

BL O-517-20

TRADE MARKS ACT 1994

IN THE MATTER OF

UK APPLICATION NO 3376377 IN THE NAME OF ATHERACES LIMITED
IN RESPECT OF A SERIES OF THREE TRADE MARKS:



AND

AN OPPOSITION THERETO UNDER NO 416611
BY CYAN BLUE ODDS LIMITED

Background and pleadings

1. On 18 February 2019, Attheraces Limited (hereinafter 'the applicant') applied to register the series of three marks shown on the cover page of this decision. The application was made for the following services:¹

Class 41

Entertainment; sporting and cultural activities; provision of betting, gambling and gaming services through physical and electronic sites and telephonic centres; organising and conducting lotteries; electronic betting, gaming, gambling and lottery services provided online, via telephone or via a television channel; betting and gambling facilitation services; organising and conducting competitions; gambling information provided on-line from a computer database or via the Internet; gaming services for entertainment purposes; factual information services relating to sport; information and advisory services relating to the aforesaid services.

2. The application was published on 15 March 2019, following which, on 17 June 2019, Cyan Blue Odds Limited (hereinafter 'the opponent') filed an opposition against all services in the application.

3. The opponent bases its case on the following sections of the Trade Marks Act 1994 (the Act):

Under 3(1)(b) because the application consists of the words 'QuickBet' and 'a generic hand device'. The opponent submits 'QuickBet' is entirely descriptive of all the services it seeks to protect, which by its very nature, makes the trade mark application devoid of distinctive character.

Under 3(1)(c) because the application consists of the words 'QuickBet' and 'a generic hand device'. The opponent submits the term 'QuickBet' is entirely

¹ International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).

descriptive for betting, gambling and gaming services, being made up from two clear English words, 'QUICK' and 'BET' which is emphasised by the capitalisation of the letters Q in 'QUICK' and B in 'BET'.

Under 3(1)(d) because a 'quick bet' is understood by consumers to be a bet placed on a particular activity, typically a sporting activity, which takes very little time to process before it is placed. This feature is used as a shortcut when a consumer wishes to place a bet on a variety of platforms. Consequently, the term 'Quick Bet' should not be monopolised by one entity.

4. For the purposes of the 5(4)(a) ground of opposition, the opponent relies on its unregistered sign QUICKBET and claims that it has used it for the following services, throughout the UK, since 12 March 2014:

Provision of betting, gambling and gaming services through physical and electronic sites; organising and conducting lotteries; electronic betting, gaming, gambling and lottery services provided online; gambling information provided on-line from a computer database or via the Internet; factual information services relating to sport; information and advisory services relating to the aforesaid services.

5. It submits that its opposition under 5(4)(a) should succeed because in using any trade mark which includes the term 'QUICKBET', the applicant will create a likelihood that a consumer will be confused, believing that the entity offering the services will have an economic link to Cyan Blue Odds Limited. As such, this misrepresentation is likely to affect the goodwill which has been built up by Cyan Blue Odds Limited and cause damage to the QUICKBET trade mark.

6. The applicant filed a counterstatement in which it denies all of the grounds of opposition. It puts the opponent to 'strict proof of use' of its goodwill in QUICKBET for the services claimed under the 5(4)(a) ground of opposition.

7. With regard to the section 3 grounds the applicant submits:

“The contested mark comprises of [sic] more than just the verbal element QUICKBET and must be considered as a whole. The overall mark is sufficiently distinctive for registration.”

8. The opponent filed evidence. The parties were asked if they wanted the decision to be made following a hearing or from the papers. Neither side elected to be heard and both parties filed written submissions in lieu of a hearing. The applicant is represented by HGF Limited. The opponent represents itself. I make this decision following careful consideration of the papers.

Opponent’s evidence

A witness statement by Holly Down and exhibits HD1 to HD8

9. Ms Down is responsible for managing the opponent’s legal interests worldwide, a position she has held since 7 December 2015. Her statement is dated 14 January 2020.

10. I do not intend to summarise the evidence here but will refer to it as necessary throughout this decision.

Preliminary issue

11. In its evidence and submissions, the opponent makes reference to other trade marks before the EUIPO which it submits were ‘considered non-distinctive for registration’. The examples of marks provided under this heading are not on all fours with the matter before me in this case. The first relates to betting but the elements of the mark are different from those in this application. The remaining two relate to computer hardware in class 9 and downloadable exercise videos in class 41. In addition, the reason for the refusal of each of these marks has not been provided in evidence.

12. The opponent also provides examples of marks which it concludes were ‘rejected for absolute grounds in the UK’. These marks are simply shown on the UK register as refused. The reason for the refusal is not known and has not been provided in evidence. In any case, each of the examples given is a word-only mark and comprises different words from those at issue in this case.

13. None of these examples is helpful to the opponent. I will make this decision on the facts before me, according to the relevant legal provisions.

DECISION

14. Section 3(1) of the Act is as follows:

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

(a) ...

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade:

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

15. It must be borne in mind that these grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c), but still be objectionable under section 3(1)(d) and/or 3(1)(b) of the Act. In *SAT.1 SatellitenFernsehen GmbH v OHIM*², the Court of Justice of the European Union (‘CJEU’) stated that:

² Case C-329/02 P

“25. [...] it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

16. The relevant public from whose perspective the opposition under these grounds must be assessed is, in this case, a member of the adult public, as the application relates to gaming, betting and gambling services. It also includes professional and business members of the industry as some of the services, such as ‘betting and gambling facilitation services’ would be used by them, rather than members of the public.

The opposition under s.3(1)(b)

17. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and

thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

18. Under this ground the opponent submits:

"In the TM8, the Applicant stated that 'the contested mark comprises of more than just the verbal element QUICKBET and must be considered as a whole. The overall mark is sufficiently distinctive for registration.'

The Application is a logo mark consisting of one word 'QUICKBET' in sentence case letters, with a generic hand device. The word element of the trade mark amounts to the words 'Quick' and 'Bet', including the capitalization of the letters 'Q'

and 'B' which essentially creates two separate words contained within one word, 'Quick Bet'."

19. The opponent submits that in light of the services for which the trade mark applicant seeks registration:

"...it is clear that 'QuickBet' is entirely descriptive of all the services it seeks to protect, which by its very nature, makes the trade mark application devoid of distinctive character."

20. The opponent concludes:

"The global appreciation of the visual, aural or conceptual impact of the mark in question must be based on the overall impression given by the mark, bearing in mind its distinctive and dominant components. The term "QuickBet" is the dominant element of the trade mark, with the 'hand device' having no phonetic or conceptual impact on the overall impression of the trade mark. Despite this, the Applicant claims that the addition of the hand device makes the trade mark registrable.

We disagree with the assumption of the Applicant that adding a generic hand device to the mark creates a distinctive mark."

21. In *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2013] F.S.R. 29, Arnold J. held that a descriptive word with a minor figurative embellishment was, as a whole, devoid of any distinctive character. He found that:

"116. Taking all of the evidence into account, I conclude that the CTM is precluded from registration by art.7(1)(c) in relation to the services in issue because NOW would be understood by the average consumer as a description of a characteristic of the service, namely the instant, immediate nature of the service. The figurative elements of the CTM do not affect this conclusion. In the alternative, if the inclusion of the figurative elements means that the CTM does not consist exclusively of the

unregistrable word NOW, I consider that the CTM is devoid of distinctive character and thus unregistrable by virtue of art.7(1)(b).

117. I would comment that it appears to me that PCCW only succeeded in obtaining registration of the CTM because it included figurative elements. Yet PCCW is seeking to enforce the CTM against signs which do not include the figurative elements or anything like them. That was an entirely foreseeable consequence of permitting registration of the CTM. Trademark registries should be astute to this consequence of registering descriptive marks under the cover of a figurative figleaf of distinctiveness, and refuse registration of such marks in the first place.”

22. A similar point arose in *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch), when Birss J. found that the registration of the descriptive word PINK (for clothing) with the letters in the colour pink, and in a unique form of script, and within a rectangular box, did not prevent the mark being *prima facie* unregistrable under s.3(1)(c). In the alternative, the mark was excluded by s.3(1)(b).

23. See also the judgment of the General Court in *Spirig Pharma v EUIPO*, Case T-261/15 ('Daylong' with stylised letter 'o' for cosmetics and medications that last all day), *Bayer Intellectual Property v EUIPO*, Case T-123/18 (stylised heart device for services for treating cardiovascular diseases) and Case T-361/18, *APEDA v EUIPO* ('Sir Basmati' 'Rice' and device of a man in a turban with other figurative elements).

24. The applicant submits:

“39. The figurative element is visually significant and will not be dismissed or disregarded by the relevant public, which will exercise at least a medium degree of attention when faced with the mark. The contrast between the figurative device and QuickBet elements and the rectangular background is also noticeable. These features suffice to render the contested mark visually distinctive and as Section 3(1)(b) applies to marks which are devoid of any distinctive character, the mark does not fall within the provision.”

25. The opponent defines a 'Quick Bet' as a bet placed on a particular activity, typically a sporting activity, which takes very little time to process before it is placed. This feature is used as a shortcut when a consumer wishes to place a bet. The applicant has not contested this submission, rather it points to the combination of elements in its mark which it concludes result in a distinctive whole.

26. The words 'Quick' and 'Bet' can be clearly identified in the application, as both the 'Q' of Quick and the 'B' of Bet are presented as capital letters, while the rest of the mark is shown in lower case. The words are presented in what looks to be a standard typeface and they themselves are non-distinctive for the services at issue, which are, primarily, betting and gambling services.

27. With regard to the shading/colour in the series of marks, and the plain rectangular background, I do not find that this adds anything in terms of distinctiveness.³ Case law makes clear that it is commonplace for traders to present words in a variety of shades/colours and on backgrounds which enable the words to be seen. Such presentation does not result in otherwise non-distinctive/descriptive words achieving distinctiveness.

28. The device which is present at the start of the mark is an outline of a hand pointing upwards with an extended index finger. Above the finger are two radiating semi-circles. Being presented as it is at the start of the mark and being rendered in a size equivalent to the first letter of the word element, the capital letter 'Q', means that it is noticeable within the mark as a whole. The issue is whether the mark as a whole is capable of acting as a badge of origin to the extent that it is prima facie registerable.

29. The opponent has not provided any evidence to support its position that the hand is in fact generic, nor has it provided any evidence to show that a hand device is commonly used in the context of betting and gambling services.

30. Consequently, it is incumbent on me to determine whether the hand device is sufficiently distinctive to result in the application, as a whole, satisfying the requirements of section 3(1)(b). The hand is a simple outline, with no additional stylisation or detail. The lines above

³ No colour claim is made with regard to the series of three marks which make up the application.

the index finger can be seen as a button, or action lines denoting the act of pressing. In either case, it will be seen by the average consumer as a simple picture of a hand pressing a button. It is clear from the evidence filed by the opponent, in the form of blogs and help pages, that a number of betting service providers offer services where bets can be placed online by clicking or (in the age of touch screen) pressing a button. In the context of such services which are often accessed by pressing a button, the hand device does not add a distinctive feature to the applicant's mark. The mark as a whole consists of a number of non-distinctive elements which together do not amount to a trade mark which can operate as a badge of origin for one particular undertaking. The whole, in this case, is not more than the sum of its parts.

31. In conclusion, the trade mark applied for will not perform its necessary origin function and is non-distinctive. **The opposition under section 3(1)(b) succeeds.**

The opposition under section 3(1)(c)

32. The opponent provides the same claims for its opposition under both 3(1)(b) and 3(1)(c). Specifically, the opponent describes the hand device in the applicant's trade mark as 'generic' and 'non-distinctive' rather than 'descriptive' of the services.

33. Whilst it adds nothing to the outcome, I would have found that the 'hand device' as described earlier, would simply be seen as a hand pressing a button. In the context of the mark as a whole and in relation to the services for which the application is made, would be seen as someone pressing a button to place a quick bet. Consequently, the sign as a whole is descriptive.

The opposition under section 3(1)(d)

34. To succeed under this ground the opponent needs to show that the applicant's mark consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade. The opponent has not provided a single exhibit which shows the words Quick Bet used with a hand device. In other words, there is no evidence to show that the application as a whole is commonplace for the relevant betting and gaming services. Consequently, the ground under 3(1)(d) fails.

The opposition under section 5(4)(a)

35. Section 5(4)(a) of the Act states:

“5(4) 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...

(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.”

36. In *Discount Outlet v Feel Good UK*,⁴ 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).”

⁴ [2017] EWHC 1400 IPEC

37. 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.”

The relevant date

38. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*,⁵ Mr Daniel Alexander QC, sitting as the Appointed Person, considered the relevant date for the purposes of s.5(4)(a) of the Act:

“43. In *SWORDERS TM O-212-06* Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

39. The filing date of the subject trade mark is 18 February 2019. No evidence or submissions have been advanced which claim a prior date of use by the applicant and accordingly, the matter need only be assessed as of that date.

⁵ BL O-410-11

Goodwill

40. The first hurdle for the opponent is to show that it had the required goodwill at the relevant date. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), the Court stated:

“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.”

41. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

42. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

43. The opponent claims to have continuous use of the term ‘Quick Bet’ since 2014 with huge online presence and reach and concludes that it has acquired substantial goodwill in the term.

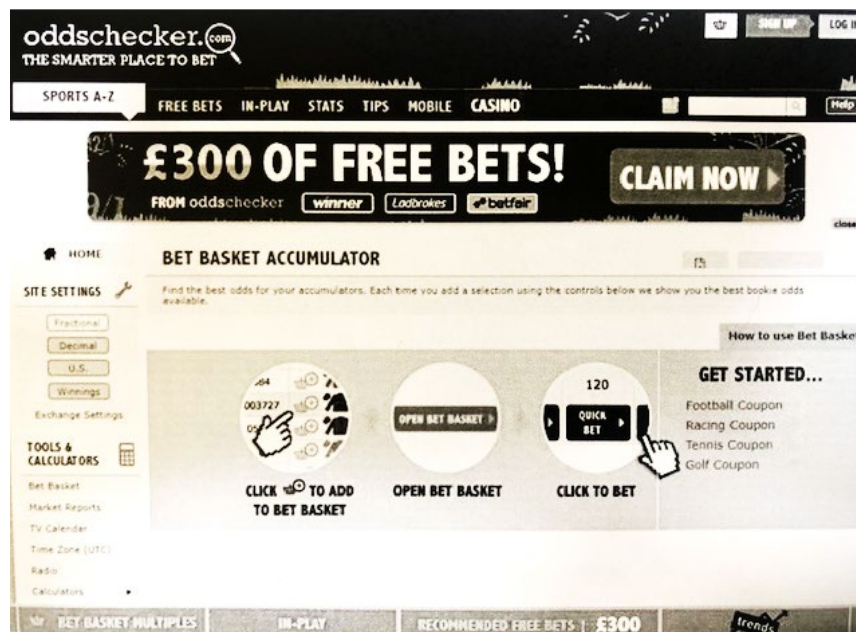
44. The applicant submits that the opponent’s evidence of goodwill is lacking and concludes that it has not demonstrated goodwill in Quick Bet in the UK before the relevant date for any services.

45. Evidence of goodwill is provided by the opponent’s witness Ms Down in exhibits HD1 and HD2 of her evidence.

46. HD1 is a single page described as a series of tweets from 2012 from Oddschecker (the opponent’s online business) referencing the term ‘Quick Bet’. I reproduce it in full, below:

- Scott Payne** @Scottgolf · Mar 21, 2015
 @Oddschecker Have @bet365 withdrawn from "quickbet". The option has disappeared and u now have to click through each selection on mobile 🤦
- Rob Sowerby** @robds101 · Oct 26, 2014
 @betfair Not being able to click 'quickbet' with you when pricing accas up on @oddschecker must cost you a lot of business.
- #MADSTACKS** @SwitchDempsey · Aug 30, 2014
 Replying to @Oddschecker
 @Oddschecker why is it not possible? Would make your site/app the best betting buddy ever. Really handy when can quickbet.
- Paul Gillespie** @paulgil23 · Dec 14, 2013
 Replying to @jimbigpant
 @jameskevinberry @Oddschecker quickbet to BV works for me on the main site as well. Not sure why not working for you.
- Henry** @downallstar · Nov 20, 2012
 @Oddschecker you're new Quickbet function is very slow (15secs to load), and bets not in betslip when directed to bookies site.

47. The first page of exhibit HD2 is from WayBackMachine dated 12 March 2014:



48. The remaining pages of the exhibit HD2 are mostly from Australian and South African websites which are not relevant as it is clear from case law such as *Starbucks (HK) Ltd & Anor*

*v British Sky Broadcasting Group PLC & Ors*⁶ that the relevant public for the purpose of assessment of goodwill under s.5(4)(a) is the UK public.

49. The pages taken from the UK are from www.moneyshed.co.uk. They are help pages relating to Quick Bet betting systems and are dated January 2018. However, they clearly refer to a service offered by Coral and not by the opponent.

50. The sum total of the evidence of the opponent's goodwill is the two exhibits reproduced in full in the preceding paragraphs. Ms Down confirms that the opponent's Oddschecker.com website is available in the UK. However, that does not mean that the examples of tweets provided in the first exhibit are UK customers, nor does any of the tweets originate from the opponent.

51. The second page reproduced above is taken from Oddschecker.com. There is no evidence to show how many UK consumers visit this site or how many have been exposed to 'quick bet' as a sign used by the opponent. I have no indication of the number of UK customers who use the 'quick bet' link shown in the third circle on the website page to place bets, nor any evidence which would enable me to determine how many consumers in the UK would see 'Quick Bet' as an indication that the opponent is the originator of the services. It is for the opponent to show that the 'quick bet' sign is distinctive of the opponent and that it will be understood by the UK public as referring to the opponent's services. The so called 'attractive force' which brings in customers must be demonstrated by evidence.

52. In short, there is nothing before me to show that the opponent had generated any goodwill under the sign QUICKBET for the claimed services, at the relevant date.

53. In addition, I note that the opponent has submitted throughout these proceedings that the words 'Quick Bet' are entirely descriptive for betting services. I have found that to be the case in my assessment of the s.3 grounds earlier in this decision. That being the case, it is for the opponent to file evidence sufficient to show that the relevant UK consumer of the services at issue would identify the opponent as the owner of the goodwill in the Quick Bet sign. The evidence filed falls a long way short of satisfying that requirement.

⁶ [2015] UKSC 31

54. Accordingly, the applicant's claim under this ground fails at the first hurdle. **The opposition under section 5(4)(a) of the act fails.**

OUTCOME

55. The opponent has succeeded under the section 3(1)(b) ground which means that the application will be refused.

COSTS

56. The opponent has been mostly successful and is therefore, in principle, entitled to a contribution towards its costs. As the applicant is unrepresented, at the conclusion of the evidence rounds the Tribunal invited it, in the official letter dated 21 April 2020, to indicate whether it wished to make a request for an award of costs, and if so, to complete a pro-forma including a breakdown of its actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the defence of the opposition; it was made clear to the opponent that if the pro-forma was not completed then no costs would be awarded. The opponent did not respond to that invitation. Consequently, I make no order as to costs.

Dated this 20th day of October 2020

**Al Skilton
For the Registrar,
The Comptroller-General**