

**O-888-22**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION UK00003593593 BY  
WANDERLIST ONLINE DIRECTORY LIMITED TO REGISTER:**

**The Wanderlist**

**AS A TRADE MARK IN CLASS 43**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 426595  
BY VIRTUOSO, LTD.**

## Background & Pleadings

1. On 10 February 2021, Wanderlist Online Directory Limited (“the applicant”) applied to register the above trade mark in the United Kingdom in respect of the following services in class 43:

*Accommodation reservations; Accommodation services; Temporary accommodation; Hotel accommodation services; Accommodation reservations (Temporary -); Rating holiday accommodation; Arranging hotel accommodation; Accommodation bureau services; Accommodation bureaux services; Holiday accommodation services; Temporary accommodation services; Hospitality services [accommodation]; Temporary accommodation reservations; Reservations (Temporary accommodation -); Operating membership accommodation; Providing hotel accommodation; Accommodation reservation services; Arranging holiday accommodation; Providing temporary accommodation; Booking of temporary accommodation; Booking services for accommodation; Appraisal of hotel accommodation; Booking of campground accommodation; Rental of temporary accommodation; Rental of accommodation [temporary]; Booking of hotel accommodation; Hotel accommodation reservation services; Arranging of hotel accommodation; Reservation services for accommodation; Providing accommodation for functions; Providing temporary housing accommodations; Travel agencies for arranging accommodation; Arranging of accommodation for tourists; Provision of hotel accommodation; Accommodation services for meetings; Arranging of temporary accommodation; Reservation of temporary accommodation; Rental of holiday accommodation; Holiday planning services [accommodation]; Accommodation (Rental of temporary -); Accommodation services for functions; Reservation of hotel accommodation; Providing accommodation for meetings; Reservation of tourist accommodation; Tourist camp services [accommodation]; Temporary accommodation reservation services; Provision of holiday accommodation; Arranging of holiday accommodation; Letting of holiday accommodation; Arranging temporary housing accommodations; Provision of temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Services for reserving holiday accommodation; Accommodation exchange services [time share]; Arranging and providing temporary accommodation; Providing information about temporary accommodation services; Booking services for holiday accommodation; Reservation of accommodation in hotels; Accommodation reservation services [time share]; Provision of temporary furnished*

*accommodation; Provision of temporary work accommodation; Booking of accommodation for travellers; Provision of trade show facilities [accommodation]; Booking agency services for hotel accommodation; Booking of temporary accommodation via the Internet; Providing assisted living facilities [temporary accommodation]; Travel agency services for booking accommodation; Tourist agency services for booking accommodation; Accommodation booking agency services [time share]; Charitable services, namely providing temporary accommodation; Providing temporary accommodation in boarding houses; Providing accommodation in hotels and motels; Temporary accommodation provided by dude ranches; Accommodation bureau services [hotels, boarding houses]; Booking agency services for holiday accommodation; Agency services for booking hotel accommodation; Arranging of accommodation for holiday makers; Accommodation letting agency services [time share]; Providing temporary accommodation in holiday flats; Providing temporary accommodation in holiday homes; Reservation services for the booking of accommodation; Rental of rooms as temporary living accommodations; Temporary accommodation services provided by holiday camps; Travel agency services for reserving hotel accommodation; Travel agency services for booking temporary accommodation; Temporary accommodation information, advice and reservation services; Rental of temporary accommodation in holiday homes and flats; Providing temporary accommodation as part of hospitality packages; Agency services for the reservation of temporary accommodation; Providing information about temporary accommodation via the Internet; Provision of information relating to the booking of accommodation; Hotels, hostels and boarding houses, holiday and tourist accommodation; Providing on-line information relating to holiday accommodation reservations; Tour operator services for the booking of temporary accommodation; Reception services for temporary accommodation [management of arrivals and departures]; Reservation of temporary accommodation in the nature of holiday homes; Consultancy provided by telephone call centers and hotlines in the field of temporary accommodation.*

The application was published for opposition purposes on 4 June 2021.

2. On 3 September 2021, Virtuoso, Ltd. (“the opponent”) opposed the application, in full, under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following trade marks and all services for which they are registered, as laid out below:

International registration ("IR") 1488617

## VIRTUOSO WANDERLIST

Date of protection of the international registration in the UK: 12 December 2019

Priority date: 29 January 2019

*Class 43: Travel agency services, namely, making reservations and bookings for temporary lodging, restaurants and meals.*

IR 1490656

## VIRTUOSO WANDERLIST

Date of protection of the international registration in the UK: 19 December 2019

Priority date: 29 January 2019

*Class 39: Travel information services, namely, providing an interactive website for travel information services featuring a series of lifestyle and travel-related questions to help identify travel recommendations tailored to a specific user based on their individual needs and preferences; travel route planning services, namely, designing and managing a travel route plan portfolio tailored to a specific user; travel agency services, namely, arranging of transportation for travel tours designed to expose the traveler to different countries, cultures, histories, societies, languages and experiences; web-based travel information services, namely, travel information services featuring a series of lifestyle and travel-related questions for response from the user that results in a report providing a recommended travel plan portfolio; travel agency services, namely, making reservations and bookings for transportation; arranging of transportation for travel tours; travel guide services; travel information services; providing information in the field of travel by means of a global computer network.*

3. The opponent contends that there exists a likelihood of confusion on the basis that the respective marks are highly similar on account of the dominant and distinctive element “WANDERLIST”, and the identity or high similarity between the respective services.

4. In its counterstatement, the applicant denies that the marks’ dominant element is WANDERLIST, that the marks are similar, and that there exists a likelihood of confusion, including a likelihood of association.

5. The applicant is represented by Murgitroyd & Company and the opponent by Barker Brettell LLP. Only the applicant filed evidence during the evidential rounds and neither party requested a hearing, though the opponent elected instead to file written submissions in lieu. Whilst I do not propose to summarise those submissions here, I will keep them in mind throughout and intend to refer to them only where necessary.

6. Although the UK has left the EU, section 6(3)(a) of the European Union (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 my decision will continue to make reference to the trade mark case law of EU courts.

### **The applicant’s evidence**

7. The applicant’s evidence comprises a witness statement from Ms Christine Lund-Beck of Murgitroyd & Company, dated 13 May 2022, alongside supporting exhibits CLB1 to CLB5.

8. At CLB1 Ms Lund-Beck encloses extracts from online dictionaries Merriam Webster, Dictionary.com and the Cambridge English dictionary providing a definition of the word ‘virtuoso’. I reproduce the Dictionary.com definitions of the word, as a noun and adjective, below, with the additional extracts echoing much of the same.

## virtuoso

noun [C]


UK  /,vɜː.tʃuˈeɪ.səʊ/ US  /,vɜː.tʃuˈoʊ.sou/

plural virtuosos or virtuosos UK /,vɜː.tʃuˈeɪ.si/ US /,vɜː.tʃuˈoʊ.si/

a person who is extremely skilled at something, especially at playing an instrument or performing:

## virtuoso

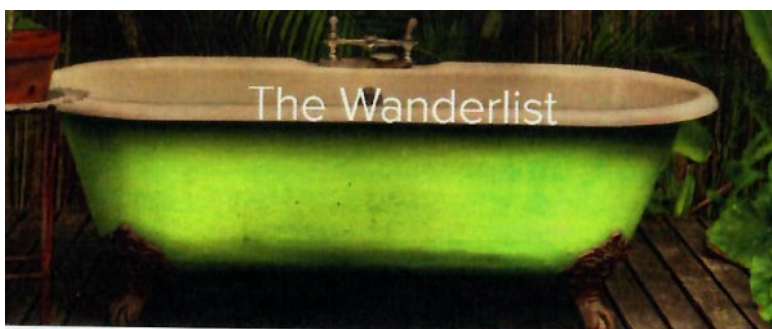
adjective [before noun]

UK  /,vɜː.tʃuˈeɪ.səʊ/ US  /,vɜː.tʃuˈoʊ.sou/

extremely skilled:

9. At Exhibits CLB2 and CLB3 are further dictionary extracts, from the same sources, for “wanderlust” and “bucket list”, going to Ms Lund-Beck’s submission that “wanderlist” would be “readily perceived” as a combination of these terms. Dictionary.com defines ‘wanderlust’ as *a strong, innate desire to rove or travel about* and ‘bucket list’ as *a list of things a person wants to achieve or experience, as before reaching a certain age or dying*.

10. At Exhibit CLB4 Ms Lund-Beck provides extracts from third party websites, all using the term ‘Wanderlist’. A selection of those are shown below:



### Wanderlist

Welcome to *The Wanderlist*, the first in a series of travel temptations from Mr & Mrs Smith. Drawing on a trove of insider knowledge, we present a hand-picked collection of hotels set on, in, or overlooking the water – each one offering the opportunity to discover something new and experience something unforgettable. So join us and dive in – the water’s lovely...

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<sup>1</sup> <https://www.mrandmrsmith.com/the-wanderlist>

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2

## OH, THE PLACES WE'LL GO

Every traveler has his or her 'wanderlist'.

You know – the list of things that drove them to travel in the first place – like a bucket list with great world wonders, but also places and experiences inspiring personal passion projects. This is our list that we created before departing on our journey, back in early 2014. It's grown and evolved... a lot, but it's still a driving force to remind us that there's so much to see in this beautiful world.

Hopefully we'll get to tick off many more items, and inspire you to create your own list as well.



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11. Enclosed at Exhibit CLB5 are pages from the websites of Statista, The Sun and MoneySavingExpert. The Statista extract states that in the first half of 2020, “the majority of all age groups in the United Kingdom spent an average of less than four thousand British pounds on holidays each year... Around a third of holidaymakers aged 25 to 35 would spend between one and two thousand pounds on holidays per year (32 percent) and another 26 percent two to four thousand.”<sup>4</sup> An article in The Sun dated 8 August 2018 states that the “average hard-working family spends nearly £5000 a year on holidays”. A poll conducted by MoneySavingExpert dated 21 January

<sup>2</sup> <https://www.butlerandhill.co.uk/products/personalised-wanderlist-dropbox>  
<sup>3</sup> <https://howfarfromhome.com/wanderlist/>  
<sup>4</sup> UK survey from December 2019 to June 2020; 8,935 respondents

2020 asks “How much AFTER-TAX income do you spend on all of your holidays (UK and abroad) in one year?” The results are divided into three categories according to the circumstances of the voter, specifically “I’m part of a family group (single or couple with dependent children”); “I’m in a couple with no children (or older children we don’t travel with)” and “I’m single”. The majority of voters in each category answered **1-2 months’ income** (39%, 33% and 23% respectively<sup>5</sup>).

## Decision

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

13. Section 5A reads:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

14. Under the provisions laid out in section 6 of the Act, the opponent’s trade marks clearly qualify as earlier marks. In accordance with section 6A of the Act, as neither had completed its registration procedure more than five years prior to the filing date of the applicant’s mark, neither is subject to the proof of use requirements. Consequently, the opponent can rely upon both marks and all services it has identified without providing evidence of use.

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<sup>5</sup> 843 of 2182 votes; 1092 of 3276 votes; 258 of 1107 votes



## **Section 5(2)(b) - Case law**

15. The following principles are gleaned from the decisions of the courts of the European Union 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (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 the earlier mark to mind, is not sufficient;

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

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

### **Comparison of services**

16. in addition to goods and services which are literally identical, the General Court (“GC”) set out a further provision as to when goods can be considered identical (though it equally applies to services) in *Gérard Meric v OHIM*, Case T-133/05. It 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 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”.

17. Applying that principle, I find the following terms in the application encompassed by, or encompassing of, the opponent's *travel agency services, namely, making reservations and bookings for temporary lodging*. They are to be considered identical.

*Accommodation reservations; Accommodation reservations (Temporary -); Arranging hotel accommodation; Accommodation bureau services; Accommodation bureaux services; Temporary accommodation reservations; Reservations (Temporary accommodation -); Accommodation reservation services; Arranging holiday accommodation; Booking of temporary accommodation; Booking services for accommodation; Booking of campground accommodation; Booking of hotel accommodation; Hotel accommodation reservation services; Arranging of hotel accommodation; Reservation services for accommodation; Travel agencies for arranging accommodation; Arranging of accommodation for tourists; Arranging of temporary accommodation; Reservation of temporary accommodation; Reservation of hotel accommodation; Reservation of tourist accommodation; Temporary accommodation reservation services; Arranging of holiday accommodation; Holiday planning services [accommodation]; Arranging temporary housing accommodations; Accommodation bureaux [hotels, boarding houses]; Services for reserving holiday accommodation; Arranging... temporary accommodation<sup>6</sup>; Booking services for holiday accommodation; Reservation of accommodation in hotels; Booking of accommodation for travellers; Booking agency services for hotel accommodation; Booking of temporary accommodation via the Internet; Travel agency services for booking accommodation; Accommodation bureau services [hotels, boarding houses]; Booking agency services for holiday accommodation; Agency services for booking hotel accommodation; Arranging of accommodation for holiday makers; Reservation services for the booking of accommodation; Travel agency services for reserving hotel accommodation; Travel agency services for booking temporary accommodation; Temporary accommodation ... reservation services<sup>7</sup>; Agency services for the reservation of temporary accommodation; Reservation of temporary accommodation in the nature of holiday homes*

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<sup>6</sup> Separated term, originally *arranging and providing temporary accommodation*

<sup>7</sup> Separated term, originally *temporary accommodation information, advice and reservation services*

18. In my comparison of the remaining services, I will consider factors including their nature, intended purpose, method of use and whether they are in competition or are complementary.<sup>8</sup> I shall also keep in mind the following case law.

19. In *Kurt Hesse v OHIM*, Case C-50/15 P, the Court of Justice of the European Union (“CJEU”) stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means that:

“...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”.

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

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

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<sup>8</sup> *Canon*, Case C-39/97

whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

**Accommodation services; Hotel accommodation services; Holiday accommodation services; Temporary accommodation services**

21. If these terms are not encompassing of the services set out in the opponent's specification, insofar as the applicant's terms will likely incorporate an element of booking or reservation, I find the similarity to be fairly high. The services will be accessed for the same purpose, to secure or access a certain accommodation, but this may be directly or indirectly, through a third party provider. Additionally, the opponent's services refer specifically to the *reservation* of accommodation and I acknowledge the difference between *reserving* accommodation and the *provision* of accommodation, which the consumer may expect from some of the applied for services above. The users are likely to be the same and there could be some degree of correlation in the respective trade channels. Whilst I accept there will be some distinction in nature between the services themselves, there are likely to be a number of similarities in the process, with a degree of information pertaining to the user's requirements obtained prior to the relevant accommodation being reserved or accessed. Given that the services will be utilised for much the same purpose, there could be an element of competitiveness. The services are not indispensable but there may be a degree of complementarity; though they are not exclusively offered by a single origin, such circumstances could arise and the services could be used alongside one another.

**Providing information about temporary accommodation services; Temporary accommodation information [and] advice ... services<sup>9</sup>; Providing information about temporary accommodation via the Internet**

22. The opponent relies upon *travel information services, namely, providing an interactive website for travel information services featuring a series of lifestyle and travel-related questions to help identify travel recommendations tailored to a specific*

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<sup>9</sup> Separated term, originally *temporary accommodation information, advice and reservation services*

*user based on their individual needs and preferences* in class 39. The services are accessed for a similar purpose and will likely be selected by the same users. There will be some similarity in the nature of the services, with the opponent's 'travel information' likely to encompass accommodation. For the most part, the trade channels are likely to be shared or similar and, whilst not indispensable, it would not be unusual for the respective services to be provided alongside one another by a single entity, meaning there is an element of complementarity. I find a high degree of similarity.

### **Operating membership accommodation**

23. I understand the above term to refer to accommodation which is available on a members-only basis, rather than to the public at large. The respective uses (considered against the opponent's *travel agency services, namely, making reservations and bookings for temporary lodging*) share a similarity in that each seeks to provide the end user with an appropriate accommodation, though the users of the applicant's, given that the services operate on a membership basis, will represent a smaller demographic, largely dependent on the criteria for membership. The nature of the services differs; the applicant's involve the provision of accommodation (to members) and the opponent's services act, for the most part, as an intermediary between the consumer and the end accommodation, though similar considerations will likely be made to establish a suitable accommodation. Given the limited nature of the applicant's services, the trade channels are unlikely to be the same, though could be similar. The services are not directly competitive; at least any opportunity for competition seems limited. The services are not indispensable for one another and, in my experience, the services are not generally offered by the same entity. That being said, in my experience, it is not entirely uncommon for third party booking providers, for example, to offer a loyalty scheme or subscription benefits. Still, the nature of the respective services remains distinct. Weighing all considerations, I find the similarity of a low degree.

**Accommodation exchange services [time share]; Accommodation reservation services [time share]; Accommodation booking agency services [time share]; Accommodation letting agency services [time share];**

24. To my knowledge, time share accommodation refers to a property or properties operating on a shared ownership basis, often intended for use as a holiday home, for example. Considered against the opponent's class 43 services, the respective services are admittedly both accessed for the purpose of identifying an appropriate accommodation, or 'temporary lodging' in the opponent's specification. That said, the applicant's services will likely represent a notably more significant investment and the consumer will likely intend to use the accommodation repeatedly over a longer period of time, in contrast to the opponent's services which are generally accessed to arrange a short-term accommodation for a one-off holiday, for example, though I do not discount that some users are likely to reserve the same accommodation (through an agent) repeatedly. Still, the accommodation specified in the applicant's services will likely be utilised on a 'temporary' basis, similarly to the opponent's; a time share property is not typically a 'permanent' residence, to my knowledge. Both services are, to my understanding, available to the general public, though I would expect less active interest in the applicant's services. The trade channels are likely to be distinct and I do not consider there to be a competitive element. The services are not indispensable and, in light of the varying degrees of investment involved and the different channels, I do not expect that they would typically be provided by the same entity. That being said, both services are engaged, to some degree, for the purpose of accessing an appropriate lodging on a temporary basis. Applying due weight to those factors, I find a low degree of similarity.

#### **Charitable services, namely providing temporary accommodation**

25. The respective services share a purpose insofar as each is intended to provide or at least acquire temporary accommodation, though I continue to acknowledge the distinction between *providing* temporary accommodation and *reserving* such accommodation. It is not clear in which way the applied-for services are intended to be delivered, though the use of the word *charitable* suggests that the services would be provided at no cost or perhaps a reduced rate intended for those in need in some way, or perhaps to raise money for a particular cause. Generally speaking, the users are likely to differ; I would not expect the average consumer accessing travel agency services, for example, to be the same as the average consumer of charitable services,

including those set out above. That being said, were the accommodation being provided as part of a fundraising initiative, for example, to raise money for a particular charity, there could be some correlation in user. The nature of the services may have some (limited) degree of similarity, insofar as some of the same considerations regarding the consumer and the accommodation itself may be made, though I would not necessarily expect the trade channels to be the same, given that one is a charitable service and the other typically self-funded. The services are not strictly competitive nor are they indispensable for one another. For the most part, the services will be provided by distinct and unrelated entities though it is not unforeseeable that an entity operating in the reservation of accommodation may branch out into the provision of accommodation and could perhaps seek to provide temporary accommodation on a charitable basis as part of a wider initiative, for example. Notwithstanding the differences that I have identified, I consider there to be a low degree of similarity between the parties' services.

**Providing accommodation for functions; Accommodation services for meetings; Accommodation services for functions; Providing accommodation for meetings; Provision of temporary work accommodation**

26. Whilst the above services concern accommodation, the reason for requiring the accommodation is quite different. In the opponent's class 43 services, the bookings concern 'temporary lodging' which suggests at least an overnight stay, whereas the applicant's services will likely be engaged on a different basis, for a shorter term. The respective uses are therefore not similar and there will be a distinction in users; the consumer will either be an individual looking to reserve an appropriate lodging, usually for leisure, or a professional entity or individual looking to secure an appropriate location for a work event, for example. The nature of the services may be similar, to a degree, to the extent that the interactions may be via a similar medium, and may entail a similar approach insofar as the provider will be looking to retrieve certain information and criteria from the customer to ensure the selected accommodation is suitable and, again, I keep in mind the difference between the *provision* of, and the *reservation* of. There may be some vague correlation in trade channels, though not necessarily, and the services are not competitive. It may not typically be the case that providing accommodation for functions, for example, and making reservations for temporary



accommodation will be managed by a single entity though there may be circumstances where this does occur. I find a very low degree of similarity.

### **Provision of trade show facilities [accommodation]**

27. In regards to the above services, I make many of the same conclusions. Whilst the above term refers to 'facilities', it specifies accommodation, so presumably the services concern the provision of accommodation suitable for hosting trade shows. There will therefore be a likely distinction in the use of the services (when compared to those relied upon by the opponent in class 43). The users will also likely differ; with the users of the above services likely to be approaching the selection on a somewhat professional basis, specifically those looking to organise a trade show. Though there may be some similarity in the services' nature, insofar as the consideration of the same criteria may be in play ahead of sourcing a provider for accommodation, the nature of the services themselves is rather distinct. There could be some crossover in the respective trade channels, though not exclusively. The services are not competitive and they are not indispensable for one another though, as above, there could be circumstances whereby the same entity provides both, but these are likely to be limited. I find a very low degree of similarity.

### **Consultancy provided by telephone call centers and hotlines in the field of temporary accommodation**

28. To support the opponent's *travel agency services, namely, making reservations and bookings for temporary lodging*, I would expect there to be an opportunity for the consumer to interact with the relevant agent, including by telephone. The opponent's services will be utilised to make a reservation in temporary accommodation, and the applicant's to gain advice relating to temporary accommodation so the respective uses are not the same but are closely tied. The users are likely to be shared and, particularly where the consumer liaises with a travel agent via telephone, the nature of the services is likely to be highly similar. Users who are unsure of which accommodation to book, for example, may be torn between seeking out the services of the applicant or contacting a travel agent, from whom it would expect a degree of advice or expertise. Consequently, there could be a competitive element. The services could be provided

by a single entity and the applicant's consultancy services could precede the booking services relied upon by the opponent. I therefore find some complementarity between the respective services. On reflection, I find a high degree of similarity.

**Provision of information relating to the booking of accommodation; Providing on-line information relating to holiday accommodation reservations**

29. I apply much of my reasoning in the previous paragraph to my consideration of the above terms. Whilst the uses are different (considered against the same term of the opponent's), there is a relationship to be found insofar as both concern the reservation of accommodation. The users will likely be shared and there will be a degree of similarity in the services' nature, including via an on-line platform which it would not be unusual for a travel agency to make use of. Again, there could be an opportunity for competitiveness, and with the applicant's informative services typically preceding the opponent's booking services and with a single entity likely to offer both, I find the services complementary. I find a high degree of similarity.

**Rating holiday accommodation; Appraisal of hotel accommodation**

30. I understand the above terms to refer to services which attribute a specific rating to hotels and other accommodation, typically judged against a predetermined criteria. The opponent's travel information services incorporate *providing an interactive website... featuring a series of lifestyle and travel-related questions to help identify travel recommendations tailored to a specific user based on their individual needs and preferences*. Whilst the applied for services above are less bespoke, to my mind, the process of identifying recommendations, including for accommodation, will likely entail a degree of rating or appraisal to determine which accommodations may be appropriate, or have superior amenities. There is some degree of similarity, therefore, in the services' use and they will likely be accessed by the same users. For the reasons given above, there will likely be an element of similarity in the nature of the services, though I accept that the applicant's services are not limited to operation via a website. The services are not indispensable but may be provided by a single entity. Whilst there are, to my knowledge, distinct entities operating solely for the purpose of assessing accommodation (including hotels), an entity providing travel information services

incorporating an element of 'recommendation' may offer its own means of assessment or appraisal to assist its customers. There is therefore an element of complementarity between the services and, given the similarity in use, there could be a degree of competitiveness. I find a fairly high degree of similarity.

**Temporary accommodation; Providing hotel accommodation; Providing temporary accommodation; Rental of temporary accommodation; Rental of accommodation [temporary]; Providing temporary housing accommodations; Provision of hotel accommodation; Rental of holiday accommodation; Accommodation (Rental of temporary -); Tourist camp services [accommodation]; Provision of holiday accommodation; Letting of holiday accommodation; Provision of temporary accommodation; Provision of temporary furnished accommodation; Providing accommodation in hotels and motels; Providing temporary accommodation in holiday flats; Providing temporary accommodation in holiday homes; Rental of rooms as temporary living accommodations; Rental of temporary accommodation in holiday homes and flats; Hotels, hostels and boarding houses, holiday and tourist accommodation; Providing temporary accommodation in boarding houses; boarding houses accommodation; Temporary accommodation provided by dude ranches; Temporary accommodation services provided by holiday camps**

31. The opponent relies *upon travel agency services, namely, making reservations and bookings for temporary lodging (...)*. Whilst I acknowledge the difference between securing such reservations for accommodation and providing the accommodation itself, there is some similarity in the services' use and the users will likely be shared; in either case the consumer will require use of a temporary accommodation and it will elect either to secure temporary accommodation through an intermediary such as a travel agent or it will liaise directly with the provider of the accommodation. From the perspective of the average consumer, some elements of the organisation of the relevant accommodation may be shared but the nature of providing accommodation and reserving accommodation is rather distinct. Though I accept that some of the accommodation specified in the aforementioned services is relatively obscure (dude ranches, for example), in my experience, travel agencies offer a wide range of accommodation types and, in addition, it may not be considered unusual or uncommon

for an entity such as a travel agent to also offer its own means of accommodation (within reason). There could therefore be a degree of complementarity, albeit limited, and an element of competitiveness, whereby the consumer requires a certain accommodation and chooses between accessing that accommodation via the provider (including those specified above) or seeking the assistance or intervention of a travel agent to source the relevant accommodation and make a reservation on its behalf. I find the services' similarity to be of a medium degree.

### **Reception services for temporary accommodation [management of arrivals and departures]**

32. The opponent's travel agency services include *the reservation and booking of temporary lodging*. The above services will be used to facilitate the arrival or departure of guests at the applicable lodging. There may be some crossover in the users accessing the respective services; those making a reservation of accommodation will typically engage with a 'check-in/check-out' procedure upon arrival and departure. The nature of the services is quite different, though both are interactive and are traditionally carried out in a face-to-face environment. Though the respective trade channels may not be shared, in my experience, it would not necessarily be unusual for a travel agent to support its customers insofar as the management of arrivals and departures is concerned, particularly when the travel agent is the provider of the accommodation itself, though also on a general basis. For that reason, there could be an element of complementarity, though the services are not competitive. I find the similarity to be between a low and medium degree.

### **Hospitality services [accommodation]; Providing temporary accommodation as part of hospitality packages**

33. The opponent relies upon *travel agency services, namely, making reservations and bookings for temporary lodging*. In my experience, it is not unusual for a travel agency to offer hospitality packages (in sports, for example), comprising transportation, accommodation and admittance to the relevant experience. The respective uses are similar; to ultimately provide the user with suitable accommodation, though the applicant's services may not require the involvement of a

third party such as a travel agent and may more so concern the provision of an accommodation accessed alongside hospitality. There will likely be some overlap in the services' users and I would expect some, albeit limited, similarity in the nature of the services insofar as the considerations of compatibility, though again I acknowledge the distinction between the provision of accommodation and making a reservation (of accommodation). Given what I have found regarding the services' use, there could be a competitive element. I also find a degree of complementarity; the user may in some circumstances expect the same entity to provide both. I find the similarity to be of a medium degree.

### **Providing assisted living facilities [temporary accommodation]**

34. I consider the above services against the opponent's *travel agency services, namely, making reservations and bookings for temporary lodging*. Though it could be described as a temporary accommodation or lodging, of sorts, to my knowledge *assisted living facilities* generally refer to an accommodation intended to cater to those who require an additional degree of care, thus the accommodation must be carefully tailored to their bespoke requirements. There is therefore somewhat of a distinction between the services' use and likely between the respective user; the average consumer searching for hotel or holiday accommodation, for example, would not necessarily be the same as the average consumer seeking provision of an assisted living facility, which is likely a much narrower demographic. Whilst both services ultimately offer the end consumer somewhere to reside (either directly or indirectly), with the locations likely to share some hospitable facilities, to my mind the services' nature is distinct, particularly given the difference in the respective uses. In my experience, the services would not generally be provided by the same entity nor are they indispensable for one another. I cannot see any opportunity for the services to occupy competitive roles. Weighing all factors, I find the services dissimilar.

### **Tourist agency services for booking accommodation; Tour operator services for the booking of temporary accommodation**

35. If the above services are not directly encompassed by the opponent's *travel agency services, namely, making reservations and bookings for temporary lodging*, I

find at least a high degree of similarity. The services will be accessed for the same purpose, i.e. to book accommodation, and the users will likely be shared. The nature of the services is likely to be highly similar, each intended to secure accommodation for the end consumer, and there seems to be opportunity for a degree of complementarity insofar as the relationship between the providers is concerned, and the services could be competitive on the market.

36. For those services where I have failed to find any similarity, the opposition fails at this juncture. If there is no similarity, there is no likelihood of confusion to be considered<sup>10</sup>.

### **The average consumer and the nature of the purchasing act**

37. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. 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. (as he then was) 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.”

38. The average consumer of the services at issue here is likely to be a member of the general public. In my experience, the services are typically accessed in-person and online, suggesting that the marks' visual impressions play the greatest role in their selection, though I do not discount the opportunity for interactions, including

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<sup>10</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

purchases, to be made over the telephone or for recommendations to be sought from peers, for example, so the marks' aural impressions are also relevant. The average consumer will likely be alive to factors such as the provider's reputational standing, value-for-money and will want to ensure that the service they select meets their specific requirements. The services are not likely to be purchased particularly frequently and, whilst variable, the cost can be significant, as indicated in the applicant's evidence. I find the average consumer will apply between a medium and high degree of attention to the services' selection.

### **Comparison of trade marks**

39. 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, Case C-591/12P, that:

“34. ...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.”

40. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create.

41. The trade marks to be compared are displayed in the table below:

<b>Opponent's mark(s)</b>	<b>Applicant's mark</b>
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VIRTUOSO WANDERLIST	<b>The Wanderlist</b>
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42. The marks on which the opponent relies are identical, and each comprises two words of eight and ten letters, respectively. The words hang together and the marks' overall impression resides in the two words it comprises.

43. The applicant's mark comprises two words of three and ten letters. The first word 'THE' serves to introduce or qualify the mark's second word element, WANDERLIST, which carries the greater weight in the mark's overall impression.

44. Visually, both parties' marks comprise two words; the second of which is identical. Other than each containing a letter 'T', the marks' first words share little similarity and they are of significantly different lengths. I keep in mind that, generally, the beginnings of marks typically have more of an impact on consumers (than their endings) and, with that in mind, I find the marks' visual similarity to be of a medium degree.

45. Aurally, I find the opponent's mark likely to be articulated in a total of seven syllables; VUR-TCHU-OH-SO WON-DUR-LIST. The opponent's will likely comprise four syllables, specifically THE-WON-DUR-LIST. The final three syllables are identical but there is little similarity in the remaining syllables and I keep in mind what I have said regarding the beginnings of marks. I find the aural similarity to be between a low and medium degree.

46. Conceptually, the opponent's mark is comprised of two words, neither of which being an ordinary dictionary word. The first word, VIRTUOSO, is likely to be recognised by the average consumer in the UK, at least a significant portion of average UK consumers, but may be thought to have foreign origin. Still, in my experience, the word is utilised in the English language and the average consumer will likely have an idea of its meaning, at least insofar as it suggests an expertise or excellence in a



certain field. That said, I accept that there will also be a portion of consumers to whom the word will be meaningless and may be presumed to be foreign or invented (with no associated concept). Moving now to the mark's second word, WANDERLIST, this is not, to my knowledge, a word with which the average consumer will be familiar (notwithstanding its use by third parties in the applicant's exhibits). The consumer may, however, be familiar with similar word WANDERLUST which, whilst originating from a different language, if identified will be understood to mean a desire to travel, or something to that effect. Effectively, the adaptation from WANDERLUST to WANDERLIST could transform the concept from a desire to travel to a list of places the author wishes to travel to. That said, I must recognise that I cannot necessarily attribute an understanding of WANDERLUST to the average UK consumer<sup>11</sup> and, therefore, it seems likely that there will also be a significant number of consumers for whom WANDERLUST will not evoke any specific meaning so any associated connotation in that regard is lost. That being said, where that is the case, the average consumer would likely identify that the word comprises two recognisable dictionary words; WANDER and LIST, so at the least it would likely interpret the word as meaning, vaguely, 'a list of places to wander'. I apply the same reasoning to my conceptual assessment of the applicant's mark, and the introduction of 'The' contributes little to the position, other than particularising the 'list' itself. Applying those findings, in regard to the earlier mark(s), as the average consumer is unlikely to attribute any proficiency or expertise to an inanimate object such as a list, it may turn instead to attribute the suggestion of skill to the provider of the services and, consequently, it will either be left with an impression of an entity which is highly skilled at creating either a list of places to travel to, or a list of places to simply wander or, where VIRTUOSO is absent of any concept, simply the list itself. That conceptual impression is to be considered against that conveyed by the applicant's mark which is a list either of places to travel, or to wander. 'WANDERLIST' will be interpreted identically in both marks, yet the opponent's mark introduces an element of expertise of specialism (for a proportion of consumers, at least). On balance, regardless of which way WANDERLIST is interpreted (be it an adaptation of WANDERLUST or a more literal interpretation), I find the conceptual similarity at least fairly high.

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<sup>11</sup> *Chorkee Ltd v Cherokee Inc.*, Case BL O/048/08

## **Distinctive character of the earlier trade mark(s)**

47. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public. 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).”

48. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods or services for which they are registered, to those with high inherent distinctive character, such as invented words. Dictionary words which do not allude to the goods or services will typically fall somewhere in the middle. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; generally, the more distinctive the earlier mark, the greater the likelihood of confusion.

The distinctive character of a mark may be enhanced as a result of it having been used in the market.

49. Given that the opponent has not made a pleading of enhanced distinctiveness, and in the absence of evidence of use, I have only the inherent distinctiveness of the earlier marks to consider. The relied upon marks are identical, both comprising two words: VIRTUOSO WANDERLIST. I have found that the mark, for a significant portion of average consumers, will either evoke a concept of an expert in the field of compiling lists of places to travel or, more literally, an expert in the field of compiling lists of places to wander or, alternatively, where VIRTUOSO carries no concept, a list of places to travel or to wander. For all consumers, though particularly in the case of the consumer for whom WANDERLIST carries an association with travel, when considered against the services relied upon by the opponent, the mark consequently carries a suggestive or allusive connotation. That being said, the words themselves are not ordinary dictionary words. VIRTUOSO, whilst a recognisable word for a portion of average consumers, is not what I would consider an 'every-day' word or a common way to allude to expertise or excellence. The marks' second word is even less ordinary; whether or not the consumer presumes it to be a play on the word WANDERLUST or sees it as a simple adjoining of 'WANDER' and 'LIST', it is nonetheless unusual. Notwithstanding the marks' possible allusive element, I find the marks' inherent distinctiveness to be fairly high.

### **Likelihood of confusion**

50. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. 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 and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive it is, the greater the likelihood of confusion.

51. 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 the trade marks are not the same but puts the similarity

that exists between the trade marks and goods down to the responsible undertakings being the same or related.

52. 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*, Case BL O/375/10, 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.””

53. To make the assessment, I must adopt the global approach advocated by the case law whilst taking account of my earlier conclusions. I also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind.

54. I will begin by considering a likelihood of direct confusion. I have found the parties' marks visually similar to a medium degree, aurally similar to between a low and medium degree and conceptually similar to at least a fairly high degree. I also keep in mind that the earlier mark(s) possess an inherent distinctiveness of fairly high degree. In the course of my decision I have concluded that a large number of terms in the applicant's specification are similar, to varying degrees, or identical to those relied upon by the opponent. Whilst I bear in mind that the services may not necessarily be engaged on a particularly frequent basis, and notwithstanding that the marks share an identical word in WANDERLIST, the marks' preceding words comprise eight letters in the earlier mark(s) and only three in the later mark, with no shared letters between the

two, and I have found the marks' visual impression to carry the greatest weight in the purchasing process. With those factors in mind, even where only a medium degree of attention is applied to the purchase, the marks are unlikely to be directly mistaken for one another. Whilst consumers may identify the shared use of invented word WANDERLIST, it will readily recognise that they are not the same.

55. I turn now to consider a likelihood of indirect confusion. As the case law explains, this is a case of the average consumer realising that the marks are not the same but nonetheless attributing the similarities between them to a shared or related origin. The mark's common element is the word WANDERLIST. Whilst I have found that it will likely be seen as an adaptation of WANDERLUST or alternatively simply a merging of ordinary words WANDER and LIST, it is not an ordinary dictionary word and its composition would likely be considered unusual. In addition, it will be conceptually interpreted in the same way in either mark, leaving an identical conceptual message in the mind of the average consumer. The use of the word 'VIRTUOSO' in the earlier mark(s) will either add a suggestion of expertise or excellence (in the associated field) or it will add nothing, conceptually, in which case, the marks could still be seen to be related; a house mark and a secondary mark, for example. Even in the former scenario, where it does carry a concept, the role of VIRTUOSO to introduce an element of 'expertise' and, in this case (as explained in my conceptual assessment), would likely suggest that the provider is well-versed in creating bespoke lists for its customers. The lists themselves remain the subject of the mark. Particularly in light of the fairly high inherent distinctiveness held by the earlier mark(s), it seems likely that wherever the respective services are similar, or are seen to be related in some way, the average consumer will conclude that the marks originate from a single or economically-related origin. The unusual nature of the marks' shared word WANDERLIST would likely cause the consumer to attribute the shared element to more than simply a coincidence, having asked themselves what the likelihood is of two distinct entities electing to use the same non-dictionary word in somewhat related fields. I reach that conclusion in regards all relevant consumers, regardless of how either VIRTUOSO or WANDERLIST is interpreted. In short, I find a likelihood of indirect confusion.

## **Conclusion**

**56. The opposition has succeeded, for the most part, and subject to any successful appeal the application will proceed to registration in respect of:**

*Accommodation exchange services [time share]; Accommodation reservation services [time share]; Accommodation booking agency services [time share]; Accommodation letting agency services [time share]; Accommodation reservations; Accommodation services; Temporary accommodation; Hotel accommodation services; Accommodation reservations (Temporary -); Rating holiday accommodation; Arranging hotel accommodation; Accommodation bureau services; Accommodation bureaux services; Holiday accommodation services; Temporary accommodation services; Hospitality services [accommodation]; Temporary accommodation reservations; Reservations (Temporary accommodation -); Operating membership accommodation; Providing hotel accommodation; Accommodation reservation services; Arranging holiday accommodation; Providing temporary accommodation; Booking of temporary accommodation; Booking services for accommodation; Appraisal of hotel accommodation; Booking of campground accommodation; Rental of temporary accommodation; Rental of accommodation [temporary]; Booking of hotel accommodation; Hotel accommodation reservation services; Arranging of hotel accommodation; Reservation services for accommodation; Providing accommodation for functions; Providing temporary housing accommodations; Travel agencies for arranging accommodation; Arranging of accommodation for tourists; Provision of hotel accommodation; Accommodation services for meetings; Arranging of temporary accommodation; Reservation of temporary accommodation; Rental of holiday accommodation; Holiday planning services [accommodation]; Accommodation (Rental of temporary -); Accommodation services for functions; Reservation of hotel accommodation; Providing accommodation for meetings; Reservation of tourist accommodation; Tourist camp services [accommodation]; Temporary accommodation reservation services; Provision of holiday accommodation; Arranging of holiday accommodation; Letting of holiday accommodation; Arranging temporary housing accommodations; Provision of temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Services for reserving holiday accommodation; Arranging and providing temporary accommodation; Providing information about temporary accommodation services; Booking services for holiday accommodation; Reservation of accommodation in hotels; Provision of temporary furnished accommodation; Provision of*

*temporary work accommodation; Booking of accommodation for travellers; Provision of trade show facilities [accommodation]; Booking agency services for hotel accommodation; Booking of temporary accommodation via the Internet; Travel agency services for booking accommodation; Tourist agency services for booking accommodation; Providing temporary accommodation in boarding houses; Providing accommodation in hotels and motels; Temporary accommodation provided by dude ranches; Accommodation bureau services [hotels, boarding houses]; Booking agency services for holiday accommodation; Agency services for booking hotel accommodation; Arranging of accommodation for holiday makers; Providing temporary accommodation in holiday flats; Providing temporary accommodation in holiday homes; Reservation services for the booking of accommodation; Rental of rooms as temporary living accommodations; Temporary accommodation services provided by holiday camps; Travel agency services for reserving hotel accommodation; Travel agency services for booking temporary accommodation; Temporary accommodation information, advice and reservation services; Rental of temporary accommodation in holiday homes and flats; Providing temporary accommodation as part of hospitality packages; Agency services for the reservation of temporary accommodation; Providing information about temporary accommodation via the Internet; Provision of information relating to the booking of accommodation; Hotels, hostels and boarding houses, holiday and tourist accommodation; Providing on-line information relating to holiday accommodation reservations; Tour operator services for the booking of temporary accommodation; Reception services for temporary accommodation [management of arrivals and departures]; Reservation of temporary accommodation in the nature of holiday homes; Consultancy provided by telephone call centers and hotlines in the field of temporary accommodation; Charitable services, namely providing temporary accommodation*

**57. The opposition has failed in regards the following services and, subject to any successful appeal, the application will proceed to registration in respect of the following:**

*Providing assisted living facilities [temporary accommodation]*

**Costs**

58. The opponent has achieved a greater measure of success 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 (reduced accordingly):

Filing a Notice of Opposition (official fee):	£100
Preparing a Notice of Opposition and preparing a counterstatement:	£150
Preparing written submissions:	£250
<b>Total:</b>	<b>£500</b>

**59. I order Wanderlist Online Directory to pay Virtuoso, Ltd. the sum of £500. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.**

**Dated this 13<sup>th</sup> day of October 2022**

**Laura Stephens  
For the Registrar**