

O-502-10

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION NO 3479615
BY MOMENTS OF SPACE LIMITED
TO REGISTER THE FOLLOWING TRADE MARK IN CLASSES 9 AND 41:**

MICRO MEDITATION

Background

1. On 6 April 2020, Moments of Space Limited ('the applicant') applied to register the above trade mark for the following goods and services:

Class 09: *Computer software; mobile application software; downloadable mobile applications in the field of meditation, wellbeing and mindfulness; downloadable media in the field of meditation, wellbeing and mindfulness; downloadable electronic publications in the field of meditation, wellbeing and mindfulness including books, audio books, newsletters, magazines, posters, texts, articles, messages, inspirational quotes, exercise books, activity books and blogs; downloadable podcasts in the field of meditation, wellbeing and mindfulness; downloadable videos in the field of meditation, wellbeing and mindfulness; electronic publications.*

Class 41: *Online education services; education services relating to meditation, mindfulness and wellbeing; meditation training and teaching of meditation practices; development of educational course materials in the field of meditation, mindfulness and wellbeing; conducting of educational courses, conferences and events in the field of meditation, mindfulness and wellbeing; providing non-downloadable electronic publications; providing non-downloadable publications of educational texts in the field of meditation, mindfulness and wellbeing including books, newsletters, magazines, posters, texts, articles, messages, inspirational quotes, exercise books, activity books and blogs; providing non-downloadable videos in the field of meditation, mindfulness and wellbeing; providing non-downloadable audio content including sound recordings, music and podcasts in the field of meditation, mindfulness and wellbeing; creation of podcasts in the field of meditation, mindfulness and wellbeing.*

2. On 8 April 2020, the Intellectual Property Office ('IPO') issued an examination report in response to the application. The examination report contained objections under sections 3(1)(b) and (c) of the Trade Marks Act 1994 ('the Act').
3. The section 3(1)(c) objection was raised on the basis that the mark consists exclusively of signs which may serve in trade to designate the subject matter or intended purpose of the goods and services, i.e. goods and services relating to micro meditation. The examination report defined micro-meditations as "small bursts of meditation that can be used to tackle negative, difficult, or unpleasant situations". In order to support the finding, the examination report included internet extracts which had been found

following a search on 8 April 2020, and attached them to the report as Annex A (see attached Annex).

4. Annex A contained: a report entitled *An Intimacy Micro-Meditation For Your New Year*, from psychologytoday.com; a report entitled *How to relax. Common myths, busted*, from eonenergy.com; a report entitled *The Light of Awareness*, from yoganaturesheffield.org.uk; and reference to a book on sale at amazon.co.uk, entitled *Micro Meditation – 10 Seconds Will Change Your Life*.
5. The Section 3(1)(b) objection was not independent of the objection under section 3(1)(c), and the finding of non-distinctiveness was the automatic consequence of the sign being considered to be descriptive.
6. On 3 August 2020, the applicant filed a Form TM5 'Request for a statement of reasons for registrar's decision'. I am now asked under section 76 of the Act, and Rule 69 of the Trade Mark Rules 2008, to state the grounds of my decision and the material used in arriving at it.

Decision

7. The relevant parts of section 3 of the Act read as follows:

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

(a) ...

(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) ...

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.”

The relevant legal principles - Section 3(1)(c)

8. There are a number of judgments from the CJEU which deal with the scope of Article 3(1)(c) of First Council Directive 89/104 (recoded and replaced by Directive 2008/95/EC on 22 October 2008) and Article 7(1)(c) of the Community Trade Mark Regulation (the 'CTMR'), whose provisions correspond to section 3(1)(c) of the UK Act.
9. The main guiding principles which are relevant to this case are noted below:
 - The words 'may serve in trade' include within their scope the possibility of future use even if, at the material date of application, the words or terms intended for protection are not in descriptive use in trade (see, to that effect, CJEU Cases C-

108/97 and C109/97 *Windsurfing Chiemsee Produktions und Vertriebs GmbH v Boots and Segelzubehor Walter Huber and others*;

- As well as the possibility of future use, the fact there is little or no current use of the sign at the date of application is also not determinative in the assessment. The words 'may serve in trade' are to be interpreted as meaning, 'could' the sign in question serve in trade to designate characteristics of the goods/services, see e.g. BL O/096/11 'Putter Scope', a decision of the Appointed Person at para 11;
- Article 7(1)(c) (section 3(1)(c)) pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the categories of goods or services in respect of which registration is applied for may be freely used by all. The provision therefore prevents such signs or indications from being reserved to one undertaking alone because they have been registered as trade marks (see judgment of 4 May 1999 in Joined cases C-108/97 and C-109/97 *Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots-und Segelzubehör Walter Huber and Franz Attenberger (Chiemsee)* [1999] ECR I-2779, at paragraph 25).
- It is also a well-established principle that the Registrar's role is to engage in a full and stringent examination of the facts, underlying the Registrar's frontline role in preventing the granting of undue monopolies, see to that effect CJEU Case C-51/10 P, *Agencja Wydawnicza Technopol sp. z.o.o. v OHIM* [2011] ECR I-1541 (*Technopol*).
- There must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics - see CJEU Judgment C-468/01 P to C472/01 P *Procter & Gamble Company v OHIM* (Three-dimensional tablets for washing machines or dishwashers) at paragraph 39, and General Court Judgment T-222/02 *Robotunits* at paragraph 34.
- In light of all the foregoing, a sign's descriptiveness cannot be assessed other than by reference to the goods or services concerned, on the one hand, and by reference to the understanding which the relevant persons have of it, on the other (see judgment of 15 October 2003 in Case T-295/01 *Nordmilch eG v OHIM ('Oldenburger')* [2003] ECR - 4365, at paragraphs 27 to 34).

Application of legal principles – Section 3(1)(c)

The mark in the prima facie

10. The sign applied for consists of the words 'Micro' and 'Meditation'. The term Micro is a well-known dictionary word, which is defined as meaning small or reduced in size. The term Meditation is also a well-known dictionary word, which is defined as meaning the act of remaining in a silent and calm state for a period of time (see attached Annex B). When these two readily recognisable terms are combined into the phrase Micro Meditation, which is constructed in accordance with the rules of English grammar and syntax in so far as the adjective Micro describes the noun Meditation, the combination

creates a purely descriptive whole. The combination Micro Meditation possesses the concept of a period of meditation which is smaller or shorter in period of time than the standard practices. As a whole, the concept of the sign does not create an impression far removed from the simple combination of the descriptive parts. Rather, the concept of the sign Micro Meditation describes directly a short version of meditation.

11. An assessment of the relevant consumer is important in coming to a conclusion as to the likely perception of the mark in the first instance. In *Matratzen Concord AG v Hukla Germany SA*, C-421/04 (*Matrazen*), the CJEU stated that:

“...to assess whether a national trade mark is devoid of distinctive character or is descriptive of the goods or services in respect of which its registration is sought, it is necessary to take into account the perception of the relevant parties, that is to say in trade and or amongst average consumers of the said goods or services, who are reasonably well informed and reasonably observant and circumspect, in the territory in respect of which registration is applied...”.

12. I am also mindful of the decision of the General Court (formerly the Court of First Instance) in *Ford Motor Co v OHIM*, T-67/07 where it was stated that:

“...there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the category of goods and services in question or one of their characteristics”.

13. It is clear from the aforementioned case law that I must determine whether or not the mark applied for will be perceived by the relevant consumer as a means of directly designating a characteristic of the goods and services being provided. In order to do this, I will first assess who I consider the relevant consumer of the goods to be.

14. The specification applied for in Class 9 covers a broad range of goods. It includes the type of goods purchased by the general public, such as *mobile application software; electronic publications*; and to a degree *computer software*. The specification in Class 9 also includes goods which are purchased by a more specialist consumer, i.e. someone with a specific interest in meditation. These goods include *downloadable mobile applications in the field of meditation, wellbeing and mindfulness; downloadable electronic publications in the field of meditation, wellbeing and mindfulness including books, newsletters, magazine, posters, texts, articles, messages, inspirational quotes, exercise books, activity books and blogs; downloadable podcasts in the field of meditation, wellbeing and mindfulness; and downloadable videos in the field of meditation, wellbeing and mindfulness*. With this in mind, and because the relevant consumer will consist of both the specialist consumer and the average consumer in general, I consider it likely that the purchaser of the goods applied for in Class 9 will be someone who is at least reasonably well-informed and circumspect.

15. Turning to services applied for in Class 41, the specification again covers a broad range. It includes the type of services purchased by the general public at large, such as *online educational services*; and *providing non-downloadable electronic publications*. The specification in Class 41 also includes services which may be purchased by a more specialist consumer, i.e. someone with a specific interest in meditation. These services include *education services relating to meditation, mindfulness and wellbeing; meditation training and teaching of meditation practices; development of educational course materials in the field of meditation, mindfulness and wellbeing; conducting of educational courses, conferences and events in the field*

of meditation, mindfulness and wellbeing; providing non-downloadable publications of educational texts in the field of meditation, mindfulness and wellbeing including books, newsletters, magazines, posters, texts, articles, messages, inspirational quotes, exercise books, activity books and blogs; providing non-downloadable videos in the field of meditation, mindfulness and wellbeing; providing non-downloadable audio content including sound recordings, music and podcasts in the field of meditation, mindfulness and wellbeing; and creation of podcasts in the field of meditation, mindfulness and wellbeing. As was found to be the case in relation to Class 9, because the relevant consumer of the Class 41 services will consist of both the specialist consumer and the average consumer in general, I consider it likely that the purchaser of the services applied for in Class 41 will be someone who is at least reasonably well-informed and circumspect.

16. Considering the nature of the goods and services applied for, it is clear that they are largely focused on meditation. It is my opinion that, even in relation to those goods and services which could be purchased by the average consumer in general, the reality is that they are nevertheless likely to be targeted at the specialist consumer, by which I mean someone with an active interest in meditation, whether that be regular or sporadic practice. This is because although the scope of *computer software* and *providing non-downloadable electronic publications etc.*, is relatively broad, and could include all manner of software and publications, I consider it more than likely that the content/subject matter will be that of a shortened form of meditation, especially when sold under the trade mark Micro Meditation. Therefore, I believe it is possible to argue that the relevant consumer will be in the vast majority of instances the specialist consumer. It cannot be excluded, however, that the relevant consumer will also contain people who are new to meditation, and are looking for a shorter version.
17. Because a specialist consumer tends to have specific needs, it is a reality that such a consumer will have conducted research and will display due diligence when purchasing products and services intended to give information in relation to meditation. This applies not only to those who currently practice meditation, but also those consumers interested in beginning the practice. Such a consumer is sure to be aware that meditation can be practiced over differing periods of time, from longer and deeper meditation to quicker and shorter meditation. Therefore, when searching for goods and services which specialise in giving information in relation to meditation, the specialist consumer will understand the term Micro Meditation to describe the length of time the meditation can be performed over. In the alternative, it is certainly possible that the specialist consumer will understand the term as describing the fact that the version of meditation is a lesser form, i.e. smaller/micro version of meditation. Either of these likely perceptions would give a purely descriptive meaning in relation to the goods and services applied for, and are equally objectionable. As mentioned above, even in relation to those goods which can ordinarily fulfil a variety of purposes, the specialist consumer will nevertheless assume that in instances where they are sold under the term Micro Meditation, it is because they are referring to this subject.
18. In relation to the average consumer of general consumer goods and services, such as *computer software* and *non-downloadable electronic publications etc.*, who does not necessarily have a pre-existing or pre-determined specific interest in meditation, they will nevertheless assume that the goods and services will contain information about a micro form of meditation. Such a consumer does not need to know what micro meditation is in order to understand that the term describes the content. For example, an average consumer would not have to have practiced prenatal yoga in order to understand that *computer software* sold under the term Prenatal Yoga is going to contain information in relation to this subject. As I have previously established, the

average consumer is considered to be reasonably well-informed and circumspect. Such a consumer would be given a directly descriptive message about the subject matter of the goods and services applied for if sold under the sign Micro Meditation.

19. It is settled law that the registrability of a sign must be assessed in context first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the relevant public's perception of the mark (see Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 29; Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 77; and Case C-218/01 *Henkel* [2004] ECR I-1725, paragraph 50). That having been said, it is accepted in case-law that where the same ground of refusal is given for a category or group of goods or services, the competent authority may use only general reasoning for all of the goods and services concerned (see judgment C-239/05, *BVBA*, paragraph 34). The goods and services applied for are homogeneous in nature, and can be categorised as being the type which educate and provide information. In relation to such a category of goods and services, the specialist consumer will expect the term Micro Meditation to refer to the subject matter contained within the information or being taught. As such, I find the mark to directly describe the subject matter characteristic of the goods and services.
20. Based on the above, I find the mark applied for will be viewed as a term which directly designates characteristics (in this case subject matter) of the goods and services applied for. In the prima facie, I find the mark to be excluded from registration for the goods and services applied for under section 3(1)(c) and (b) as a consequence of the finding under (c).

Conclusion

21. In this decision, I have considered the objection issued by the examiner. Ordinarily, I would have also considered any and/or all submissions filed by the applicant and their arguments submitted therein. However, an alternative argument endorsing the acceptability of the mark was not provided by the applicant. It has therefore been found that the objection was correctly raised, and the application is hereby refused under Section 3(1)(c) and (b) for all of the goods and services in Classes 9 and Class 41 respectively.

Dated this 8th day of October 2020

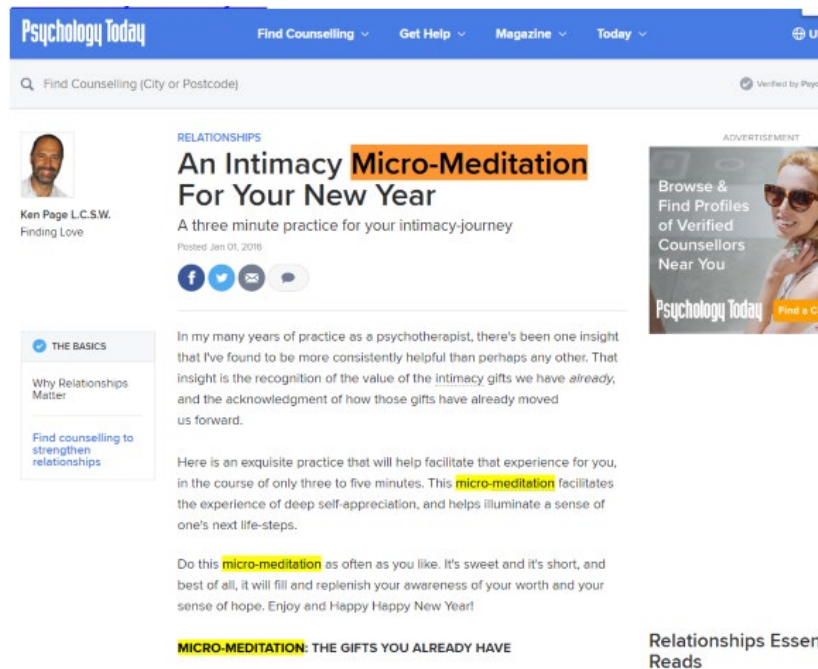
Dafydd Collins

For the registrar
The Comptroller General

Annex A

Evidence from original examination report

<https://www.psychologytoday.com/gb/blog/finding-love/201601/intimacy-micro-meditation-your-new-year>



The screenshot shows a webpage from Psychology Today. At the top, there is a blue navigation bar with the site name and menu items: 'Find Counselling', 'Get Help', 'Magazine', and 'Today'. Below the navigation bar is a search bar with the text 'Find Counselling (City or Postcode)'. The main content area features a profile picture of Ken Page L.C.S.W. and his name. The article title is 'An Intimacy Micro-Meditation For Your New Year' with 'Micro-Meditation' highlighted in orange. Below the title is a subtitle 'A three minute practice for your intimacy-journey' and the date 'Posted Jan 01, 2016'. There are social media sharing icons for Facebook, Twitter, Email, and Print. The article text begins with 'In my many years of practice as a psychotherapist, there's been one insight that I've found to be more consistently helpful than perhaps any other. That insight is the recognition of the value of the intimacy gifts we have already, and the acknowledgment of how those gifts have already moved us forward.' It then describes a 'micro-meditation' practice that takes three to five minutes and helps with self-appreciation and future steps. The article concludes with 'Do this micro-meditation as often as you like. It's sweet and it's short, and best of all, it will fill and replenish your awareness of your worth and your sense of hope. Enjoy and Happy Happy New Year!'. At the bottom of the article, there is a highlighted section 'MICRO-MEDITATION: THE GIFTS YOU ALREADY HAVE'. To the right of the article is an advertisement for Psychology Today, featuring a woman's face and the text 'Browse & Find Profiles of Verified Counsellors Near You'. Below the advertisement, the text 'Relationships Essen Reads' is visible.

<https://www.eonenergy.com/blog/2018/August/how-to-relax>

How to relax. Common myths, busted



Posted 29/08/2018 by E.ON

Already enjoyed a [relaxing holiday](#) this summer? There's no need to leave that stress-free feeling behind. Whether you're looking for the best ways to unwind or want to find out more about [micro-meditation](#), you're in the right place. We've been researching some common relaxation myths to bring you the truth about the art of switching off.



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<https://www.yoganaturesheffield.org.uk/the-light-of-awareness>

The Light of Awareness: A morning exploring the Vijnāna Bhairava Tantra, followed by a vegan lunch

Sunday 21 October 2018, 9:30am to 1:00pm, followed by vegan lunch

The Aum Room, 38 Machon Bank Road, Sheffield, S7 1PG

The Vijnāna Bhairava Tantra is a unique and beautiful text from the Trika lineage of Shaiva Tantra which can be dated to around 850CE. The beauty of this text lies in the simplicity and accessibility of its practices, that aim to cultivate awareness.

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"The Supreme Goddess constantly articulates herself as the life-giving flow of the breath. Exhale, releasing up, and on inhaled, the movement into embodiment, descending. By pausing at the two places where they arise, and filling those points with silent awareness, one abides in the state of inner fullness." Verse 24 as translated by scholar Christopher Hareesh Wallis

Cost

£35, including lunch

[Contact Us](#) for further details and to book your place.



<https://www.amazon.co.uk/Micro-Meditation-F-J-Jeske/dp/1726644480>

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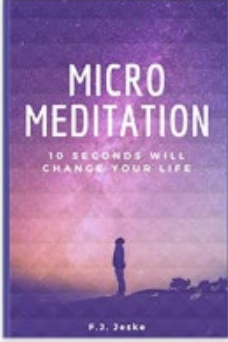
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Micro Meditation is a new and revolutionary idea. **Micro Meditation** can be practiced anytime, anywhere. Charge your battery with Micro-Meditation! **Micro Meditation** contains many individual and absolutely authentic descriptions and first-hand instructions. Meditation for beginners is easy with this revolutionary concept! Read the table of contents. It's a very special book. Meditate NOW for more success, better health & peace of mind and just become happier. Even experienced practitioners can certainly find some new and interesting information about this infinite topic here.

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Annex B

Dictionary definitions

<https://www.oed.com/view/Entry/117905?rskey=1mQjrQ&result=7#eid>

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