation in hotels, motels and boarding houses; Rental of temporary accommodation in holiday homes and flats; Holiday camp services [lodging]; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing travel lodging information services and travel lodging booking agency services for travelers; Providing on-line information relating to holiday accommodation reservations; Providing of information relating to hotels, restaurants and campsites; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines;</p>
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	<p>Rating holiday accommodation; Day-nurseries [crèches]; Nurseries and day care centers; Retirement homes; Pet boarding services; Rental of furniture, linens and table settings; Rental of temporary accommodation in the form of mobile homes.</p> <p><u>Second Earlier Mark</u></p> <p>Class 43: Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Lounge bars; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Providing of meals for immediate consumption; Resort hotel services; Rental of portable buildings; Rental of temporary accommodation; Rental of temporary accommodation in the form of villas and bungalows; Rental of temporary accommodation in holiday homes and flats; Retirement homes; Tourist homes; Services for providing food and drink, namely restaurants (catering); Providing temporary lodging for guests; Services for providing food and drink in restaurants and bars, namely restaurant (catering) and bar services; Services for providing food and drink as a welcome service; Providing of holiday accommodation; Hotel reservations and booking of hotel rooms; Providing campground facilities;</p>
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	<p>Providing of accommodation in hotels and motels; Providing of temporary accommodation in holiday camps, apartments and holiday homes, and in guest houses; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing of land and caravan sites on a temporary basis; Arranging of temporary accommodation and providing of temporary accommodation; Boarding houses; Hotel reservations for travellers; Room reservation services; Booking of temporary accommodation via the Internet; Reservation of temporary accommodation in the nature of holiday homes; Booking of campsite accommodation; Tourist restaurants; Travel agency services for booking temporary accommodation; Travel agency services for the booking of hotel accommodation; Tourist inns; Coffee shop services; Café services and restaurants; Cafés; Holiday camp services [lodging]; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Hotel reservation services provided via the Internet; Restaurants offering takeaway services; Services for providing food and drink for customers; Catering; Hotel catering;</p>
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	<p>Temporary accommodation in hotels, motels and boarding houses; Temporary accommodation services provided by holiday camps; hotel, motel and resort services; Providing travel lodging information services and travel lodging booking agency services for travelers.</p> <p><u>Third and Fourth Earlier Marks</u></p> <p>Class 43: Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Lounge bars; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Providing of meals for immediate consumption; Resort hotel services; Rental of portable buildings; Rental of temporary accommodation; Rental of temporary accommodation in the form of villas and bungalows; Rental of temporary accommodation in holiday homes and flats; Retirement homes; Tourist homes; Services for providing food and drink, namely restaurants (catering); Providing temporary lodging for guests; Services for providing food and drink in restaurants and bars, namely restaurant (catering) and bar services; Services for providing food and drink as a welcome service; Providing of holiday accommodation; Hotel reservations and booking of hotel rooms; Providing campground facilities;</p>
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	<p>Providing of accommodation in hotels and motels; Providing of temporary accommodation in holiday camps, apartments and holiday homes, and in guest houses; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing of land and caravan sites on a temporary basis; Arranging of temporary accommodation and providing of temporary accommodation; Boarding houses; Hotel reservations for travellers; Room reservation services; Booking of temporary accommodation via the Internet; Reservation of temporary accommodation in the nature of holiday homes; Booking of campsite accommodation; Tourist restaurants; Travel agency services for booking temporary accommodation; Travel agency services for the booking of hotel accommodation; Tourist inns; Coffee shop services; Café services and restaurants; Cafés; Holiday camp services [lodging]; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Hotel reservation services provided via the Internet; Restaurants offering takeaway services; Services for providing food and drink for customers; Catering; Hotel catering;</p>
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	Temporary accommodation in hotels, motels and boarding houses; Temporary accommodation services provided by holiday camps; Hotel and motel services; Providing travel lodging information services and travel lodging booking agency services for travelers; Childcare services; Hotel resort services.
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Comparison between the Applicant's goods and the First Earlier mark

Class 12

Trailer tents

23. The Applicant has *trailer tents* in its specification as does the Opponent, they are self-evidently identical.

Trailers; Trailers for motor land vehicles; Transport trailers

24. A trailer is defined as a "vehicle without an engine that can be pulled by another vehicle"⁶ and all of these goods would, therefore, be included within the term *vehicles* of the Opponent's broader category and therefore be identical on the basis of the principles in *Meric*. If I am wrong however then they are highly similar overlapping in user, method of use, nature, and trade channels and would be complementary to *vehicles*.

Class 22

Temporary structures made of fabrics; Tents; Tents for use as an adjunct to vehicles; Tents [not for camping]

⁶ www.dictionary.cambridge.org

25. A trailer tent is a large tent which differs to a conventional tent or other fabric-based structures, only to the extent that the container in which it is stored and transported, is integral to its structure. On this basis the Applicant's goods are identical to the Opponent's *trailer tents* according to the principles in *Meric*. If, however, I am wrong then they are highly similar as they share user, trade channels and nature. There may also be a degree of competition between a trailer tent and a free standing tent in so far as the consumer may choose to purchase a tent separately as opposed to purchasing the tent and container as one unit.

Awnings and tarpaulins; Awnings for tents

26. An awning or tarpaulin is something which is designed to extend a tent or caravan and provide additional storage, expand the living space or provide additional shelter; it therefore shares purpose with a tent and in light of my previous findings would be similar to the Opponent's *trailer tents*. Awnings and tarpaulins are normally manufactured and sold by the same companies as those that produce tents and trailer tents and thus overlap in distribution and trade channels. The goods are complementary to the extent that the Applicant's goods cover awnings and tarpaulins intended to be used with tents and consumers would expect those producing *trailer tents* to also produce the awnings/tarpaulins; they would target the same end consumer. It follows therefore that the Applicant's goods are similar to a medium degree to the Opponent's *trailer tents*.

Comparison between the Applicant's services and the Opponent's First, Second, Third and Fourth Earlier Marks

27. Other than childcare services the Opponent's second, third and fourth earlier marks cover almost identical specifications in class 43 and therefore the following findings apply equally to each of those earlier marks.

Class 43:

Accommodation services for functions; Accommodation services for meetings; Hospitality services [accommodation]; Letting of holiday accommodation; Providing temporary accommodation; Providing temporary accommodation as part of hospitality packages; Providing temporary lodging at holiday camps; Provision of temporary lodgings; Temporary accommodation

28. These services are included in the Opponent's specification, being either self-evidently identical or falling within the Opponent's broader terms according to the principles in *Meric*. They are identical to the Opponent's *temporary accommodation; Accommodation bureaux (hotels, boarding, campsites); Temporary accommodation reservations; Booking of temporary accommodation via the Internet; Providing temporary housing accommodations; Resort lodging services; Tourist camp services [accommodation]; Rental of temporary accommodation in the form of mobile homes. Rental of temporary accommodation; Hotel services; Hotels and motels; Resort hotel services; Resort hotel services.*

Camp services (Holiday -) [lodging]; Campground facilities (Providing -); Caravan park facilities (Provision of -)

29. These services are either self-evidently identical or identical according to *Meric* to the Opponent's *Holiday camp services [lodging]; Providing campground facilities; Provision of caravan park facilities.*

Banqueting services; Bar and restaurant services; Beer garden services; Business catering services; Catering (Food and drink -); Catering services; Corporate hospitality (provision of food and drink); Food preparation; Hospitality services [food and drink]; Mobile catering; Providing food and drink for guests; Provision of food and drink

30. These services are identical to the Opponent's *serving food and drinks; Café services and restaurants; Café services; Cafés; Providing of food and drink via a mobile truck; Catering; Canteens; Hotel catering services; Take-away food and drink services; cocktail and lounge services; Coffee shop services; Tourist restaurants;*

Snack-bars; Lounge bars either by being self-evidently identical or identical according to the principles in *Meric*, the one being caught by the broader category of the other and vice versa.

Hire of pavilions; Hiring of furniture; Leasing of metal and non-metal transportable buildings; Marquee hire

31. These services are either self-evidently identical or are identical according to *Meric* to the Opponent's *rental of furniture, linens and table settings; Rental of temporary accommodation; Rental of portable buildings* services.

Provision of conference, exhibition and meeting facilities

32. These services are similar to the Opponent's *hotel services* and the *provision of temporary accommodation* in that the nature of the services are shared in so far as both providers make rooms available on a temporary basis; one for staying, the other as a meeting facility. My own understanding of hotels is that they often provide conference, exhibition and meeting facilities as well as accommodation for those attending such events. The trade channels and nature would therefore overlap. It follows therefore that the services are directed at the same public through the same channels and be offered by one and the same undertaking. They are similar to a medium degree.

Average consumer

33. When considering the opposing trade marks I must determine first of all who the average consumer is and the method of selecting these goods and services. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.

34. 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

35. Neither party makes any submissions regarding the average consumer. To my mind the majority of both parties’ goods and services are aimed at the general public who will undertake the selection process primarily through visual means for example by looking through brochures and via internet searches. I do not discount aural considerations however as a result of telephone enquiries, recommendations or discussions with sales assistants. For both the goods and services the level of attention in the purchasing process will depend on the nature of the goods and the services on offer. Camping equipment for example can vary considerably in price from those at the top end of the range to cheaper mass produced makes and models. Relatively speaking, however, the goods are not excessively expensive. Whilst I accept that the purchase of camping equipment is unlikely to be a casual daily occurrence, nevertheless, it is not so infrequent that the level of attention would be at the highest, for example when purchasing a house. Considerations such as price, suitability and durability will still play a part, but such factors would not increase or decrease the level of attention beyond the norm for such goods. Overall, I regard the level of attention undertaken in the purchasing of the goods to be no more than average. In relation to the services a number of factors are considered before selection, dominated primarily by the price, availability and reputation of the provider. Even taking these matters into account, given that the purchases are unlikely to be

highly expensive, I do not consider that again the selection process would involve more than an average level of attention.

Comparison of the marks

36. 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.”

37. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to consider 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.

38. The Opponent argues that as a result of the overlap in letters at the beginning and end of the marks, the visual differences being minor and at the centre of the marks will be overlooked by the consumer leading to the marks being visually highly similar. Furthermore, the marks are phonetically highly similar as they share so many letters

in common with any differences being lost in speech. Neither mark appears to have a specific meaning in English rendering them conceptually indistinguishable.

39. The Applicant accepts that all marks appear to be made up words with no meaning attached to them necessitating a more thorough scrutiny of the similarities between the marks to be undertaken. It places greater weight on the phonetic differences that exist between the marks and the presence of the letter W in the Applicant’s mark which acts as a distinguishing factor both visually and phonetically. In addition, the Applicant argues that “the difference in size of both marks also offers distinguishing factor[sic] with a squat four letters used for TOPI but five used for TOWPI with the presence of a W drawing the eye towards it. The relative scarcity of four letter words in the English language may lead the average consumer to assume that TOPI is an acronym.”

40. The respective marks are shown below:

Applicant’s mark	Opponent’s marks
TOWPI	First Earlier Mark TOHAPI Second Earlier Mark TOHAPI, WHAT MATTERS Third Earlier Mark TOPI CLUB Fourth Earlier Mark TOPI

Overall Impression

41. The Applicant's mark consists of the five letter word TOWPI presented in a plain black unremarkable font with no additional stylisation. The overall impression is contained solely in the word itself.

42. The Opponent's first and fourth earlier marks consist of the six and four letter words TOHAPI and TOPI respectively. There are no other elements to contribute to the marks and the overall impression of each, resides in the entirety of the word within each mark.

43. The Opponent's second earlier mark consists of the words TOHAPI and WHAT MATTERS, separated by a comma. The words WHAT MATTERS are ordinary commonly used words, acting as either a statement or despite the absence of a question mark, conveying a question in the mind of the consumer qualified by the first element TOHAPI. The overall impression resides in the distinctive and dominant word TOHAPI because greater weight will be attributed to it as a result of its position at the beginning of the mark; the words WHAT MATTERS contribute but play a lesser role.

44. The Opponent's third mark contains the words TOPI CLUB in conventional font. The two words contribute to the overall impression of the mark although weighted in favour of the word TOPI as it identifies the name of the club within the mark.

Visual comparison

The Application and the First Earlier Mark

45. The Applicant submits that “there is no clear aesthetic similarity between TOHAPI and TOWPI. The latter is a five letter word with the ‘W’ acting as a visual coupling between ‘TO’ and ‘PI’. It is averred that this is very different to the aesthetic of TOHAPI, which is a six letter word with the eye drawn to divide between TO and then HAPI, or even to the ‘HA’ as a bridge between ‘TO’ and ‘PI’. This may be due to the lack of any use of ‘TOH’ in the English language.” The Opponent submits that despite the difference in the lengths of the marks (6 letters as opposed to five) the first two letters and last two letters are identical and the visual difference at the centre will be overlooked by the consumer. To my mind the marks coincide with four out of the five/six letters; the first two and last two letters of each mark are identical. The only difference lies with the middle letter “W” as opposed to the middle two letters “HA” there being no counterpart in the respective marks. I consider that the marks are visually similar to between a medium and high degree since they both begin and end with the same letters and given that differences in the middle of words are less noticeable.

The Application and the Second Earlier Mark

46. As I have already found the marks coincide in the letter structure “TO*PI” which (other than the inclusion of the letter W) is the entirety of the Applicant’s mark and are contained in the first element of the Opponent’s mark. The marks differ in so far as the Opponent’s mark contains additional words there being no counterpart in the Applicant’s and the difference with the middle letters “W” as opposed to “HA”. Taking into account my assessment of the overall impression of the Opponent’s mark, I consider that the marks are visually similar to a low degree.

The Application and the Third Earlier Mark

47. The marks coincide with the letters T,O,P and I and differ to the extent that the Opponent’s mark also includes the word CLUB and the letter W is included in the

middle of the Applicant's mark. I consider that the marks are visually similar to a medium degree.

The Application and the Fourth Earlier mark

48. The Applicant further denies any visual similarity between TOPI and TOWPI and whilst acknowledging that both marks include the letters T, O, P and I, the presence of the letter 'W' distinguishes between them. The Opponent submits that the marks only differ with one letter in the middle which is insufficient to distinguish between the marks. The Applicant's mark consists of the five letter word TOWPI whereas the Opponent's mark is four letters in length. Save for the addition of the letter W the entirety of the Opponent's mark is included in the Applicant's mark. Whilst a change of one letter in a relatively short mark can make an impression, this is offset by the fact that four out of the five letters are identical, sharing the same position at the beginning and end of the marks, which I consider results in a high degree of visual similarity

Aural Comparison

49. The Applicant has filed evidence as to how the Opponent pronounces its own marks and claims that this pronunciation establishes sufficient distinction between the marks for no confusion to arise. The aural comparison, however, is only one point of consideration in the global assessment. I note that the web-video filed is in French and would therefore be directed to those consumers who live in France or speak French. Despite the Applicant inferring that the Opponent and French people would attribute a different pronunciation to the earlier marks, this is not borne out from the video and there is no way of telling how the Opponent would pronounce the applied for mark and whether in fact there is any difference in pronunciation. In any event it is the interpretation of the UK consumer which is key and how the marks are perceived by the UK public. Whilst I accept that there may be a number of ways that the marks may be articulated, I must assess the matter as to how the marks are perceived on

first impressions and from the perspective of the consumer's immediate and instinctive reaction to the mark on first encounter.⁷

50. With this in mind I consider that the Applicant's mark will be pronounced as TOE-PEE. The first earlier mark will be pronounced as TOE-AH-PEE or as TOO-HA-PEE. In the first scenario since the first and last syllable will be pronounced in an identical manner I consider that the marks share a high degree of aural similarity, the "AH" sound in the middle of the Opponent's mark being lost. In the second scenario the degree of similarity will be medium since the marks coincide at the beginning of the first syllable (with the shared "T-OE/T-OO" sound) and the last syllable.

51. The first word of the second earlier mark will be pronounced as I have already outlined in the preceding paragraph. The remaining words will be given their ordinary dictionary pronunciation. Given my assessment in relation to the overall impression of the mark, if only the TOHAPI element is articulated then the marks will be aurally similar to either a high or medium degree taking into account my earlier findings regarding the different pronunciations, otherwise the similarity will be low if all of the words are pronounced.

52. The first element of the third earlier mark will be pronounced as TOE-PEE or TOP-EE. The word CLUB will be given its ordinary pronunciation. If all elements are articulated in the first scenario, then the marks will be similar to a medium degree or low to medium in the second scenario. However in light of the role the element "CLUB" plays, if only the first element TOPI is articulated then if it is pronounced as TOE-PEE, then the marks will be aurally identical otherwise I consider that marks will be aurally similar to a high degree as a result of the beginning of the first syllable of both marks starting with a "T" and short "O" sound and given the identity of the last syllable.

⁷ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

53. The fourth earlier mark will be pronounced as TOE-PEE or TOP-EE and therefore in light of my earlier findings in the preceding paragraph, the degree of aural similarity will be identical or high.

54. I accept that there may be slight variations in the pronunciation of the syllables in each mark, other than those outlined above, which would result in a number of additional combinations, leading to a greater or lesser extent of aural similarity. However, I have considered and discounted these combinations as I believe it would result in an overly artificial dissection of the marks which would not be undertaken by the average consumer.

Conceptual Comparison

55. The Applicant submits that its mark “is the combination of the word tow (as the product is trailer based) and tepee/tipi (the native American tent)” whilst at the same time acknowledging that all the marks appear to be made up words with no meaning attached to them. The Opponent argues that neither words TOPI, TOWPI or TOHAPI have a clear recognisable meaning. For a conceptual message to be relevant it must be capable of being immediately grasped by the average consumer.⁸ I do not find that the average consumer will undertake a detailed analysis of any of the respective marks and as such will perceive them all to be invented. This will result in a conceptual comparison being impossible and therefore they are conceptually neutral. Whilst the Opponent’s third mark will bring to mind the name of a club called TOPI, the word TOPI itself will not give rise to any meaning. Similarly, the Opponent’s second earlier mark raises a question or is a statement, qualified by the invented word TOHAPI.

⁸ Case C-361/04 P *Ruiz-Picasso and Others v OHIM* [2006] ECR I-00643; [2006] E.T.M.R. 29

Distinctive character of the earlier marks.

56. 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).”

57. Registered trade marks possess varying degrees of inherent distinctive character; descriptive words tend to have a low level of inherent distinctiveness, whereas invented words are regarded as possessing a high level of distinctive character and dictionary words that are neither descriptive nor allusive are somewhere in the middle. The degree of distinctiveness is an important factor as it directly relates to whether

there is a likelihood of confusion; the more distinctive the earlier mark the greater the likelihood of confusion. The distinctive character of a mark can be enhanced by virtue of the use made of it.

58. Since no evidence was filed by the Opponent nor did it plead that the distinctive character of its marks have been enhanced through use I only have the inherent position to consider. Taking into account my assessment regarding the overall impressions of the marks, the distinctive and dominant elements reside in the words TOPI/TOHAPI in each mark, which will be regarded as invented with no apparent link to the goods or services. The addition of the element CLUB in the third earlier mark will be perceived by the average consumer as a club called TOPI. Whereas the words WHAT MATTERS in the second earlier mark raises a question that something matters, qualified by the word TOHAPI or acts as a statement i.e. TOHAPI is what matters, where TOHAPI is still the subject of the statement. I consider that all four marks possess a high degree of distinctive character.

Likelihood of confusion

59. When considering whether there is a likelihood of confusion between the marks I must consider whether there is direct confusion, where one mark is mistaken for the other or whether there is indirect confusion where the similarities between the marks lead the consumer to believe that the respective goods and services originate from the same or related source.

60. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr *Iain Purvis Q.C.*, as the Appointed Person, explained 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 recognised 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, I conclude that it is another brand of the owner of the earlier mark.”

61. A number of factors must also be borne in mind when undertaking the assessment of confusion. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or services and vice versa. As I mentioned above, it is also necessary for me to keep in mind a global assessment of all relevant factors when undertaking the comparison and that the purpose of a trade mark is to distinguish the goods and services of one undertaking from another. In doing so, I must consider that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

62. Earlier in my decision I found that most of the goods and services in question were identical or similar to a high degree with only a few being similar to a medium degree. I also considered that the average consumer, being a member of the general public, would select the goods and services primarily visually, paying an average degree of attention, but not discounting aural considerations. Whilst the Opponent relies on all four of its earlier marks, its first and fourth earlier marks are closer in terms of visual and aural similarity and therefore I will consider the likelihood of confusion with reference to these two marks because if it fails in relation to these marks it will also fail in relation to its second and third earlier marks since those marks include additional verbal elements.

63. I found that the fourth earlier mark TOPI to be visually similar to a high degree and aurally identical or highly similar depending on the pronunciation of the mark. In relation to the first earlier mark TOHAPI I found the visual similarity to be between a medium and high degree and aurally similar to either a high or medium degree again depending on the pronunciation attributed. Since no conceptual comparison is possible the marks are conceptually neutral. I considered that both the Opponent's marks are inherently distinctive to a high degree.

64. Taking into account these conclusions and the fact that consumers rarely have a chance to compare marks side by side, I consider that the similarities between the marks as a result of the identical first two and last two letters would in my view cause the marks to be misremembered or mistakenly recalled, especially in the absence of a conceptual hook to distinguish between them. The difference between the inclusion/absence of the letters "W" and "HA", for marks that will be regarded as invented, are not sufficient to enable the average consumer to distinguish between them. I do not consider that the average consumer will undertake a forensic analysis of the later mark, such that a clear and specific meaning would be attributed to it (as set out by the Applicant, where it submitted that its mark would be perceived as the combination of the word tow (trailer) and tepee), that it would dominate the global assessment and override the high visual and aural similarities.⁹

65. I have also taken account of the potential differences in the pronunciation of the respective marks. However, even when the goods and services are requested verbally, the difference in pronunciation of the middle letters will be swallowed by the identity of the remaining letters and are unlikely to be distinguished by the consumer. Bearing in mind the principles of imperfect recollection, I am satisfied that the Applicant's mark will be mistaken for the Opponent's earlier marks or vice versa leading to a likelihood of direct confusion. I recognise that in some circumstances the difference of one letter within a short mark can be more significant, but I do not consider that this applies in the case before me, due to the positioning of the different

⁹ *Wolf Oil v EUIPO*, C-437/16 P, EU:C:2017:737

letter/s within the middle of the marks, giving them less impact than if those differences were at the beginning.

66. Having found confusion in relation to marks one and four I need not consider the Opponent's remaining marks as this will not place it in any stronger position. However, for the sake of completeness, I would also have found confusion in relation to these marks for the same reasons, but on the basis of indirect confusion. Taking into account the independency principle, I consider that having misremembered the element of shared commonality, the additional verbal elements CLUB and WHAT MATTERS may be recognised as different elements but regarded as brand extensions originating from the same or linked undertaking.

Conclusion

67. The opposition under section 5(2)(b) succeeds in full. Subject to appeal the application is refused.

Costs

68. As the Opponent has been successful it is entitled to a contribution towards its costs. Award of costs in proceedings are based upon the scale as set out in Tribunal Practice Note 2 of 2016. Applying that guidance, I award costs to the Opponent on the following basis:

Preparing a notice of opposition

and reviewing the counterstatement: £200

Drafting submissions and considering £300

the evidence/submissions filed

Official fee: £100¹⁰

Total: £600

69. I order Rebecca Green to pay Village Center the sum of £600 as a contribution towards its costs. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 9th day of April 2020

Leisa Davies
For the Registrar

¹⁰ The Opponent did not continue with its opposition under section 5(4) and therefore the official fee is reduced accordingly.

Annex

Opponent's goods and services specification as relied upon

First Earlier Mark

Class 12: Vehicles; Apparatus for locomotion by land, air or water; Motors for land vehicles; Suspension shock absorbers for vehicles; Bodies for vehicles; Anti-skid chains; Chassis or bumpers for vehicles; Sun-blinds adapted for automobiles; Safety belts for vehicle seats; Electric vehicles; Camping vehicles; Caravans; Mobile homes [caravans]; Camper vans; Trailer tents; Caravan spoilers; Levelling apparatus for caravans; Caravan storage assemblies; Bicycles; Frames, stands, brakes, handlebars, rims, pedals, tyres, wheels and saddles for bicycles.

Class 35: Advertising; Business management; Business administration; Office functions; Direct mail advertising; Advertising in the field of tourism and travel; Promotion [advertising] of travel; On-line advertising on a computer network; Rental of advertising time on communication media; Rental of advertising space; Publication of publicity texts; Dissemination of advertising matter; Arranging newspaper subscriptions for others; Arranging subscriptions to telecommunication services for others; Business management and organization consultancy; Accounting; Document reproduction; Commercial administration of the licensing of the goods and services of others; Services rendered by a franchisor, namely, assistance in the running or management of industrial or commercial enterprises; Business management advisory services relating to franchising; Administration of the business affairs of franchises; Computerized file management; Web site traffic optimization; Public relations services; Commercial intermediation services; Consumers (Commercial information and advice for -) [consumer advice shop]; Rental of sales stands; Rental of sales stands; Presentation of goods on communication media, for retail purposes; Organization of exhibitions for commercial or advertising purposes.

Class 39: Transport; Travel services; Package holiday services for arranging travel; Travel arrangement and reservation services; Planning of journeys; Arranging and booking of travel for package holidays; Booking of tickets for travel; Booking of seats (travel); Booking of sightseeing tours; Booking of travel, excursions and cruises; Computerised travel booking; Sightseeing [tourism]; Services for the arranging of tours; Planning and arranging of sightseeing tours and day trips; Organisation of guided tours and trips; Escorting of travellers; Travel guide services; Vehicle hire; Rental of recreational vehicles; Boat rental; Rental of water craft; Rental of cycles; Push-chair rental; Travelling trunks rental; Providing vehicles for tours and excursions; Providing of information online relating to travel; Providing travel reservation information via the internet; Providing of information to tourists relating to excursions and sightseeing trips; Services of travel consultants; Consultancy relating to sightseeing and travel; Consultancy in the field of sightseeing and travel provided by telephone call centres and telephone helplines; Transportation information; Transport of travellers; Issuing of tickets for travel; Transportation of travellers' baggage; Packaging and storage of goods; Transportation logistics; Delivery of goods; Towing; Delivery of newspapers; Water distribution; Electricity distribution; Garage rental; Rental of garage parking places; Taxi services; Rental of motor homes; Physical storage of electronically-stored data or documents.

Class 41: Education; Providing of training; Entertainment; Sporting and cultural activities; Entertainment information; Education information; Recreation facilities (Providing -); Providing amusement arcade services; Camp services (Holiday -) [entertainment]; Holiday camp amusement centre services; Children's adventure playground services; Adventure playground services; Swimming facilities; Swimming pool and water chute complex services; Beach and pool clubs; Providing recreational areas in the nature of play areas for pets; Education services provided by tourist resort establishments; Providing sports facilities; Instruction in sporting activities; Organisation of competitions [education or entertainment]; Organising of entertainment; Organisation of sporting events; Organisation of group recreational activities; Rental of amusement machines and apparatus; Games equipment rental; Rental of educational and teaching materials; Sports equipment (Rental of -); Organising events for entertainment purposes; Arranging of workshops;

Organisation of parties; Conducting lotteries for others; Organisation of educational events; Organisation of teaching activities; Organisation of shows; Performances (Presentation of live -); Cinema presentations; Rental of show scenery; Booking of seats for shows; Arranging and conducting of colloquiums; Arranging and conducting of conferences; Arranging of exhibitions for cultural or educational purposes; Educational courses relating to the travel industry; Publication of books; Lending of books and other publications; Publication of texts and images, including in electronic form, except for advertising purposes; Publication of magazines; Publication of leaflets; Services for the publication of newsletters; Publication of electronic books and journals on-line; Publication of online guide books, travel maps, city directories and listings for use by travellers, not downloadable; Publication of directories relating to tourism; Micropublishing; Photography; Audio, video and multimedia production, and photography; Videotape editing; Video and audio rental services; Rental of audio-visual apparatus; Video rental services; Game services provided on-line from a computer network; Gambling.

Class 43: Serving food and drinks; Temporary accommodation; Café services and restaurants; cocktail and lounge services; Coffee shop services; Café services; Cafés; Hotel catering services; Tourist restaurants; Snack-bars; Lounge bars; Take-away food and drink services; Providing of food and drink via a mobile truck; Catering; Canteens; Restaurant reservation services; Accommodation bureaux (hotels, boarding houses, campsites); Temporary accommodation reservations; Booking of temporary accommodation via the Internet; Hotel reservations; Arranging of accommodation for holiday makers; Booking of campground accommodation; Booking of campsite accommodation; Rental of temporary accommodation; Providing temporary housing accommodations; Arranging of accommodation for holiday makers; Arranging of accommodation for tourists; Resort lodging services; Tourist camp services [accommodation]; Providing campground facilities; Provision of caravan park facilities; Rental of temporary accommodation in the form of villas and bungalows; Rental of portable buildings; Providing temporary trailer park facilities; Hotel services; Hotels and motels; Resort hotel services; Resort hotel services; Boarding houses; tourist hostel services; Providing accommodation in hotels and motels; Temporary accommodation in hotels, motels and boarding

houses; Rental of temporary accommodation in holiday homes and flats; Holiday camp services [lodging]; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing travel lodging information services and travel lodging booking agency services for travelers; Providing on-line information relating to holiday accommodation reservations; Providing of information relating to hotels, restaurants and campsites; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Rating holiday accommodation; Day-nurseries [crèches]; Nurseries and day care centers; Retirement homes; Pet boarding services; Rental of furniture, linens and table settings; Rental of temporary accommodation in the form of mobile homes.

Second Earlier Mark

Class 35: Advertising; Business management; Business administration; Office functions; Direct mail advertising; Arranging newspaper subscriptions [for others]; Arranging subscriptions to telecommunications services for others; Presentation of goods and services on all means of communication for retailing; Business management and organization consultancy; Accounting; Document reproduction; Employment agencies; Commercial administration of the licensing of the goods and services of others; Consumers (Commercial information and advice for -) [consumer advice shop]; Presentation of goods on communication media, for retail purposes; Business management advisory services relating to franchising; Computerized file management; Organization of exhibitions for commercial or advertising purposes; On-line advertising on a computer network; Rental of advertising time on communication media; Publication of publicity texts; Rental of advertising space; Dissemination of advertising matter; Public relations services; Business auditing.

Class 39: Transport; Travel arrangement; Travel agencies; Conducting of tours; Vehicle hire; Rental of recreational vehicles; Providing of information to tourists relating to excursions and sightseeing trips; Providing of information online relating

to travel; Arranging travel and transportation; Arranging of excursions; Arranging and booking of travel for package holidays; Booking of tickets for travel; Booking of seats (travel); Booking of sightseeing tours; Booking of travel, excursions and cruises; Computerised travel booking; Consultancy in the field of sightseeing and travel provided by telephone call centres and telephone helplines; Consultancy relating to sightseeing and travel; Services of travel consultants; Travel arrangement and reservation services.

Class 43: Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Lounge bars; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Providing of meals for immediate consumption; Resort hotel services; Rental of portable buildings; Rental of temporary accommodation; Rental of temporary accommodation in the form of villas and bungalows; Rental of temporary accommodation in holiday homes and flats; Retirement homes; Tourist homes; Services for providing food and drink, namely restaurants (catering); Providing temporary lodging for guests; Services for providing food and drink in restaurants and bars, namely restaurant (catering) and bar services; Services for providing food and drink as a welcome service; Providing of holiday accommodation; Hotel reservations and booking of hotel rooms; Providing campground facilities; Providing of accommodation in hotels and motels; Providing of temporary accommodation in holiday camps, apartments and holiday homes, and in guest houses; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing of land and caravan sites on a temporary basis; Arranging of temporary accommodation and providing of temporary accommodation; Boarding houses; Hotel reservations for travellers; Room reservation services; Booking of temporary accommodation via the Internet; Reservation of temporary accommodation in the nature of holiday homes; Booking of campsite accommodation; Tourist restaurants; Travel agency services for booking temporary accommodation; Travel agency services for the booking of hotel accommodation; Tourist inns; Coffee shop services; Café services and restaurants; Cafés; Holiday camp services [lodging]; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Hotel reservation services provided via the Internet; Restaurants offering takeaway

services; Services for providing food and drink for customers; Catering; Hotel catering; Temporary accommodation in hotels, motels and boarding houses; Temporary accommodation services provided by holiday camps; hotel, motel and resort services; Providing travel lodging information services and travel lodging booking agency services for travelers.

Third Earlier Mark

Class 35: Advertising; Business management; Business administration; Office functions; Direct mail advertising; Arranging newspaper subscriptions [for others]; Arranging subscriptions to telecommunications services for others; Presentation of goods and services on all means of communication for retailing; Business management and organization consultancy; Accounting; Document reproduction; Employment agencies; Commercial administration of the licensing of the goods and services of others; Consumers (Commercial information and advice for -) [consumer advice shop]; Presentation of goods on communication media, for retail purposes; Business management advisory services relating to franchising; Computerised file management; Exhibitions for commercial or advertising purposes; On-line advertising on a computer network; Rental of advertising time on communication media; Publication of publicity texts; Rental of advertising space; Dissemination of advertising matter; Public relations services; Business auditing.

Class 39: Transport; Travel arrangement; Travel agencies; Vehicle hire; Rental of recreational vehicles; Providing of information to tourists relating to excursions and sightseeing trips; Providing of information online relating to travel; Arranging travel and transportation; Arranging of excursions; Arranging and booking of travel for package holidays; Booking of tickets for travel; Booking of seats (travel); Booking of sightseeing tours; Booking of travel, excursions and cruises; Computerised travel booking; Consultancy in the field of sightseeing and travel provided by telephone call centres and telephone helplines; Consultancy relating to sightseeing and travel;

Services of travel consultants; Travel arrangement and reservation services; Conducting of tours (tourist guide services).

Class 43: Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Lounge bars; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Providing of meals for immediate consumption; Resort hotel services; Rental of portable buildings; Rental of temporary accommodation; Rental of temporary accommodation in the form of villas and bungalows; Rental of temporary accommodation in holiday homes and flats; Retirement homes; Tourist homes; Services for providing food and drink, namely restaurants (catering); Providing temporary lodging for guests; Services for providing food and drink in restaurants and bars, namely restaurant (catering) and bar services; Services for providing food and drink as a welcome service; Providing of holiday accommodation; Hotel reservations and booking of hotel rooms; Providing campground facilities; Providing of accommodation in hotels and motels; Providing of temporary accommodation in holiday camps, apartments and holiday homes, and in guest houses; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing of land and caravan sites on a temporary basis; Arranging of temporary accommodation and providing of temporary accommodation; Boarding houses; Hotel reservations for travellers; Room reservation services; Booking of temporary accommodation via the Internet; Reservation of temporary accommodation in the nature of holiday homes; Booking of campsite accommodation; Tourist restaurants; Travel agency services for booking temporary accommodation; Travel agency services for the booking of hotel accommodation; Tourist inns; Coffee shop services; Café services and restaurants; Cafés; Holiday camp services [lodging]; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Hotel reservation services provided via the Internet; Restaurants offering takeaway services; Services for providing food and drink for customers; Catering; Hotel catering; Temporary accommodation in hotels, motels and boarding houses; Temporary accommodation services provided by holiday camps; Hotel and motel services; Providing travel lodging information services and travel lodging booking agency services for travelers; Childcare services; Hotel resort services.

Fourth Earlier Mark

Class 35: Advertising; Business management; Business administration; Office functions; Direct mail advertising; Arranging subscriptions to telecommunications services for others; Presentation of goods and services on all means of communication for retailing; Business management and organization consultancy; Accounting; Document reproduction; Employment agencies; Commercial administration of the licensing of the goods and services of others; Consumers (Commercial information and advice for -) [consumer advice shop]; Presentation of goods on communication media, for retail purposes; Business management advisory services relating to franchising; Computerized file management; Organization of exhibitions for commercial or advertising purposes; On-line advertising on a computer network; Rental of advertising time on communication media; Publication of publicity texts; Rental of advertising space; Dissemination of advertising matter; Public relations services; Business auditing.

Class 39: Transport; Travel arrangement; Travel agencies; Vehicle hire; Rental of recreational vehicles; Providing of information to tourists relating to excursions and sightseeing trips; Providing of information online relating to travel; Arranging travel and transportation; Arranging of excursions; Arranging and booking of travel for package holidays; Booking of tickets for travel; Booking of seats (travel); Booking of sightseeing tours; Booking of travel, excursions and cruises; Computerised travel booking; Consultancy in the field of sightseeing and travel provided by telephone call centres and telephone helplines; Consultancy relating to sightseeing and travel; Services of travel consultants; Travel arrangement and reservation services; Conducting of tours (tourist guide services).

Class 43: Temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Lounge bars; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Providing of meals for immediate consumption; Resort hotel services; Rental of portable buildings; Rental of temporary accommodation; Rental of temporary

accommodation in the form of villas and bungalows; Rental of temporary accommodation in holiday homes and flats; Retirement homes; Tourist homes; Services for providing food and drink, namely restaurants (catering); Providing temporary lodging for guests; Services for providing food and drink in restaurants and bars, namely restaurant (catering) and bar services; Services for providing food and drink as a welcome service; Providing of holiday accommodation; Hotel reservations and booking of hotel rooms; Providing campground facilities; Providing of accommodation in hotels and motels; Providing of temporary accommodation in holiday camps, apartments and holiday homes, and in guest houses; Providing of information relating to temporary accommodation; Providing of information relating to temporary accommodation via the Internet; Providing of land and caravan sites on a temporary basis; Arranging of temporary accommodation and providing of temporary accommodation; Boarding houses; Hotel reservations for travellers; Room reservation services; Booking of temporary accommodation via the Internet; Reservation of temporary accommodation in the nature of holiday homes; Booking of campsite accommodation; Tourist restaurants; Travel agency services for booking temporary accommodation; Travel agency services for the booking of hotel accommodation; Tourist inns; Coffee shop services; Café services and restaurants; Cafés; Holiday camp services [lodging]; Consultancy in the field of temporary accommodation, provided by telephone call centres and telephone helplines; Hotel reservation services provided via the Internet; Restaurants offering takeaway services; Services for providing food and drink for customers; Catering; Hotel catering; Temporary accommodation in hotels, motels and boarding houses; Temporary accommodation services provided by holiday camps; Hotel and motel services; Providing travel lodging information services and travel lodging booking agency services for travelers; Childcare services; Hotel resort services.