

O/410/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003475554
BY GLOBAL EVENTS AND ATTRACTIONS LIMITED**

**TO REGISTER THE FOLLOWING TRADE MARK
IN CLASSES 28, 35, 37 & 41:**



**AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 420627 BY GEA GROUP AKTIENGESELLSCHAFT**

BACKGROUND AND PLEADINGS

1. On 17 March 2020, Global Events and Attractions Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom for the following services:

Class 28: Fairground apparatus; fairground ride apparatus; fairground attractions; rollercoasters; amusement park apparatus; amusement park attractions; theme park apparatus; theme park attractions; playground apparatus; games, toys and playthings; video game apparatus; decorations for Christmas trees; parts and fittings for all of the aforementioned goods.

Class 35: Business management of visitor attractions; business management of fairgrounds, amusement parks, theme parks, and playgrounds; information, advisory and consultancy services relating to all of the aforementioned services.

Class 37: Construction, installation, maintenance, refurbishment and repair of fairground apparatus; construction, installation, maintenance, refurbishment and repair of fairground machinery; construction, installation, maintenance, refurbishment and repair of fairground ride apparatus; construction, installation, maintenance, refurbishment and repair of rollercoasters; construction, installation, maintenance, refurbishment and repair of fairgrounds, theme parks, amusement parks and playgrounds; building of fairs, fair stalls and fair shops; information, advisory and consultancy services relating to all of the aforementioned services.

Class 41: Entertainment; recreational facilities; fairground rides; provision, operation and rental of fairground rides; rollercoasters; provision, operation and rental of rollercoasters; fairground services; amusement park services; theme park services; amusements; amusement arcades; provision, operation and rental of amusement machines; hosting leisure events; provision of visitor attractions for entertainment purposes; sporting and cultural activities; information, advisory and consultancy services relating to all of the aforementioned services.

The application was published for opposition purposes on 27 March 2020.

2. On 29 June 2020, GEA Group Aktiengesellschaft (“the opponent”) opposed the application based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), in respect of classes 35 and 37 only. For the purpose of the opposition, the opponent relies upon the following trade marks and some of the services for which they are registered. Those services are laid out below:

United Kingdom Trade Mark (“UKTM”) 3125919:

GEA

Filing date: 7 September 2015; Registration date: 5 February 2016

Class 37: Building construction; Installation, repair and maintenance of machines, mechanical apparatus, implements, motors and engines for the industrial manufacturing and process technology, for the chemical, pharmaceutical, cosmetic, food and beverage industry, for agricultural and dairy purposes, for oil extracting and oil processing, for energy producing, waste water processing and for metal processing industries, for shipping, for drilling platforms and for use in cellars; installation, repair and maintenance of regulating, checking (supervision), control, measuring and switching installations, apparatus and instruments, detecting and monitoring instruments, data processing installations and equipment, data collection installations and equipment, data output installations and equipment and data transmission installations and equipment; installation, repair and maintenance of lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply as well as sanitary installations; steel structure construction works; building construction, including structural and civil engineering and including for the building of industrial and mechanical installations and of buildings; building construction supervision; installation of industrial and mechanical installations; construction information; cleaning services; installation of temporary structures for trade fairs; interference suppression in electrical apparatus; retrofitting and modification of machines; repair or maintenance of machines, installations (facilities) and apparatuses; installation, maintenance and repair of machines, installations (facilities) and apparatuses; installation, maintenance and repair of plants on farms; advisory relating to installation, maintenance and repair services; providing information relating to installation, maintenance and repair services.

European Union Trade Mark (“EUTM”) 13911433¹

¹ Although the UK has left the EU and the EUTM relied upon by the opponent now enjoys protection in the UK as a comparable trade mark, the EUTM remains the relevant rights in these proceedings

GEA

Filing date: 31 March 2015; Registration date: 7 February 2018

Class 35: Advertising; marketing; promotional services; publication of publicity texts; public relations; market studies; market analysis; providing of specialist business knowledge; computerized business information services; computerized inventory control; administration of third party business interests (control, management, supervision); business appraisals; business assistance, management and administrative services; business consulting; accountancy, book keeping and auditing; consultation on data processing; business planning; business advisory services for traders and the branch office staff in the milk-producing industry in the field of branch route management, namely planning of the sales area development, sales planning and marketing planning, distribution techniques, distribution route management planning, personnel management and operational management; updating and maintenance of data in computer databases; business project management services for construction projects; business strategy development services; data processing; business analysis, research and information services; commercial information agency; collection and systematization of information into computer databases; drawing up of business statistical information; business feasibility studies; commercial trading and consumer information services; import and export services; retail and wholesale trade in the fields of pharmaceutical, veterinary and sanitary preparations.

Class 37: Building construction; installation, repair and maintenance of machines, mechanical apparatus, implements, motors and engines for the industrial manufacturing and process technology, for the chemical, pharmaceutical, cosmetic, food and beverage industry, for agricultural and dairy purposes, for oil extracting and oil processing, for energy producing, waste water processing and for metal processing industries, for shipping, for drilling platforms and for use in cellars; installation, repair and maintenance of regulating, checking (supervision), control, measuring and switching installations, apparatus and instruments, detecting and monitoring instruments, data processing installations and equipment, data collection installations and equipment, data output installations and equipment and data transmission installations and equipment; installation, repair and maintenance of lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply as well as sanitary installations; steel structure construction works; building construction, including

because the application was filed before the end of the Implementation Period and, under the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019, I am obliged to decide the opposition on the basis of the law as it stood at the date of application.

structural and civil engineering and including for the building of industrial and mechanical installations and of buildings; building construction supervision; installation of industrial and mechanical installations; construction information; cleaning services; maintenance services; installation of temporary structures for trade fairs; interference suppression in electrical apparatus; retrofitting and modification of machines; repair or maintenance of machines, installations (facilities) and apparatuses; installation, maintenance and repair of machines, installations (facilities) and apparatuses; installation, maintenance and repair of plants on farms; advisory relating to installation, maintenance and repair services; providing information relating to installation, maintenance and repair services; rental of machines, mechanical apparatus, implements and motors for oil extracting, for drilling platforms and for underground mining; rental of apparatus for steam generating and drying; extermination, disinfection and pest control; maintenance consultancy.

3. In its statement of grounds, the opponent submits that, as a result of the similarity between the respective marks and the identity or similarity between the respective specifications, there exists a likelihood of confusion on the part of the relevant public, which includes a likelihood of association.

4. In its counterstatement, the applicant does not admit that, as a result of any similarity between the marks, there exists a likelihood of confusion. With regards to the services at issue, it denies that they are similar.

5. The applicant is represented by Murgitroyd & Company and the opponent by Forresters IP LLP. Neither party filed evidence, though I note the applicant applied for an extension of time in which to do so, which was refused. Neither party requested a hearing, though both elected to file written submissions in lieu. This decision is taken following a careful reading of all the papers which I will refer to, as necessary.

DECISION

6. Section 5(2)(b) of the Act reads as follows:

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

(a) [...]

(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.”

7. The trade marks relied upon by the opponent qualify as earlier trade marks because they were applied for at an earlier date than the application, pursuant to section 6 of the Act. As neither had completed its registration procedure more than 5 years before the application date of the mark at issue, neither is subject to the proof of use provisions set out in section 6A of the Act². The opponent can, therefore, rely upon both marks and all services it has identified without providing evidence of use.

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

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

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

² See section 6A(3)(a) of the Act (added by virtue of the Trade Marks Regulations 2018: SI 2018/825)

(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.

9. Although, at the time of issue, the UK has left the EU, section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Comparison of services

10. The services relied upon by the opponent are laid out at paragraph 2 of this decision and those which it opposes are listed below:

Class 35: Business management of visitor attractions; business management of fairgrounds, amusement parks, theme parks, and playgrounds; information, advisory and consultancy services relating to all of the aforementioned services.

Class 37: Construction, installation, maintenance, refurbishment and repair of fairground apparatus; construction, installation, maintenance, refurbishment and repair of fairground machinery; construction, installation, maintenance, refurbishment and repair of fairground ride apparatus; construction, installation, maintenance, refurbishment and repair of rollercoasters; construction, installation, maintenance, refurbishment and repair of fairgrounds, theme parks, amusement parks and playgrounds; building of fairs, fair stalls and fair shops; information, advisory and consultancy services relating to all of the aforementioned services.

11. Where goods or services are not literally identical, a further provision for identity was set out in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05. The General Court (“GC”) stated:

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

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

12. When assessing the services’ similarity, I am guided by the relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, which were as follows:

(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.

13. I am also guided by the judgment of the CJEU in *Canon*, Case C-39/97, in which the Court stated at paragraph 23:

“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. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"12. ...Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

15. I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning³. However, I must also be conscious not to give a listed service too *broad* an interpretation. In *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16 (“*Avnet*”), Jacob J stated:

“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.”

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

16. For the purposes of a comparison, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons⁴.

Business management of visitor attractions; business management of fairgrounds, amusement parks, theme parks, and playgrounds; information, advisory and consultancy services relating to all of the aforementioned services

17. In my view, the aforementioned *business management* services, for which the applicant seeks registration, are encompassed by the opponent's *business management services* (which its EUTM is registered for). The applicant's related *consultancy* services are encompassed by the opponent's *business consulting* and its information services are encompassed by the opponent's *business information services*. These services are identical according to *Meric*.

18. That leaves *advisory services* (relating to the aforementioned *business management services*). In my opinion, these are similar to the opponent's *business assistance and administrative services* and *providing of specialist business knowledge*. The respective uses are highly similar and there could be a correlation in users, particularly where the fields of interest are the same or similar. There is further opportunity for similarity in nature and channels of trade as both offer guidance, of sorts, to consumers in a business context, albeit within a narrow field in the applicant's specification and a broader remit for the opponent. The services could be competitive and are not necessarily complementary. That said, it would not seem unreasonable for consumers to expect the same entity to offer both, particularly where the fields are related. Weighing all factors, I find at least a medium degree of similarity.

Installation of fairground apparatus; installation of fairground machinery; installation of fairground ride apparatus; installation of rollercoasters

⁴ *Separode Trade Mark BL O/399/10 and BVBA Management, Training en Consultancy v. Benelux-Merkenbureau [2007] ETMR 35* at paragraphs [30] to [38]

19. In my view, these terms are captured within the opponent's *installation of mechanical installations and/or installation... of machines and apparatuses*. The services are identical under *Meric*.

Maintenance and repair of fairground apparatus; maintenance and repair of fairground machinery; maintenance and repair of fairground ride apparatus; maintenance and repair of rollercoasters

20. The above services, in my opinion, fall within the remit of the opponent's *maintenance and repair of machines and apparatuses*. The respective services are, consequently, to be deemed identical in accordance with the *Meric* principle.

Construction of fairground apparatus; construction of fairground machinery; construction of fairground ride apparatus; construction of rollercoasters

21. To my mind, these terms are encompassed by the opponent's *building construction... including for the building of mechanical installations*. If that is incorrect, I find them highly similar to (at least) the opponent's *installation of mechanical installations and/or installation... of machines and apparatuses*. The uses are similar though, in my experience, construction often precedes installation. There is likely to be some coincidence in users and, though representative of distinct stages, there will be some degree of overlap in the services' nature. Furthermore, the services are likely to reach the market through the same channels of distribution. In my view, there is an element of complementarity to the services' relationship but they are not competitive. Weighing all considerations, I find the services similar to a high degree.

Refurbishment of fairground apparatus; refurbishment of fairground machinery; refurbishment of fairground ride apparatus; refurbishment of rollercoasters

22. The refurbishment of such items is likely to coincide, to an extent, with the opponent's *maintenance and repair (of machines and apparatuses)*. Refurbishment, to my knowledge, refers primarily to enhancement, often of a cosmetic nature. The uses of the respective services are tied closely together, not to mention that the act of refurbishment could incorporate an element of maintenance and repair. There is likely

to be a correlation in users, nature and channels of trade. The services are not necessarily competitive though, whilst not explicitly complementary, could be employed alongside one another and be offered by the same, or at least similar, entities. On balance, I consider the similarity to be of a high degree.

Construction, installation, maintenance, refurbishment and repair of fairgrounds, theme parks, amusement parks and playgrounds; building of fairs

23. In my experience, *fairgrounds, theme parks, amusement parks, playgrounds and fairs* are often a combination of attractions (mechanical or otherwise), eateries and general facilities. I have already explored the relationship between the opponent's services and the apparatuses and machinery likely to be found at said locations (rollercoasters, for example) but the above terms incorporate a wider remit. Still, the opponent's marks are registered for *building construction* at large and the *installation, maintenance and repair of machines, installations (facilities) and apparatuses*. There is a possibility of correlation in use and users. Whilst the opponent's terms are broader, the nature of the services is likely to be similar to some degree, though admittedly not exclusively. Nevertheless, it seems reasonable to assume that there will be some overlap in the respective trade channels. Where the fields are similar, the services could be competitive. The services are not strictly complementary, though consumers are likely to expect the same undertaking to be responsible for both. On balance, I find the services similar to at least a medium degree.

Building of... fair stalls and fair shops

24. If the aforementioned services are not encompassed by the opponent's *building construction*, I will consider the similarity in respect of the opponent's *installation of temporary structures for trade fairs*. To my mind, there is clearly a coincidence in the services' use and they are likely to be selected by the same consumers. The nature of the respective services is highly similar and they are likely to reach the market via the same distribution channels. Given their similarity, the services could certainly be competitive though I note that the opponent's structure are temporary only, whereas those in the application may be erected on a more permanent basis. The services are not strictly complementary but, in my view, it would not be unusual for consumers to

expect the same entity to offer both. I find the services similar to (at least) a high degree.

...information, advisory and consultancy services relating to all of the aforementioned services.

25. The opponent has *advisory (services) relating to installation, maintenance and repair services*. Given the relationship I have found between the applicant's class 37 services and broader *installation, maintenance and repair services*, I consider there to be a similarity in the services' uses and the respective users. The nature of the services is likely to be highly similar and the services are likely to share the same channels of trade. The average consumer is likely to expect the same entity to provide both services and they could prove to be competitive. All things considered, I consider the services highly similar.

Average consumer and the nature of the purchasing act

26. It is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the goods are likely to be selected. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

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

27. Whilst all of the services at issue are accessible to the general public, in my view they are more likely to be commissioned by professional entities or contractors looking

to employ the services for the purpose of creating a development of some nature. The selection will not necessarily be made with any degree of frequency, though some consumers would engage in such selection more frequently where a number of developments are in play. The costs are likely to be significant and factors including reputation and the quality or sourcing of materials are likely to be amongst those considered. To my knowledge, the services are advertised predominantly by visual means such as websites or trade catalogues. That said, I do not discount the opportunity for word of mouth recommendations or advice sought from a technical source. The marks' visual impact is likely to carry the greatest weight, though the aural element is also relevant. Weighing all factors, I find it likely that the attention of the average consumer during the purchasing process will be of a fairly high degree. The consumer will be eager to ensure that a reputable provider is selected to ensure whatever is being constructed or installed, for example, is fit for purpose and safe for onward users.

Comparison of trade marks


28. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“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.”

29. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

30. The parties' trade marks appear as follows:

Opponent's mark(s)	Applicant's mark
<p>GEA</p>	

31. The opponent's mark comprises one word of three letters (G,E,A). In the absence of any stylistic details or figurative elements, the mark's overall impression lies solely in the word itself.

32. The applicant's mark comprises both word and figurative elements, all appearing in black and white. The word GEA is the mark's largest element, presented in a bold, black and standard typeface. Underneath the word GEA, separated by a fine, horizontal line, are the words GLOBAL EVENTS & ATTRACTIONS, in the same or at least a similar typeface, but in a much smaller font. The additional words extend to the same length as the largest word, GEA. To the right of the mark's word elements is a figurative element spanning the height of the mark. The figurative element depicts a globe encased by what appears to be a Ferris wheel, with carriages populating the perimeter. Given the different sizes and positioning of the various elements, it seems likely that GEA will be seen as the mark's most dominant element, though the figurative depiction also plays an important role. The words beneath play a lesser role in the overall impression, not simply because of their size but their descriptive nature. The line above is almost negligible.

33. Visually, the marks clearly coincide in the word GEA. However, there are additional elements in the application with no counterpart in the opponent's marks, namely a

figurative depiction of a Ferris wheel and additional word elements positioned beneath a narrow line. Still, keeping in mind where the marks' overall impressions lie, I find the visual similarity to be of a medium degree.

34. Though not, to my knowledge, a dictionary word with which the average consumer will be familiar, in my view the opponent's mark will be articulated in two syllables, 'GEE-UH'. I note the applicant's submission regarding how its mark will be articulated. Specifically, it claims that, as consumers will readily identify that the letters G, E and A represent an acronym for the words which sit underneath (Global, Events, Attractions), the mark will be articulated in initial format, i.e. 'JEE', 'EE', 'AY'. Whilst I understand the applicant's perspective, in my opinion, this will not be the position of the average consumer. Of course, if the applicant is correct in its approach and the marks will be articulated respectively as 'GEE-UH' and 'JEE-EE-AY', I find there to be no aural similarity. However, given the elements' respective sizing, and that there is no punctuation separating the letters G, E and A in the applicant's mark, I find it likely that consumers will view it as a word, rather than three individual letters, and articulate it as such. In that event, I find it will be articulated identically to the opponent's mark; 'GEE-UH'.

35. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

36. To my knowledge, GEA does not have a meaning which will be grasped by the average consumer. I have considered whether consumers will believe it to be a foreign word but it seems more likely, in my opinion, that it will instead be viewed as an invented word absent of any concept. In the application, the mark's figurative element presents the concept of a fairground ride which offers consumers something tangible to grasp. However, this is more likely to be seen as an insight into the nature of the services provided. Similarly, the words beneath GEA offer little in terms of conceptual clarity but rather a nod to the services' nature. With neither mark evoking a clear concept, other than the suggestion of the nature of the services offered under the applicant's mark, the marks are conceptually neutral.

Distinctive character of the earlier marks

37. 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-2779, 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).”

38. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which can have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

39. In the absence of evidence of use, and indeed a claim of enhanced distinctiveness, in respect of the earlier marks, I have only their inherent distinctiveness to consider.

As I have already submitted, it seems likely that GEA will be viewed as an invented word. It is, consequently, absent of any descriptive or allusive qualities. For that reason, I consider the mark's inherent distinctiveness to be of a reasonably high degree.

Likelihood of confusion

40. To make the assessment as to a likelihood of confusion, I must adopt the global approach advocated by the case law and take account of my earlier conclusions. I keep in mind the average consumer of the services at issue, the nature of the purchasing process and the fact that the average consumer rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them retained in their mind. It is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as, generally, the more distinctive the mark, the greater the likelihood of confusion.

41. In *Kurt Geiger v A-List Corporate Limited*⁵, Mr Purvis, as the Appointed Person, pointed out that the level of distinctive character is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

⁵ BL O-075-13

42. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises that the trade marks are not the same but puts the similarity that exists between the marks, and the goods or services, down to the respective undertakings being the same or related.

43. I take note of the comments made by Mr Iain Purvis Q.C., as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*⁶, where he 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 recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.””

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

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

⁶ BL O/375/10

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

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

44. However, in *Duebros Limited v Heirler Cenovis GmbH*⁷, Mr James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association, not indirect confusion.

45. The marks share a common element in the word GEA. I have found the respective services are identical or similar to varying degrees and concluded that consumers are likely to apply a fairly high degree of attention during a predominantly visual selection process. Beginning with a likelihood of direct confusion, I find it unlikely, given the degree of attention in play, that the average consumer will fail to notice the differences between the marks. There is a figurative element in the application, which plays an important role in its overall impression, which consumers familiar with the earlier word-only mark are unlikely to overlook. This combination of factors leads me to conclude that direct confusion will not arise.

46. I move now to consider indirect confusion. As made clear in *L.A. Sugar*, indirect confusion requires a mental process on the part of the average consumer; a series of thoughts whereby it acknowledges the marks’ differences yet attributes their commonalities to a shared or the same undertaking. The commonality in the marks is the word GEA, albeit presented in a bold typeface in the application. The differences are the application’s figurative element and words presented beneath the word GEA; GLOBAL EVENTS & ATTRACTIONS. The additional words are descriptive and, consequently, consumers will not look to those for an indication of trade origin which,

⁷ BL O/547/17

instead, will lie predominantly in the word GEA. The figurative element could be consistent with an evolution in branding, for example, or a reiteration of the services' nature. The average consumer is likely, particularly given the degree of attention it is applying, to identify the shared presence of GEA in the respective marks. Given that this is likely to be viewed as an invented word, which has no allusive or descriptive properties, the average consumer is likely to dismiss a likelihood of a coincidental selection made by more than one party and will, instead, erroneously attribute the commonality of the marks originating from a shared, or at least a related, undertaking. I find this likely to be the outcome where there is any degree of similarity to be found in the competing specifications. In other words, indirect confusion will occur.

Conclusion

47. The opposition has succeeded. The application will be refused in respect of all opposed services, specifically:

Class 35: Business management of visitor attractions; business management of fairgrounds, amusement parks, theme parks, and playgrounds; information, advisory and consultancy services relating to all of the aforementioned services.

Class 37: Construction, installation, maintenance, refurbishment and repair of fairground apparatus; construction, installation, maintenance, refurbishment and repair of fairground machinery; construction, installation, maintenance, refurbishment and repair of fairground ride apparatus; construction, installation, maintenance, refurbishment and repair of rollercoasters; construction, installation, maintenance, refurbishment and repair of fairgrounds, theme parks, amusement parks and playgrounds; building of fairs, fair stalls and fair shops; information, advisory and consultancy services relating to all of the aforementioned services.

48. The application will proceed to registration in respect of:

Class 28: Fairground apparatus; fairground ride apparatus; fairground attractions; rollercoasters; amusement park apparatus; amusement park attractions; theme park apparatus; theme park attractions; playground apparatus; games, toys and playthings;

video game apparatus; decorations for Christmas trees; parts and fittings for all of the aforementioned goods.

Class 41: Entertainment; recreational facilities; fairground rides; provision, operation and rental of fairground rides; rollercoasters; provision, operation and rental of rollercoasters; fairground services; amusement park services; theme park services; amusements; amusement arcades; provision, operation and rental of amusement machines; hosting leisure events; provision of visitor attractions for entertainment purposes; sporting and cultural activities; information, advisory and consultancy services relating to all of the aforementioned services.

49. The opponent has succeeded and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (“TPN”) 2/2016. In accordance with that TPN, I award costs as follows:

Official fee	£100
Preparing a statement and considering the other side’s statement	£200
Preparation of submissions in lieu of a hearing	£200
Total	£500

50. I order Global Events and Attractions Limited to pay GEA Group Aktiengesellschaft the sum of £500. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings (subject to any order of the appellate tribunal).

Dated this 1st day of June 2021

**Laura Stephens
For the Registrar**