

**O-093-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3264016  
BY ALPHA BLUE OCEAN ADVISORS LIMITED TO REGISTER:**

**ALPHA BLUE OCEAN**

**AS A TRADE MARK  
IN CLASS 36**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 411441 BY ALPHA BANK A.E.**

## Background and pleadings

1. On 17 October 2017 Alpha Blue Ocean Advisors Limited (“the applicant”) applied to register the trade mark ALPHA BLUE OCEAN for *financial services* in Class 36. The application was published for opposition purposes on 27 October 2017.

2. The application is opposed by Alpha Bank A.E. (“the opponent”). The opposition is based upon Sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under Section 5(2)(b), the opponent relies on the following trade mark:

UK trade mark no. 1309354

Mark: ALPHA

Filing date: 08 May 1987

Date of entry in register: 24 July 1992

3. The services relied upon in this opposition are *financial services* in class 36.

4. The significance of the dates given above is that (1) the mark relied on by the opponent constitutes an earlier mark in accordance with section 6 of the Act, and (2) it is subject to the proof of use conditions contained in section 6A of the Act, its registration procedures having been completed five years or more before the publication of the applied for mark.

5. Under Section 5(2)(b), the opponent claims that there is a likelihood of confusion because the respective services are identical and the marks are similar. While it admits that the words BLUE OCEAN in the application play a distinctive role, it argues that ALPHA BLUE OCEAN “does not hang together when considered as a whole”. It also argues that ALPHA plays an independent distinctive role in ALPHA BLUE OCEAN.

6. In relation to the Section 5(4)(a) objection, the opponent claims that it has been offering financial and banking services as well as leasing and investment products under the sign ALPHA since the opponent was established in the UK in 1989 and has acquired goodwill under the sign. Therefore, use of the trade mark applied for would

cause a misrepresentation to the public and result in damage to the aforementioned goodwill.

7. The applicant filed a counterstatement denying all the grounds and putting the opponent to proof of use of its earlier mark. While it admits that the respective services are identical, it denies that there is a likelihood of confusion because, it states, the shared component ALPHA does not constitute the dominant and distinctive element of the applied for mark and/or does not play an independent distinctive role within the mark. The applicant also argues that a search of the UKIPO register discloses 194 marks beginning with the prefix ALPHA and that ALPHA is non-distinctive for financial services because it is a term used in relation to financial services in the UK to indicate “a measure of the active return on an investment” and “the relevant public are accustomed to [it]”.

8. Both parties filed evidence in these proceedings. No hearing was requested and both parties filed written submissions in lieu. The opponent is represented by Franks & Co Limited and the applicant is represented by Osborne Clarke LLP.

## **THE OPPONENT’S EVIDENCE**

9. This consists of two witness statements filed on behalf of the opponent. The bulk of the evidence is provided by William Lindsay Mackay, the Chief Executive Officer of Alpha Bank London Limited (hereafter "ABL"), a wholly owned subsidiary of the opponent. There is an additional witness statement provided by Abigail Frances Welford, a trade mark attorney at Franks & Co Limited.

### **Mr Mackay’s witness statement**

10. Mr Mackay’s witness statement is dated 18 June 2018 and is accompanied by 20 Exhibits (WLM1-WLM20). Mr Mackay states that the facts in his statement come from his own personal knowledge or the records of the opponent, London Branch (hereafter “the Branch”), ABL or Alpha Credit Group Plc (hereafter “ACG”) and that he is authorised to speak on their behalf.

11. Mr Mackay states that the opponent was founded in Greece, in 1879 and it is “one of the largest banks in Greece with assets as at 31 December 2016 of €64,872 million”. He also states that the "Alpha Banking Group" is active in the international banking market with a presence in a number of countries including the UK. The opponent operates in the UK through the Branch, which it is said to be “a member”<sup>1</sup> of the opponent, while ABL and ACG are wholly owned subsidiaries of the opponent. These are collectively referred to as the "Alpha London Group".

12. Mr Mackay states that the Alpha London Group operates out of the centrally located office in the City of London. The Branch was incorporated on 1 November 1989 and it is registered at Companies House. It is also registered with the Financial Conduct Authority (“FCA”) and has been a member of the Association of Foreign Banks operating in the UK since 1991. Mr Mackay further states that the Branch “operated under the name of “Alpha Credit Bank A.E” or “Credit Bank” between 1989 and 1994.

13. Mr Mackay states that ABL was acquired by the opponent in 1994 and changed its name from the Commercial Bank of London plc to ABL in 1995. ABL is, itself, registered at Companies House and with the FCA. Another subsidiary of the opponent is ACG. According to Mr Mackay, the FCA has permitted ABL to trade under the name “Alpha Private Bank”.

14. Mr Mackay states that the opponent’s earlier mark has been used by the Branch in the UK since “no later than 1992”, in respect of insurance, financial and banking services and investment products. He also states that the mark has been used in relation to those services “from London to customers from around the UK and abroad”.

15. Mr Mackay provides the following profit figures for ABL, obtained from its annual reports, relevant extracts of which are provided at Exhibit WLM1:

---

<sup>1</sup> § 4

<b>Year</b>	<b>Profit after tax (£'s) (rounded up)</b>
2012	1.9 million
2013	3.1 million
2014	3.1 million
2015	2.6 million
2016	2.9 million
2017	12.4 million

16. In addition, Mr Mackay provides the following profits for ACG, obtained from annual reports provided at Exhibit WLM2:

<b>Year</b>	<b>Profit after tax (£'s) (rounded up)</b>
2012	46 million
2013	359,000
2015	6.3 million

17. The following points emerge from the reports:

- ABL is a company domiciled and incorporated in the UK. It provides a range of domestic and international banking services;
- ABL is an authorised institution for the purpose of the Banking Act 1987 and is authorised to accept deposits under the Financial Services and Markets Act 2000;
- The reports are presented in sterling, which is the functional currency of ABL;<sup>2</sup>
- ABL operates independently of the parent company, i.e. the opponent. ABL does not rely on the opponent's infrastructure which includes, inter alia, having its own IT and payment system that are managed locally<sup>3</sup>. Nevertheless, it appears clear from the reports that (a) ABL receives deposits and investment

<sup>2</sup> Page 21, 2017 report (WLM1)

<sup>3</sup> Page 21, 2017 report (WLM1)

portfolios from Greek individuals and companies<sup>4</sup>; (b) most depositors are based in Greece whilst the loan portfolio is concentrated on property lending within the London area<sup>5</sup> and (c) ABL's business strategy concentrates on providing banking services to consumers who reside mainly in Greece and the UK<sup>6</sup>;

- ABL's revenues are derived from "a combination of net interest income from lending, money market activities, fees for services provided to consumers and commission earned on the safe custody of financial instruments and products for consumers"<sup>7</sup>;
- ACG's principal activities are acting as a financial intermediary and raising finance for its parent company, i.e. the opponent<sup>8</sup>.

18. Mr Mackay states that the opponent's mark:

- is used by the Alpha London Group in financial and banking services and monetary affairs;
- is used by ABL in relation to banking services and products, focusing mainly on property lending and private banking services;
- is used by ABL in the documentation of various forms of bank accounts including 4,000 current accounts, over 2,000 fixed term deposit accounts and over 400 loan accounts. Examples of ABL's "terms and conditions" for retail, individual and corporate clients dated 2014, 2016 and 2017 are provided at

Exhibit WLM3. The sign  ALPHA BANK appears at the top of each front page above the words ALPHA BANK LONDON LIMITED (WLM3);

- is used on forms consumers are required to complete in order to set up and operate an account with ABL. Forms bearing the marks (as shown in the previous bullet point), dated between 2012 and 2017 and said to have been used in the UK, are provided (WLM4 and WLM5). These include examples of

---

<sup>4</sup> Page 4, 2012 report (WLM1)

<sup>5</sup> Page 20, 2016 report (WLM1)

<sup>6</sup> Page 21, 2016 report (WLM1)

<sup>7</sup> Page 21, 2016 report (WLM1)

<sup>8</sup> Page 36, 2012 report (WLM2)

completed application forms for the opening of bank accounts, from UK and non-UK residents.

19. Mr Mackay states that the Alpha London Group “currently” has over 2,500 customers in the UK. They are both corporate and individuals. He also provides the following figures of deposits held by ABL in the period 2012-2017 obtained from annual reports provided at Exhibit WLM1:

<b>Year</b>	<b>Client Accounts (£s) (rounded up)</b>
2012	449 million
2013	458 million
2014	458 million
2015	603 million
2016	661 million
2017	740 million

20. At Exhibits WLM6-WLM7, Mr Mackay provides tariffs for the period 2012-2017 in respect of fees and charges (priced in sterling) levied in relation to personal and corporate accounts and investments. The pages show use of (a) the words ALPHA BANK LONDON LIMITED and (b) the  device mark (hereafter the “device mark”) followed by the words ALPHA BANK or ALPHA PRIVATE BANK.

21. At Exhibit WLM8, Mr Mackay provides undated screenshots from alphaprivate.gr, the opponent’s website. He explains that the opponent provides online payment facilities called “Alpha Private Bank” and “Alpha e-Banking” which allow its consumers to manage their Greek and UK accounts online from the UK. Once again, the screenshots feature the device mark followed by the words ALPHA PRIVATE BANK as well as the words ALPHA BANK LONDON LIMITED, ALPHA BANK LONDON, ALPHA PRIVATE BANK. They also refer to a range of services provided by ALPHA BANK LONDON LIMITED including deposit accounts, share and mutual funds dealing

services, foreign exchange dealing facilities as well as loans and finance for property investment, particularly in relation to UK properties.

22. Mr Mackay explains that the Alpha London Group also provides finance to its customers particularly in respect of residential and commercial property in the UK. According to Mr Mackay, the Branch was involved in providing finance to its consumers (a service which is now provided in the UK by ABL) and is the active participant in the syndicated lending market “and uses the trade mark in its activities in this market”. Mr Mackay provides the following loans figures obtained from annual reports provided at Exhibit WLM1 showing the amounts ABL has lent to its customers in the period 2012-2017:

<b>Year</b>	<b>Loans (£'s) (rounded up)</b>
2012	232 million
2013	216 million
2014	192 million
2015	187 million
2016	207 million
2017	243 million

23. Mr Mackay states that ABL provides its customers with a wide variety of investment products, all of which show use of the earlier mark. However, he states that he is unable to provide samples of these products for reasons of commercial sensitivity, but refers to such products in ACG’s annual reports (Exhibit WLM2). These annual reports, which cover the period 2012-2015, refer to ACG’s raising of finance through the issue of Euro Medium Term Note Programmes. Mr Mackay states that these notes prominently display the earlier mark as shown on extracts from the 2012, 2013, 2014, 2016 and 2017 “base prospectus” relating to this programme (Exhibit WLM9). The evidence regarding this issue is very thin; it just shows that Alpha Bank applied for the admission of these securities to trading on the Luxembourg Stock Exchange but it does not clearly say whether any UK customer or institution purchased them.

24. Mr Mackay states that ABL sends a great deal of correspondence to its customers and other third parties, and that such correspondence is always sent on its headed paper displaying the mark. A selection is provided at Exhibit WLM10. It shows use of (a) the words ALPHA BANK LONDON LIMITED and (b) the device mark followed by the words ALPHA BANK or ALPHA PRIVATE BANK.

25. Mr Mackay also provides copies of employment contracts showing ABL's address in London (Exhibit WLM12). He states that the Alpha London Group has been operative in London since 1995. A 'Google street view' photograph dated May 2015 is provided (Exhibit WLM13) showing the signage above the building being ALPHA BANK LONDON. There is also a separate sign showing the device mark. According to Mr Mackay, the signage was in constant use for 20 years. Mr Mackay further states that in July 2017 the Alpha London Group moved to its new office (always based in London) and that since then the signage has been displayed on the ground floor and outside the office building. Photographs evidencing the signage are included (Exhibit WLM15). They show use of (a) the device mark followed by the word ALPHA BANK and (b) the words Alpha Bank London Limited & Alpha Bank A.E.

26. Mr Mackay provides information about the Alpha London Group's sponsorship activities and other marketing. At Exhibit WLM16 he provides a list of publications where advertisements have been placed within the period 2012-2017 but he states that the opponent does not retain copies of the advertisements. Most of the publications listed appear to target Greek and orthodox communities in London, e.g. Salamis London Football Club, London Hellenic Community, Greek community in London. He also identifies other marketing undertaken such as drinks receptions, evening meals and an annual clay shooting day aimed at customers and advisors. No documentation is retained in respect of these activities, but Mr Mackay states that he has been involved in a number of them and confirms that the documentation included the opponent's mark. An example of marketing material is provided at Exhibit WLM19. It contains screenshots from a brochure promoting ABL; this was distributed to the opponent's consumers since May 2017 in London and Greece. The screenshots show use of (a) the words ALPHA BANK and (b) the device mark followed by the word ALPHA PRIVATE BANK. In addition, the Alpha London Group sponsors a wide variety of charities. Supporting evidence for this is provided at Exhibit WLM17. It includes four

documents, three sent to ALPHA BANK LONDON LTD and one to ALPHA BANK, recognising the fundraising amounts raised in the UK. Two of those are from charities based in London<sup>9</sup> and are dated January 2013 and February 2013 respectively.

Ms Welford's witness statement

27. Ms Welford is a trade mark attorney in the firm of Franks & Co Limited, the opponent's professional representatives in these proceedings. Her evidence is provided as part of the opponent's written submissions. Attached to her witness statement at Exhibits AFW1-2 are extracts from two decisions, i.e. BL-O-127-17 and BL-O-113-11, issued by the UKIPO in relation to oppositions involving the same opponent and the same earlier mark, but different applications. I shall return to this below.

**THE APPLICANT'S EVIDENCE**

28. This consists of a witness statement (accompanied by 22 exhibits) dated 3 September 2018 by Leanne Marie Gulliver, a trade mark attorney employed by Osborne Clarke LLP, who act for the applicant. Ms Gulliver's evidence concerns use by the trade and is aimed at demonstrating that "the term Alpha has a significant meaning within the financial sector, such as to render the word "Alpha" non-distinctive and descriptive of insurance and financial services". Ms Gulliver's evidence includes:

- (a) Evidence relating to 80 UK and EU trade mark registrations in class 36 including the word ALPHA (Exhibit LMG1);
- (b) Evidence of 20 company names at UK Companies House including the words ALPHA FINANCE and ALPHA INVESTMENT (Exhibits LMG13-LMG14). The results exhibited revealed that of the companies listed, 7 were dissolved and one was incorporated after the relevant date;
- (c) Extracts from websites of eight UK companies (printed on 31 August 2018) incorporating the word ALPHA in their company name (Exhibits LMG3-LMG11), including ALPHA FMC, ALPHA REAL TRUST, ALPHA THERM LTD, ALPHA

---

<sup>9</sup> The other two do not show the charity's address

FINANCIALS, ALPHA PROPERTY LENDING, ALPHA QUANTS, ALPHA CONTRACT LEASING and ALPHA INDEX;<sup>10</sup>

- (d) Evidence concerning the results of an Internet search carried out using the Google search engine against the terms “alpha” and “finance” (together) (LMG2).

29. Ms Gulliver relies on the above evidence to demonstrate that (i) the word ALPHA is being used by third parties as a brand and/or (ii) third parties recognise the word ALPHA to have a particular meaning in the financial sector. In connection to (d) Ms Gulliver points to results showing links to websites which appear to belong to some of the companies researched at LMG3-LMG11. Finally, Ms Gulliver points to the texts of the following Google snippets:

- 1) Link: *moneyterms.co.uk*; Snippet<sup>11</sup>: *The  $\alpha$  (alpha) of a security or fund is its out-performance over the return adjusted for risk, with risk measured by  $\beta$  (beta)*;
- 2) Link: *ahl.com*; Snippet: *EXCHANGE RATE TRENDS WILL RETURN AS ECONOMIC FUNDAMENTAL DIVERGE Big exchange rate trends are a major alpha source for currency...*;
- 3) Link: *finance.ni.gov.uk*; Snippet: *The purpose of this EPN is to provide employers with further information on buying an EPA and Added Pension in alpha...*;
- 4) Link: *nomura.com*; Snippet: *Generating alpha from quant models...New alpha models...Noronha and Singal, The Journal of finance, 2014...*;
- 5) Link: *civilservicepensionscheme.org.uk*; Snippet: *alpha is a registered scheme under the Finance Act 2004, and is governed by UK...*;

30. Ms Gulliver submits that “the term “Alpha” is commonly used in, and widely understood by the financial sector as having a specific meaning regarding the measurement of performance on a return of an investment against the market index

---

<sup>10</sup> Exhibit 11 illegible

<sup>11</sup> The part of what appears on a Google page, when a particular search term is entered.

or benchmark”. In support of her claim, she adduces extracts from a number of online articles. These include:

- Exhibit LMG15: an article from the website Investopedia.com headed “What is Alpha”. It states: “Alpha is used in finance as a measure of performance. Alpha, often considered the active return on an investment, gauges the performance of an investment against a market index or benchmark which is considered to represent the market’s movement as a whole. The excess return of an investment relative to the return of a benchmark index is the investment’s alpha” [...]. The article is undated, save for the printing date of 31 August 2018;
- Exhibit LMG16: an article from the website telegraph.co.uk headed “Know your beta from your bottom up”. The article states: “Fund manager’s jargon can be impenetrable and off-putting” and “Alpha is defined a buzz word of late. Alpha is the extra return an investor hopes to receive for taking risk, instead of investing in the benchmark. [...] Some say alpha is a measure of the investor’s skill”. The article is undated, save for the printing date of 31 August 2018;
- Exhibit LMG17: said to be an article from the website Morningstar.co.uk (though the website address is not visible) dated December/January 2013. It is headed “Alpha, Beta and Now...Gamma” and states: “[...] for any given portfolio, investment decisions generally can be decomposed into two primary components: beta and alpha. Beta can be defined as the systematic risk exposures of the portfolio [...] and alpha is the residual (skill or luck-based) component associated with the various flavors of active management [...]”;
- Exhibit LMG19: an article from the website thismoney.co.uk headed “Alpha, focus, dynamic, optimal, what do all these cryptic fund names actually mean? Read our jargon buster”. The term “Alpha” is then listed in the Jargon buster which contains the following definition: “Alpha- Investments are being actively managed with the goal of outperforming the market. Alpha has a somewhat slippery definition but it is often taken to mean the return you make from active investing, on top of what you can get by just stashing money in a passive tracker fund [...]”. The copy displays a “published” date of 23 January 2017 and an “updated” date of 10 May 2017;

- Exhibit LMG22: an article from the website moneyweek.com, which is said to be “The UK’s best-selling financial magazine”, dated 21 September 2012. It states “‘Alpha’ and ‘Beta’ are two widely used investment terms. But do they actually mean anything useful? Or are they just more sales jargon used by the financial industry to pull the wool over your eyes?” and “What alpha measures – This wouldn’t matter except that fund managers happily use beta to calculate ‘alpha’, which is more of a sale tool than a useful indicator. Fund managers want to convince you that they generate bigger returns and more ‘alpha’ than anyone else so they are worth paying higher fees for. Alpha is the excess total return from a portfolio that is not explained by beta: it’s the money made due to the manager’s skill, rather than just the market going up”.

## **THE OPPONENTS EVIDENCE IN REPLY**

31. In response to the applicant’s evidence, the opponent filed submissions and evidence in reply. The evidence consists of two further witness statements by the same William Lindsay Mackay and Abigail Frances Welford mentioned above.

### *Ms Welford’s second witness statement*

32. Ms Welford’s second witness statement includes dictionary definitions for the word “alpha”. I shall return to this below.

### *Mr Mackay’s second witness statement*

33. In his second witness statement Mr Mackay states that he has worked in the financial services and banking industry in the UK for over 30 years and that for the last 25 years he has worked in managerial roles in various UK banks and financial institutions. He states that during that time he has acquired a wealth of knowledge regarding banking and investment services provided in the UK. Mr Mackay states that to the best of his knowledge, the term ALPHA has no meaning which will be evident to the ordinary consumer of financial and banking services in the UK. He also states that he has come across the terms “alpha stocks” or “alpha shares” “which are narrow specialist technical terms describing stocks or shares which purportedly give

enhanced returns with a low risk profile [...] and usually such shares and stocks are opposed to so-called 'beta shares' or 'beta stocks'. In this connection, he provides the definitions from the Collins English Dictionary of "alpha stock" and "beta stock" (Exhibits WLM01).

## **Section 5(4)(a)**

### **Legislation**

34. Section 5(4)(a) states:

"A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or (b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark."

### **Case law**

35. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

"55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

36. Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

## **Goodwill**

### *Ownership and localised nature*

37. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) at 223 as:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

38. The opponent claims to have built up considerable and valuable goodwill and reputation throughout the UK under its mark ALPHA. It claims to have used the mark widely in connection with financial and banking services as well as leasing and investment products since 1989.

39. In support of its claim, the opponent sought to rely upon the finding concerning goodwill as set out in the decision of the Hearing Officer in BL-O-127-17, where he accepted similar evidence as sufficient to demonstrate that the opponent owned goodwill under the sign ALPHA in the consolidated oppositions 405643, 405718 and 405719. It is important of course for the registrar to have due regard to other decisions taken on similar evidence, particularly when they are recent decisions and cover very similar matters, however, the opponent must show that it has an actionable goodwill at the relevant date, which is, in the first instance, the date of application<sup>12</sup>. In BL-O-127-17 the contested mark was applied for on 21 May 2015, more than two years before the date of the application in the proceedings at issue, namely 17 October 2017. Furthermore, here the applicant has specifically raised the issue of the goodwill being localised (in terms of geography and quantity) and insufficient to sustain a passing off action (see below). Nevertheless, having assessed the evidence taking into account the applicant's point as regard the localised nature of the opponent's business in the UK, my conclusion is that the opponent has established the necessary goodwill at the relevant date. My reasons are as follows.

40. The opponent is a Greek bank. It has a UK office in London, i.e. the Branch - this is part of the opponent's legal entity. The Branch is registered at Companies House and is regulated by the UK financial regulator (FCA). ABL is a wholly owned subsidiary of the opponent, it is also incorporated in the UK and registered with the FCA. There are other companies connected with the opponent, and referred to by the opponent as being part of the ALPHA group of companies, but for present purposes, I will limit my considerations to the two mentioned above.

41. The opponent's case is that it provides banking and other financial services in the UK through the Branch and its subsidiary company ABL. Both companies have their place of business in London, have been operative since, at least, 1995 and have been trading under the names ALPHA BANK LONDON LIMITED, ALPHA BANK LONDON, ALPHA BANK and ALPHA PRIVATE BANK; these signs are also used in conjunction with a device mark. The evidence is that the business strategy of ABL is to provide

---

<sup>12</sup> *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O410-11. Use of the applied for mark before its date of application may be relevant. However, the applicant has filed no evidence in these proceedings so there is no impact on the material date which remains as 17 October 2017.

banking services to customers who reside mainly in Greece and in the UK and that the opponent has over 2,500 customers in the UK. The opponent also runs a website based in Greece which can be accessed by UK consumers and can be used to manage their accounts online from the UK. ABL has 4,000 current accounts, over 2,000 fixed term deposit accounts and over 400 loan accounts. In the period 2012-2017, ABL lent to its customers approximately £200 million a year and the deposits held had grown from nearly £450 million in 2012 to £740 million in 2017.

42. The applicant did not dispute that any goodwill which might have been generated in the UK under the earlier ALPHA sign is owned by the opponent. In any event, even if the issue had been raised, I would have found that the opponent, as the holding company of the ALPHA group of companies, owned the goodwill associated with ALPHA and was entitled to proceed in its own name in an action for passing off<sup>13</sup>.

43. As I have anticipated at paragraph 39 above, the applicant argues that the opponent's evidence is inadequate to establish "a sufficient goodwill to support its claim under Section 5(4)(a)"<sup>14</sup>. The reasons it stated are twofold, the first being that "the opponent only operates from one single branch in the UK, namely in the city of London, severely limiting the geographical scope of any goodwill to that of one square-mile in London" and the second, that the opponent admitted having only 2,500 customers in the UK, which, given the size of the UK banking sector, is insufficient to demonstrate goodwill.

44. It is true that the opponent's UK office is located only in London<sup>15</sup>. It is also true that the banking services offered by the opponent through its premises in London are accessible through the opponent's website throughout the UK<sup>16</sup>. That having been said, the opponent has not provided any specific evidence about the geographical spread of its 2,500 consumers in the UK and there is nothing to suggest nationwide marketing/customers - conversely, the evidence relating to ABL marketing indicated a focus on Greek and orthodox communities within the London area and the only two

---

<sup>13</sup> *Williams and Williams v Canaries SeaSchool Slu (Club Sail Trade Marks)*, BL-O-074-10

<sup>14</sup> § 37-39 of submissions in lieu

<sup>15</sup> Although it is not clearly stated, it seems that both the Branch and ABL operate from the same premises in London.

<sup>16</sup> Indeed, in one document (Exhibit WLM19, page 225) it is said that the banking services offered by the London office are accessible even to international clients without them having to physically travel to the UK

donations which confirm an address are based in London. I also consider that London is a very large city and the UK leading financial centre and that the opponent is a foreign bank offering both domestic and international financial services. Looking at the evidence as a whole, including that related to the deposit and loan figures (which clearly indicate a well-established business with significant value) and the fact that the opponent has been trading from its premises in London for over 20 years, I am satisfied that the opponent had at the relevant date a well beyond trivial, but substantially local, goodwill centred on London. The goodwill attaches to the opponent's banking services offered under the marks ALPHA and ALPHA BANK.

45. The next issue is whether the opponent's goodwill, which I found to be established in a specific locality, is capable of preventing registration of a countrywide mark. The applicant has made no submissions on the point. In this connection, I note that in *Chelsea Man Menswear Limited v Chelsea Girl Limited and Another* - [1987] RPC 189 (CA), Dillon L.J. stated that:

“.....However, we have before us the case of plaintiffs with a strong reputation and goodwill in certain parts of the country, particularly Coventry and Oxford Street, which is faced with threats by the defendants to use the name “Chelsea Man” in all or any parts of the country in connection with the sale of men's clothing, in such a manner as is likely to mislead potential customers of the defendants and thereby to injure the plaintiffs' goodwill. Since the intended use by the defendants of the name “Chelsea Man” is nationwide, *prima facie*, it seems to me, the plaintiffs must be entitled to ask for a nationwide injunction. In my judgment, on the facts of the present case, the court would be justified in circumscribing the ambit of the injunction to narrower limits than England and Wales (which are the limits accepted by the plaintiffs) only if it were satisfied that the use by the defendants of the name “Chelsea Man” outside those limits in connection with their business *would not be likely substantially to injure the plaintiffs' goodwill*. I am far from satisfied that this is the case, for a number of reasons.

If it be assumed, for the sake of argument, that the injunction were confined to the three proposed restricted areas, it also has to be assumed that there is a

live possibility, perhaps amounting to a probability, that the defendants with their large resources and wide chain of existing shops, would soon be using the name “Chelsea Man” in trading in towns close to the borders of some or all of those areas.

I do not propose to embark on a further examination of the evidence of which counsel on both sides have given us a careful and helpful analysis. In my judgment, it clearly shows that the use by the defendants of this name or mark even outside such areas would be likely to cause substantial confusion between the plaintiffs' and defendants' respective businesses, and thus to cause damage to the plaintiffs' business within those areas.....”

46. In *Saxon Trade Mark* [2003] FSR 39 (HC), Laddie J. identified different considerations that apply where the senior and junior users have only local goodwills and one proposes to trade in the area in which the other has established goodwill (or, by analogy, makes an application to register a national mark which implies such an intention). In dealing with an appeal from a decision of a hearing officer on behalf of the registrar, the judge stated that:

“32. Mr Foley appears to have construed the section as if it is only concerned with cases where the use of the mark by the proprietor starts after use of the same or a similar mark by someone else. I do not think that this is what the section says. For the prohibition to bite, all that needs to be shown is that, at the time of the application to register, the normal use of the mark by the proprietor would be liable to be prevented by passing off proceedings brought by someone else. It may well be that in most cases this will only arise when the other party had commenced using his mark before the proprietor, but it is not inevitably so and the section does not require it to be so. The fact that the convenient title “proprietor of an earlier mark” is used to designate the other party does not limit the scope of the section. Consider, for example, a case in which one proprietor uses a mark on a retail clothing business in Manchester and the other uses it on a similar business in Plymouth. They commence trade at the same time. Their trades do not compete because of the geographical separation. Assume the Manchester trader registers the mark. Normal use of it

would include use in Plymouth. That would be liable to give rise to a cause of action in passing off (see *Levey (A.A.) v Henderson-Kenton (Holdings) [1974] R.P.C. 617* and *Evans v Eradicure [1972] R.P.C. 808* ). For that reason the registration by the Manchester trader would fall foul of s.5(4)(a) even though the Plymouth trader commenced use of the mark at the same time. For the same reason the Plymouth trader could not register the mark.”

47. It is clear that if the opponent has established a protectable goodwill in an identifiable area, it qualifies for protection in passing off proceedings against a national mark. That is the case here.

#### *Distinctiveness of the ALPHA mark*

48. The applicant also argues that since the term ALPHA is commonly used by other traders in the UK in relation to financial services, the sign has become severely diluted and, as a consequence, the opponent has failed to establish sufficient goodwill in the sign ALPHA in connection with its services across the UK. In *Phones 4u Ltd v Phone4u.co.uk. Internet Ltd [2006] EWCA 244 (Civ)*, Jacob L.J. stated that:

“34. The judge also thought the “descriptiveness” of the name affected the question of whether it had a goodwill. But the name is not descriptive in the sense that anyone would describe a business or shop selling mobile phones as a “Phones 4u” business or shop. It is that sort of name which tells you what the business is, but is also obviously intended to be an invented name to denote a particular business. True it is that it is not particularly inventive — “4u” was a bit in vogue—the sort of thing others might well want to use. For that reason, it would be unlikely to be accepted for registration as a trade mark without some proof of acquired distinctiveness. But distinctiveness for trade mark registration purposes is not the same concept as descriptiveness—it requires more. I think the judge was wrong to say, as he did:

“The phrase ‘Phones 4u’ is not inherently distinctive. It is a descriptive phrase, although not wholly descriptive in that I accept that it is more likely to acquire distinctiveness through use than a wholly descriptive

expression. Nevertheless, there is an onus on the Claimants to satisfy me that it had become distinctive through use.”

This is the language of distinctiveness for trade mark registration, not that for testing whether a goodwill has been established.”

49. In *Associated Newspapers Ltd v Express Newspapers* [2003] FSR 51 (HC), Laddie J. stated that:

“28. As Mr Watson implicitly accepts, there is no requirement in the law of passing off that the claimant's reputation has to be exclusive. There have been a number of cases where a claimant has succeeded even though he was not the only trader with a reputation in the mark. A newcomer who adopts a mark employed by more than one competitor and thereby deceives the public harms each of them. There is no reason in principle and no authority which suggests that because a number of proprietors are harmed, none of them can seek to restrain the interference with their trade.”

50. The upshot is that a party challenging the distinctiveness of a mark must show more than just some use by one or more other traders. There is a suggestion in the evidence that ALPHA is used to indicate some kind of benefit accrued through the financial advisor's skill, however, as Jacob L.J. noted in the case mentioned above, the name is not descriptive in the sense that anyone would employ the term ALPHA to describe the opponent's banking services. I therefore find that the sign ALPHA is distinctive of the opponent's banking services.

### **Misrepresentation**

51. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc. [1990] R.P.C. 341 at page 407* the question on the issue of deception or confusion is:

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

52. The applicant argues that the opponent's evidence does not establish that there has been (or would be) a misrepresentation and that given the degree of attention that consumers will deploy when selecting the services, they will not be misled into believing that the services of the applicant are, or are associated with, the opponent. The fact that the opponent has not adduced evidence of confusion is not essential in order to prove misrepresentation, and would be perverse to require so given that there is no evidence of the applicant's mark being used in the marketplace. In *Neutrogena Corporation and Another v Golden Limited and Another*, [1996] RPC 473, Morritt L.J. stated that:

“The role of the court, including this court, was emphasised by *Lord Diplock* in *GE Trade Mark* [1973] R.P.C. 297 at page 321 where he said:

‘where the goods are sold to the general public for consumption or domestic use, the question whether such buyers would be likely to be deceived or confused by the use of the trade mark is a “jury question”. By that I mean: that if the issue had now, as formerly, to be tried by a jury, who as members of the general public would themselves be potential buyers of the goods, they would be required not only to consider any evidence of other members of the public which had been adduced but also to use their own common sense and to consider whether they would themselves be likely to be deceived or confused.

The question does not cease to be a “jury question” when the issue is tried by a judge alone or on appeal by a plurality of judges. The judge's approach to the question should be the same as that of a jury. He, too, would be a potential buyer of the goods. He should, of course, be alert to the danger of allowing his own idiosyncratic knowledge or temperament to influence his decision, but the whole of his training in the practice of the law should have accustomed him to this, and this should provide the safety which in the case of a jury is provided by their number. That in issues of this kind judges are entitled to give effect to their own opinions as to the likelihood of deception or confusion and, in doing so, are not confined to the evidence of witnesses called at the trial is well established by decisions of this House itself.”

53. So far as the respective services are concerned, the financial services covered by the applicant's specification in Class 36 are identical (or highly similar) to the banking services in respect of the opponent's goodwill. The opponent's goodwill, though local, is significant. Whilst the number of UK consumers is not huge in the context of the banking sector, the evidence is that the opponent's business is a well-established bank, it has been trading from its branch office in London for over 20 years and is turning around millions of pounds a year in loans and deposits. Further, it seems reasonably clear that the opponent's banking services target Greek and orthodox communities in the UK, whom would be likely to know that the opponent is one of the largest banks in Greece.

54. In terms of assessing whether deception will arise, a number of factors must be considered and weighted in the round. One such factor relates to the similarity between the applicant's ALPHA BLUE OCEAN mark and the opponent's ALPHA sign. The applicant did not make any specific submission in relation to the claim under Section 5(4)(a). However, it did make submissions in relation to the similarity of the marks when dealing with the opponent's claim under Section 5(2)(b) which I have taken into consideration. In this connection, the applicant claims that the word ALPHA is not the dominant element and does retain an independent distinctive role within ALPHA BLUE OCEAN. Whilst it accepts that ALPHA BLUE OCEAN will be perceived as made up of two elements, i.e. ALPHA and BLUE OCEAN, the applicant argues that they hang together as ALPHA - BLUE OCEAN. It also argues that the additional concept introduced by the words BLUE OCEAN is sufficient to distinguish the marks. On the other hand, the opponent argues that that whilst the words BLUE OCEAN are also distinctive in relation to the services at issue, the two elements of the mark, i.e. ALPHA and BLUE OCEAN, retain independent distinctive roles within it because they do not 'hang together'.

55. Visually and aurally the marks share the word ALPHA, however, the applied for mark also contains the words BLUE OCEAN which has no counterpart in the opponent's sign. They are similar to a medium degree. Conceptually, the opponent has filed dictionary definitions for the word ALPHA which show that its primary significance is that of the first letter of the Greek alphabet. This concords with my own perception of the word. I therefore agree with the opponent that the word ALPHA will convey in both marks the same identical concept of the first letter of the Greek alphabet. Further, I agree with the opponent that the word ALPHA in the applied for mark does not hang together with BLUE OCEAN to make a meaningful whole. Whilst the additional concept conveyed by the words BLUE OCEAN creates an unexpected juxtaposition, the word ALPHA is likely to be picked out of the applied for mark (particularly given the fact that it is the first part of the applied for mark). In my view, the marks also share a medium degree of conceptual similarity.

56. Taking all of the above into account, would a substantial number of relevant consumers who were familiar with the opponent's use of the sign ALPHA in relation to banking services wrongly believe that the applicant's financial services offered under

the mark ALPHA BLUE OCEAN emanate from the opponent (or were otherwise connected in the course of trade with the opponent)? In my view they would. In particular I consider that a significant number of the opponent's consumers faced with financial services offered under the ALPHA BLUE OCEAN mark would think they are products or services offered under the same parent brand ALPHA. Consequently, I conclude that use of the applicant's mark could result in misrepresentation of the opponent's ALPHA sign.

### **Damage**

57. It follows from my conclusions as to goodwill and misrepresentation that the opponent would suffer damage to its goodwill if the applicant were to use the mark applied for in relation to the services objected to. Such damage could be in the form of there being an injurious association or diversion of trade from the opponent to the applicant.

### **Conclusions**

58. The opposition based on Section 5(4)(a) succeeds and, subject to appeal, the applied for mark is refused registration.

### **Other grounds**

59. It is noted that the opponent's earlier mark is the subject to separate revocation and invalidity proceedings which may have a direct impact on its validity. Ordinarily the Registry would seek the views of the parties on whether to proceed with the opposition and potentially suspend the proceedings. However, given my findings in respect of Section 5(4)(a), which will not be affected by the revocation and/or invalidity proceedings, I shall consider this ground of opposition.

## **Section 5(2)(b)**

60. Section 5(2)(b) of the Act states:

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

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

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

## **Proof of use**

61. As stated in paragraph 4, the proof of use provisions apply to the opponent’s earlier mark. Section 6A of the Act states:

“Raising of relative grounds in opposition proceedings in case of non-use

6A. - (1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

- (a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

62. Section 100 of the Act is also relevant. It states that:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it”.

63. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114.....The CJEU [i.e. the Court of Justice of the European Union] has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29];

*Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at

[22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

## **Genuine use**

64. The relevant period for proof of use purposes is the five-year period ending on the day on which the application was published, namely 28 October 2012 - 27 October 2017. When considering goodwill, I found that the opponent has established a protectable goodwill at the relevant date, i.e. 17 October 2017. I am mindful that the tests relevant to the existence of goodwill and genuine use differ, but I also note what Mr Alexander further observed in *Abanka*<sup>17</sup>: “there is no fundamental problem in using these areas of law [passing-off and genuine use] to some degree as a cross-check on each other, given that they are serving broadly similar purposes”.

65. Although Mr Mackay did not specifically provide information about the number of accounts and/or the proportion of deposits and loans figures which relate to its 2,500 UK consumers in the relevant five-year period, the opponent has consistently and successfully been trading from its premises in London since 1995 (including during the

---

<sup>17</sup> *Abanka DD v Abanca Corporacion Bancaria SA* [2017] EWHC 2428 (Ch) (6 October 2017)

five-year proof of use period) and there is evidence from 2016 that ABL's business strategy concentrates on providing banking services to consumers who reside mainly in Greece and the UK. Consequently, it would be a reasonable inference that on the balance of probabilities a proportion of those deposits and loans figures relating to the period 2012-2017 (which are of significant value) relates to UK consumers. Further, there is evidence of the opponent advertising its services in the UK within the relevant period. Even if the opponent has only one office based in London, the issue is whether the mark has been in genuine use within the jurisdiction and it seems to me that that genuine use need not be geographically widespread. My conclusion is therefore that the mark has been genuinely used in the UK in the relevant period.

### Acceptable use?

66. Another issue I need to consider is whether use of a mark is acceptable use of the mark in suit. The applicant has made no submissions on the point. The registered mark is the word ALPHA in ordinary typeface. The opponent has filed extensive evidence of use; this includes use of (a) the words ALPHA BANK LONDON LIMITED and (b) the words ALPHA BANK or ALPHA PRIVATE BANK alongside the device



mark . In considering the issue, I am mindful of the guidance of the CJEU in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, which concerned the use of one mark with, or as part of, another mark:

“31. It is true that the ‘use’ through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas ‘genuine use’, within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, ‘use’ within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish ‘use’ within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.

32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, the ‘use’ of a mark, in its literal sense, generally encompasses both its

independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35 Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)". (emphasis added)

67. In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was) as the Appointed Person stated:

"33. .... The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period...

34. The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter's distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b)

what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all."

68. Although this case was decided before the judgment of the CJEU in *Colloseum*, it remains sound law so far as the question is whether the use of a mark in a different form constitutes genuine use of the mark as registered. The later judgment of the CJEU must also be taken into account where the mark is used as registered, but as part of a composite mark.

69. Looking first at use of the mark ALPHA as part of ALPHA BANK LONDON LIMITED, I find that the average consumer of banking services would regard the words BANK LONDON LIMITED as indicating the nature of the company and the word ALPHA as having an independent distinctive role within ALPHA BANK LONDON LIMITED. The word ALPHA has the same distinctive character when it is used as a part of ALPHA BANK LONDON LIMITED as it has when used alone. I extend the same conclusions to the use of ALPHA BANK or ALPHA PRIVATE BANK alongside the device mark<sup>18</sup>. The presence of the device mark alongside the words ALPHA BANK or ALPHA PRIVATE BANK is not such as to alter the distinctive ALPHA mark as registered. Consequently, the use shown qualifies as genuine use of the mark ALPHA as registered.

### **Fair specification**

70. The final aspect to consider relates to the services. It is necessary to decide upon a fair description for the services for which genuine use has been shown and which falls within the parameters of the specification. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

---

<sup>18</sup> See in this connection Case T-171/17, *M & K Srl v European Union Intellectual Property Office*.

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

71. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

72. The opponent’s specification of services in class 36 is *financial services*. The opponent identifies itself as a bank and has always used the mark ALPHA in conjunction with the word BANK. The evidence shows that the services offered by the opponent relate to various forms of bank accounts, including deposit and loan accounts, for business and individuals. In my view, the average consumer would describe the services provided by the opponent as *banking services*. That term is an appropriate sub-category of financial services and a fair description of the use made. Accordingly, the appropriate specification for the mark on the basis of the use proven is:

**Class 36:** *banking services*

### **Section 5(2)(b) case law**

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

- (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 great 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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

**Comparison of services**

74. In *Gérard Meric v OHIM*, Case T- 133/05, the 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”.

75. The services to be compared are:

Applied for services	Opponent’s services
Financial services	Banking services

The applied for *financial services* encompass the opponent’s *banking services*. The services are identical on the *Meric* principle.

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

76. As the case law above indicates, it is necessary for me to determine who the average consumer is for the services at issue; I must then determine the manner in which these services will be selected in the course of trade. 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.”

77. The average consumer of the parties’ financial and banking services comprises the general public as well as businesses, traders and intermediaries in the financial services sector. Because of the high importance of financial transactions to most consumers, they are likely to pay an above average degree of attention when selecting a service provider. The purchase may be made visually from a website, brochure, prospectus, etc., or aurally such as in their local branch of a bank, over the telephone or via a broker, financial advisor or other intermediary.

## **Distinctive character of earlier mark**

78. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*<sup>26</sup>, 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).”

79. The applicant relies on ‘state of the register evidence’ and evidence including companies’ names and Internet searches to support its claim that the word ALPHA is low in distinctive character. However, in *Henkel KGaA v Deutsches Patent- und Markenamt*, Case C-218/01, the CJEU found that:

“65... The fact that an identical trade mark has been registered in one Member State as a mark for identical goods or services may be taken into consideration by the competent authority of another Member State among all the circumstances which that authority must take into account in assessing the distinctive character of a trade mark, but it is not decisive regarding the latter’s decision to grant or refuse registration of a trade mark.

On the other hand, the fact that a trade mark has been registered in one Member State for certain goods or services can have no bearing on the examination by the competent trade mark registration authority of another Member State of the distinctive character of a similar trade mark for goods or services similar to those for which the first trade mark was registered.”

80. In *Zero Industry Srl v OHIM*, Case T-400/06, the GC stated:

“73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘... there are no indications as to how many of such trade marks are effectively used in the market’. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71). “

81. In *Nude Brands Limited v. Stella McCartney Limited* [2009] EWHC 2154 Ch, Floyd J. stated:

“29. Whilst the use by other traders of the brand name NUDE in relation to perfume may give those traders relative rights to invalidate the mark, it does not give those rights to any defendant. I am not at this stage persuaded that this evidence has a bearing on any absolute ground of invalidity. It certainly does not go as far as establishing ground 7(1)(d) – customary indication in trade. Ground 7(1)(b) is concerned with the inherent character of the mark, not with what other traders have done with it. The traders in question are plainly using the mark as a brand name: so I do not see how this use can help to establish that the mark consists exclusively of signs or indications which may serve to indicate the kind or quality or other characteristics of the goods, and thus support an attack under 7(1)(c).”

82. What a party challenging the distinctiveness of a registered trade mark must show on the evidence is that the mark has become generic or incapable of distinguishing. The applicant’s evidence showing that some businesses were registered or have been

trading in the UK with ALPHA in their company names is not material. Concerning the evidence relating to the meaning of the word ALPHA in the financial sector, the opponent referred me again to BL -O-127-17, where the Hearing Officer dealt with an argument which seems to come very close to the submissions made by the applicant in the present case:

“82) The opponent’s mark consists of the word ALPHA. This is likely to be understood as a reference to the first letter of the Greek alphabet. There is evidence from the applicant that it has two meanings in the field of finance. I note these, but both appear to relate to specialised activities, and it is not clear to me that either meaning would enter the minds of the consumer of the opponent’s services. As conceded by Mr Hill, the word may be perceived as an allusion to “first” or “most prominent”. I note the applicant’s evidence illustrating numerous other marks being used in the field of finance containing the word ALPHA. This, together with the previous points, leads me to conclude that the mark is endowed with a medium level of inherent distinctive character, neither low, nor high.”

83. Whilst the Hearing Officer decided that case on the basis of the evidence before him, I reach the same conclusions as he did in that case. Though some of the articles exhibited refer to the word ALPHA being used in financial jargon, the applicant has not put forward any specific evidence to establish that the average consumers of the opponent’s services are actually familiar with the alleged meaning of the word, especially when one considers that the sense in which ALPHA is allegedly used is not particularly clear and does not appear in any dictionary. In these circumstances, I reject the applicant’s submission that ALPHA will be readily understood as a clear description of any characteristic of banking services.

84. As I have already found, the ordinary significance of the term ALPHA is that of the first letter of the Greek alphabet. Consequently, the earlier ALPHA mark has no obvious relation with financial or banking services and has an average degree of distinctive character. Whilst the opponent has shown use of the mark in the UK, it operates only from a single branch and the scale of use is not sufficient to have enhanced its distinctive character.

## Comparison of marks

85. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

86. It would be wrong, therefore, artificially to dissect the 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 created by them. The marks to be compared are:

<b>Applied for mark</b>	<b>Opponent's mark</b>
ALPHA BLUE OCEAN	ALPHA

87. The earlier mark consists of a single word, ALPHA, which, accordingly, comprises the sole aspect of its overall impression. In relation to the applied for ALPHA BLUE OCEAN, this comprises three words, none of which is more visually prominent than the others; they share equal prominence in the mark. As regards the independent distinctiveness of the elements of the mark, I have already dealt with the parties' submissions on the role played by the element ALPHA in the applied for mark and I stated my view that whilst the phrase BLUE OCEAN forms a unit, conveying the idea of an ocean of blue colour, ALPHA BLUE OCEAN does not because the word ALPHA

does not hang together with BLUE OCEAN to make a meaningful whole. There is no blend of meaning and significance. Consequently, the ALPHA component in the applied for mark retains an independent distinctive role. I also repeat my view that the marks are visually, aurally and conceptually similar to a medium degree.

### **Likelihood of confusion**

88. 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 marks may be offset by a greater degree of similarity between the respective services and vice versa. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has retained in his mind.

89. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective services come from the same or a related trade source). This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“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.”

90. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C., 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.

91. I agree with the opponent that the guidance in *Medion* has a resonance in the present case. The correct approach to this is as summarised in the judgment of Arnold J. in *Whyte and MacKay Ltd v Origin Wine UK Ltd & Anor* [2015] EWHC 1271 (Ch) at §§18-21:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the

components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

92. Earlier in my decision I found that the marks are visually, aurally and conceptually similar to a medium degree. The competing services are identical and will be selected visually and aurally with an above average degree of attention. The earlier mark consists of the single word ALPHA which has an average degree of distinctive character. The ALPHA component of the applied for mark retains an independent distinctive role within ALPHA BLUE OCEAN.

93. I have already found that there will be misrepresentation. In *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, Lewinson L.J. had previously cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. He pointed out that it is sufficient for passing off purposes that “a substantial number” of the relevant public are deceived, which might not mean that the average consumer is confused. However, in the light of the Court of Appeal’s later judgment in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, it seems doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes. This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments.

94. For similar reasons to those outline at paragraph 56 above, I find that there is a likelihood of confusion. Whilst the addition of the words BLUE OCEAN is sufficient to avoid direct confusion, notwithstanding the average consumers higher than normal degree of attention, they are likely to believe that the respective identical services come from the same or economically linked undertakings. The word ALPHA is likely to be picked out of the applied for mark and the words BLUE OCEAN are likely to be

perceived as an addition to a pre-existing mark. There is a likelihood of indirect confusion.

## **Conclusion**

95. The opposition under Section 5(2)(b) also succeeds.

## **Costs**

96. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Tribunal Practice Notice (TPN) 2/2016. Using that TPN as a guide, I award costs to the opponent on the following basis:

Official fees:	£200
Preparing a statement and considering the other side's statement:	£300
Filing evidence and considering the other side evidence:	£1,000
Written submissions:	£300
Total:	£1,800

97. I order Alpha Blue Ocean Advisors Limited to pay Alpha Bank A.E. the sum of £1,800 as a contribution towards its costs. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case, if any appeal against this decision is unsuccessful.

**Dated this 15th day of February 2019**

**Teresa Perks**

**For the Registrar**

**The Comptroller – General**