

**BL O/396/20**

**TRADE MARK ACT 1994  
IN THE MATTER OF APPLICATION NUMBER 3305252  
BY RELIGIOUS TECHNOLOGY CENTER  
TO REGISTER THE FOLLOWING MARK IN CLASSES 16 AND 41:**

**SUCCESS THROUGH COMMUNICATION COURSE**

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MARK IN CLASSES 16 AND 41:**

**SUCCESS THROUGH COMMUNICATION COURSE**

**Background**

1. On 20 April 2018, Religious Technology Center (“the applicant”) applied to register the above trade mark for the following goods and services in classes 16 and 41:

Class 16: Publications, namely, course materials pertaining to philosophy, religion and education relating to philosophy and religion.

Class 41: Educational services, namely, conducting courses in the fields of philosophy, religion and education relating to philosophy and religion.

2. On 9 May 2018 the Intellectual Property Office (‘IPO’) issued an examination report in response to the application. The following objection was raised:

*“The application is not acceptable in classes 16 and 41. There is an objection under Section 3(1)(b) of the Act as the mark is devoid of any distinctive character.*

*It is considered that the average consumer, when greeted with the words ‘SUCCESS THROUGH COMMUNICATION COURSE’ would not attribute any trade mark significance to the sign. They would instead perceive the sign as a banal statement intimating that the course and course materials being offered will allow the recipient to achieve success through communication.*

*The mark sends a message that could apply to any undertaking and therefore it is considered that it cannot act as a badge guaranteeing the commercial origin of the goods and services and does not distinguish your goods and services from those of another undertaking.”*

A period of two months was granted for the agent to respond.

**The applicant’s case for registration**

3. After a request for an extension of time, on 5 September 2018 Forrester’s IP LLP, (the agent) acting on behalf of the applicant submitted written arguments in support of the marks alleged inherent distinctiveness. These were:

- The goods and services claimed in the application are narrowly drafted and restricted to course material and courses relating to philosophy, religion and education relating to philosophy and religion, and it is therefore inappropriate to suggest that the mark would be perceived as a banal statement.

- The examiner obviously recognises that the mark is not descriptive in relation to the goods and services for which protection is sought, but nevertheless seeks to raise an objection that the mark is non-distinctive on the basis of grounds which allege that the mark conveys a message. Clearly that is inappropriate and an objection that the mark is non distinctive must be made as a stand-alone objection.
- The practice manual identifies various categories of slogans which may be objectionable i.e., descriptive phrases, terms normally used in advertising, value statements, inspirational or motivational statements, customer service statements and purely promotional statements. The mark does not fall into any of those categories but into the categories of acceptable slogans listed i.e. those that are ambiguous or imaginative or where some further reflection is required in order to arrive at what is being conveyed by the mark.
- The mark is an unusual combination of words which do not make up a recognised phrase and therefore inherently possesses the capability to identify the goods and services of the applicant from those of other undertakings.

4. The examiner was not persuaded to waive the objection based on the submissions above and as such, the agent requested a hearing. A hearing was held on 17 January 2019 and was attended by the hearing officer, Morwenna Bell, and Mr Wake of Forresters IP LLP, representing the applicant. At the hearing Mr Wake reiterated many of the points made in his earlier correspondence, and drew the Hearing Officer's attention to the fact that the majority of the Internet hits provided by the examiner to support the objection, referred to his client. He submitted that very little alternative use by others, of the term 'success through communication' can be found. Mr Wake considered that the words were therefore a unique and unusual combination of words that are not used by others and which require further consideration before any message could be conveyed. He added that the examiner's response to the agent on 3 October 2018 which stated that the mark is 'hinting at the goods and services at issue' is an insufficient ground to maintain an objection. Mr Wake went on to say that the mark must be looked at as a whole and whereas the word 'course' would normally be perceived as descriptive, he felt that it made a difference in this instance. Mr Wake submitted that the mark is not just a banal statement, but instead it denotes a specific course. In correspondence and at the hearing Mr Wake gave details of the applicant's identical marks which have been accepted in the US, and also details of prior UK registrations, which he felt to be on a par with this application. He appreciated that whilst the UK IPO is not bound by these prior registrations, due note should be taken of these when it is known that the USPTO adopts a rigorous examination process similar to that of the UK IPO. These Internet references show use of the mark by the applicant relating to courses and

literature to improve communication skills. The hearing officer stated that given the broad application which can be applied to the term 'communication' it would seem that the narrow specification does not help to avoid the objection.

5. After further consideration the hearing officer Ms Bell maintained the objection as she felt it clear that the mark is merely intended to form the title of a specific course. However, this does not necessarily render the sign registrable. If the words used to title the course could be readily understood by the relevant consumer and be used in the same way by other providers in the field, then the only conclusion available must be that the sign is devoid of distinctive character. Ms Bell informed Mr Wake of her reasons for maintaining the objection in her hearing report dated 23 January 2019 and allowed two months for the filing of evidence of use of the mark.

6. After three requests for extensions of time totalling 5 months, on 19 August 2019, the agent submitted evidence of use of the mark. On 9 September 2019 Ms Bell informed the agent that she did not consider the evidence demonstrated that the mark had acquired distinctive character. This was because of the manner of use of the mark which in her opinion was not as a trade mark, but merely as the name and content of a course which could be used by other providers. As the agent had not had the opportunity to discuss the evidence at the previous hearing, another hearing, before another hearing officer was offered. The agent took the opportunity of this and the hearing came before me on 17 December 2019.

7. Having fully reviewed the evidence of use submitted, I did not consider that this showed that the mark had gained distinctive character because of the use made of it and I maintained the objection (details of the evidence can be seen below). Mr Wake asked whether there was some way that the specification could be limited to overcome the objection. I could not see any way that it could be, but I allowed three months for Mr Wake to put forward any specification that he thought could potentially overcome the objection.

8. On 17 March 2020 Mr Wake proposed limitations to the specifications, further details are given in paragraph 32 below. This limitation did not render the evidence of acquired distinctiveness any more persuasive than it had previously.

On 18 March 2020 I wrote to the agent informing them of my reasons for maintaining the objection and formally refused the application.

9. On 20 April 2020 a form TM5 was received requesting a statement of reasons for the decision to refuse the application. I am now obliged, under Section 76 of the Trade Marks Act 1994 and Rule 69 of the Trade Mark Rules 2008, to state the grounds of my decision and the material used in arriving at it.

## The prima facie case for registration under Section 3

### The Law

10. Section 3(1) of the Act reads as follows:

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

*(a) ...*

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

*(c) ...*

*(d) ...*

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

### The relevant legal principles – Section 3(1)(b)

11. The general interest to be taken into account in each case must reflect different considerations according to the ground for refusal in question. In relation to section 3(1)(b) (and the equivalent provisions referred to above upon which section 3(1)(b) is based) the Court has held that “...*the public interest... is, manifestly, indissociable from the essential function of a trade mark*” (Case C-329/02P *Satelliten Fernsehen GmbH v OHIM ‘SAT.1’*). The essential function thus referred to is that of guaranteeing the identity of the origin of the goods or services offered under the mark to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin (see paragraph 23 of the above mentioned judgment). Marks which are devoid of distinctive character are incapable of fulfilling that essential function. Moreover, the word ‘devoid’ has, in the UK at least, been paraphrased as meaning ‘unpossessed of’ from the perspective of the average consumer.

12. There are a number of judgements of the Court of Justice of the European Union (“CJEU”) which deal with the scope of article 3(1)(b) of the Directive and Article 7(1)(b) of the Regulation, whose provisions correspond to Section 3(1)(b) of the UK Act. I derive the following main guiding principles from the cases notes below:

- An objection under Section 3(1)(b) operates independently of objections under section 3(1)(c) – (*Linde AG (and others) v Deutsches Patent-und Markenamt*, Joined Cases C-53/01 to C-55/01, paragraphs 67 to 68);

- For a mark to possess a distinctive character it must identify the product (or service) in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product (or service) from the products (or services) of other undertakings (*Linde* paragraphs 40-41 and 47);
- A mark may be devoid of distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive (*Postkantoor* paragraph 86);
- A trade mark's distinctiveness is not to be considered in the abstract but rather by reference to the goods or services in respect of which registration is sought and by reference to the relevant public's perception of that mark (*Libertel Group BV v Benelux Merkenbureau*, Case C-104/01 paragraphs 7277);
- The relevant public must be deemed to be composed of the average consumer who is reasonably well-informed and reasonably observant and circumspect (*Libertel* paragraph 46 referring to Case C-342/97 *Lloyd Schuhfabrik Meyer*).

13. When considering whether a sign can function as a trade mark, it is important to consider the average consumers first impression of the sign when it is used in relation to the goods and services covered by the application. The test is one of immediacy or first impression, as confirmed in the decision *Sykes Enterprises v OHIM (Real People Real Solutions)* [2002] ECR II-5179, where it states:

*"a sign which fulfils functions other than that of a trade mark is only distinctive for the purposes of Article 7(1)(b) of Regulation No 40/94 if it may be perceived immediately as an indication of the commercial origin of the goods or services in question, so as to enable the relevant public to distinguish, without any possibility of confusion, the goods or services of the owner of the mark from those of a different commercial origin."*

14. It is clear from the aforementioned case law that assuming notional and fair use, I must determine whether or not the mark applied for will be viewed by the average consumer as a sign capable of denoting a single source of trade origin, when used in relation to the goods and services included in the application. I must therefore consider who the average consumer of the goods and services covered by the application is. The goods and services are all limited to 'pertaining to philosophy, religion and education relating to religion'. It is therefore reasonable to assume that the average consumer for such goods and services could include members of the general public who are interested in such matters, also students who are studying philosophy and religion and those who are providing such education. I do not consider the consumers will necessarily be of any one particular religion, but I consider it likely that they will pay a moderate to high level of attention when

purchasing the goods and services, as these are unlikely to be goods and services which are frequently purchased.

15. When used in relation to the goods and services offered, I consider the average consumer will perceive the sign as nothing more than a readily comprehensible non-distinctive sign, indicating that the goods and services relate to the provision of a communications course which promises a successful outcome. Had the sign just constituted the words 'Communications Course', in my opinion there would be no argument that these words are readily understood and considered as both descriptive and generic by the relevant consumer. As such, an objection under section 3(1)(b) and (c) would have been appropriate in my opinion. So, then, how are things changed by the term 'Success through Communications Course'. The word 'success' means '*the achievement of something that you have been trying to do*' (Collins English Dictionary). In my opinion then, the word 'success' simply adds the dimension of an intended positive outcome to the use of 'communication'. As to the argument that the words designate a specific course offered by the applicant, as in, 'The 'Success through Communication' Course offered by 'x', then in my opinion, this is a sign which could equally be used by other providers as the name of their course; thus the sign is inherently devoid of distinctive character.

16. The agent stated at the hearing with Ms Bell that the mark denotes a specific course and that is how I consider consumers will see the sign. They will not perceive it as indicating any one particular supplier of such a course. I therefore consider the *prima facie* objection against the mark to be appropriate.

17. In maintaining the objection I need to address the question of acceptances of the mark in the US and the references to marks which have been accepted at the UK IPO which contain the word 'success'. Regarding the US acceptances I have to point out that the Registrar is not bound by the decisions of other national offices, as confirmed by the CJEU in its judgement on *Henkel KGaA v Deutsches Patent und Markenamt* (C-218/01) where it was stated that:

*"The fact that an identical trade mark has been registered in one Member State 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 a 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 application for registration of a similar mark for goods or services similar to those for which the first mark was registered."*

Although that refers to member states of the EU the same must hold true for other national offices, including the US. Regarding the acceptances of UK marks which contain the word 'success', I am not bound by those earlier decisions. In this respect I refer to the comments of Jacob J in *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281:

*"In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the Register. It has long been held that under the old Act that comparison with other marks on the Register is in principle irrelevant when considering a particular mark tendered for registration, see e.g. MADAME Trade Mark (1699 RPC 541) and the same must be true of the 1994 Act. I disregard the state of the register evidence."*

In any event I do not find that acceptances of different marks which happen to contain the word 'success' with other matter, to be of any assistance in the progress of this application. I would simply add the marks are not the same, they merely include an element of this mark, in part of those marks.

### **The case for registration based on acquired distinctiveness**

18. On 19 August 2019 the agent submitted evidence of use of the mark with a view to the application proceeding on the basis of distinctiveness acquired through use. The evidence came in the form of a witness statement completed by Mr Warren McShane, the President of the Religious Technology Centre (the applicant) accompanied by various exhibits which are listed below. Mr McShane confirmed that the mark has been used continuously in the UK since at least 1980 on all the goods and services claimed in the application. The witness statement includes details of US registrations for the same mark and for the same goods and services which are the subject of this application. The witness statement goes on to give further details of the services provided, i.e. services provided in a classroom type environment within a Church of Scientology, each class lasting between two and three hours and the complete course being run over five days, providing between ten and fifteen hours of study. The evidence includes details of the locations where the services are provided, all being locations where the applicants are licensed users and where Scientology Churches are based, these are spread around the UK. These courses and the course materials are only delivered by licensed Church organisations and there are no organisations outside the Church of Scientology structure which deliver the courses and course materials. The course is based in the fields of philosophy, religion and education relating to those subjects and is particularly aimed at improving an individual's communications skills.

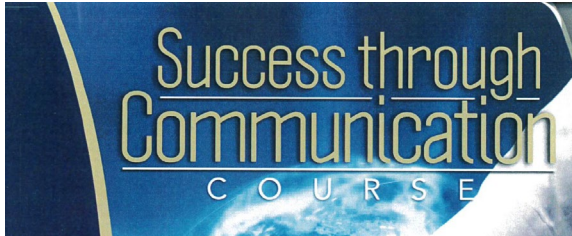
19. The witness statement was accompanied by exhibits which are summarised below:



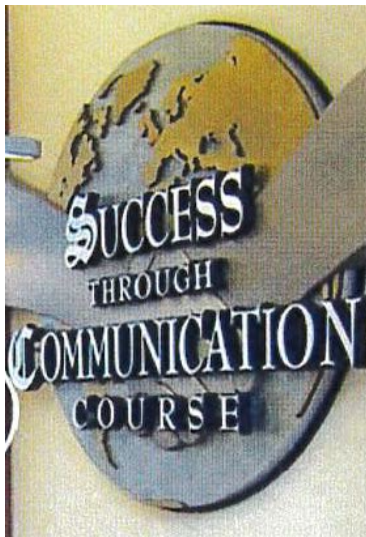
**WMS1** – copy of written submissions regarding the prima facie case.

**WMS2** – copies of US TM registrations.

**WMS3** – exhibits showing use of ‘Success Through Communication Course’ on training packs, on classroom walls etc. The exhibits show variant use of the mark, i.e. ‘Success through Communication’ is used as a header with ‘course’ presented below.



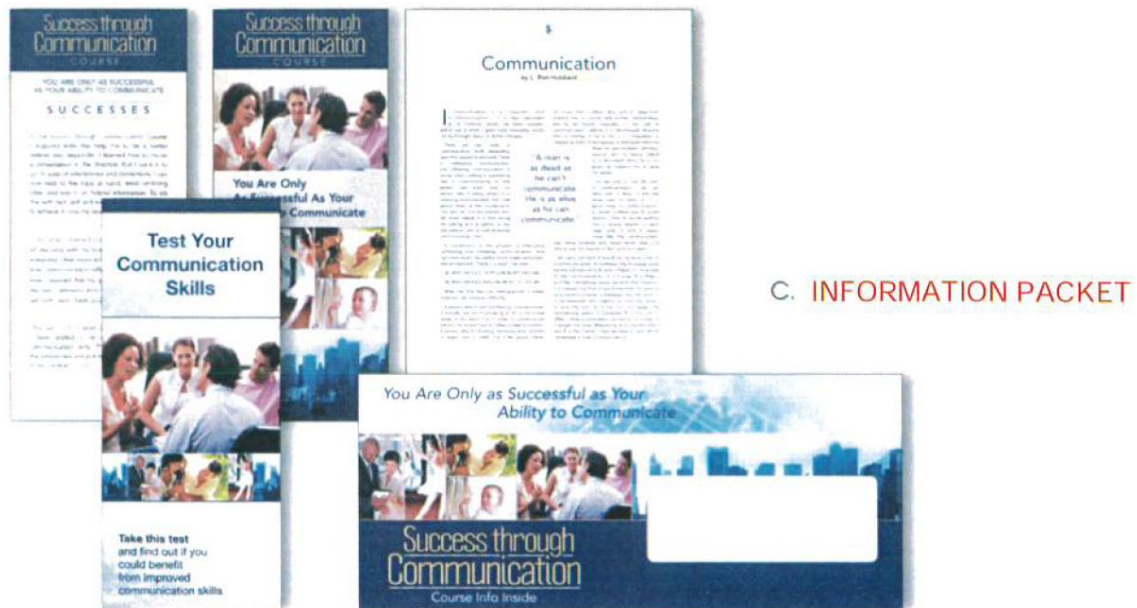
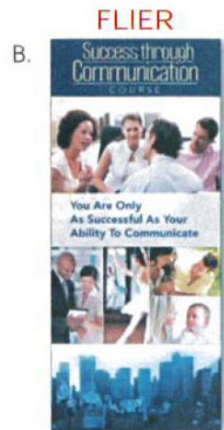
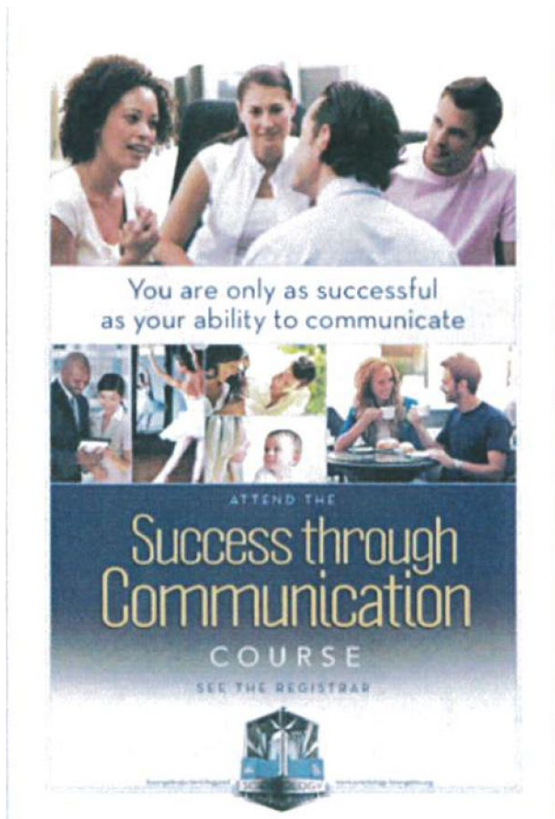
Some of the extracts also show photographs of the mark being used with a logo element in a classroom situation:



**WMS4** – extracts of websites of various UK based Churches of Scientology showing the ‘Success Through Communication Course’ being offered.

**WMS5** – copies of purchase invoices for the course.

**MS6** – copies of promotional materials in the form of posters and fliers:



**WWMS7** – copies of articles relating to the new Dissemination and Distribution Centre which is the in-house function that produces promotional materials. This is based in America. As this does not relate to use in the UK this is not helpful in proving distinctiveness acquired through use.

20. Set out below is a table showing the sales figures relating to the monetary value and number of course sales per annum in the UK for the study program:

YEAR	USD	GBP	NO.
2007	\$ 1,192.00	£ 596.00	12
2008	\$ 9,759.00	£ 5,270.00	100
2009	\$ 7,244.00	£ 4,636.00	80
2010	\$ 8,712.00	£ 5,663.00	118
2011	\$ 11,616.00	£ 7,202.00	123
2012	\$ 8,859.00	£ 5,581.00	95
2013	\$ 9,364.00	£ 5,993.00	100
2014	\$ 7,796.00	£ 4,756.00	82
2015	\$ 7,596.00	£ 4,937.00	81
2016	\$ 8,434.00	£ 6,241.00	102
2017	\$ 6,429.00	£ 4,993.00	86
2018	\$ 7,579.00	£ 5,685.00	97
2019	\$ 5,152.00	£ 3,967.00	64
<b>TOTAL</b>	<b>\$ 99,732.00</b>	<b>£ 65,520.00</b>	<b>1140</b>

21. Below are the figures showing the costs for the production and shipping of course materials for those courses provided in the UK. The table also shows the number of packs/course materials that were purchased each year by the various Churches in the UK. Mr Wake clarified that the figures for the number of items supplied to the UK do not match the number of courses supplied in any one year, as course materials would be purchased in advance, in anticipation of courses to be sold:

	A	B	C	D
		USD	GBP	NO. OF ITEMS
1	2009	\$ 238	£ 181	60
2	2010	\$ 2,306	£ 1,499	630
3	2011	\$ 481	£ 298	138
4	2012	\$ 309	£ 195	88
5	2013	\$ 595	£ 381	168
6	2014	\$ 754	£ 460	210
7	2015	\$ 182	£ 313	55
8	2016	\$ 515	£ 381	158
9	2017	\$ 620	£ 484	186
10	2018	\$ 694	£ 521	199
11	2019	\$ 160	£ 123	48
	<b>TOTAL</b>	<b>\$ 6,854</b>	<b>£ 4,836</b>	<b>1940</b>

22. The witness statement informs us that it is difficult to allocate a particular value to the investment made in marketing and promotion, but the following table shows the

estimated costs of promoting the SUCCESS THROUGH COMMUNICATIONS COURSE in the UK:

	USD	GBP	NO. ITEMS
2014	\$ 107	£ 65	1,056
2015	\$ 67,713	£ 44,013	112,491
2016	\$ 64,285	£ 47,570	119,266
2017	\$ 318	£ 245	3,168
2018	\$ 229	£ 172	2,496
2019	\$ 70	£ 54	768
<b>TOTAL</b>	<b>\$ 132,722</b>	<b>£ 92,119</b>	<b>239,245</b>

23. On 9 September 2019 the hearing officer Ms Bell wrote to the agents informing them that, after considering the evidence, she was maintaining the objection. In assessing the evidence she took into account the strength of the objection against the mark. She felt that, given the sign's lack of distinctive character, the evidence would have to be compelling. The hearing officer did not feel that the evidence showed use of the sign as a trade mark and as such was not sufficient to educate consumers that the sign is a trade mark. The use shown was merely that of a non-distinctive name of a course. Her concerns included the fact that mark does not appear to be used exactly as filed and some of the examples in use showed use of the mark in a stylised font and with a logo. As Ms Bell did not consider the evidence sufficient to overcome the objection the agent was entitled to a further hearing. This hearing was only in respect of the assessment of the evidence of use and not in respect of the prima facie case for acceptance, which had already been dealt with at the original hearing.

24. On 8 November 2019 the agent requested a further hearing. This took place between myself and Mr Wake on 17 December 2020. Following the hearing, I maintained the objection as I did not consider that the mark had acquired distinctiveness through use.

#### **Application of the legal principles – acquired distinctiveness**

25. The CJEU provided guidance in *Windsurfing Chiemsee* (see judgment of 4 May 1999 in Joined cases C-108/97 and C-109/97) about the correct approach to the assessment of distinctive character acquired through use, setting out the relevant test in paragraph 55:

“...the first sentence of Article 3(3) of the First Directive 89/104/EEC is to be interpreted as meaning that:

- *A trade mark acquires distinctive character following the use which has been made of it where the mark has come 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 goods of other undertakings;*

*In determining whether a trade mark has acquired distinctive character following the use which has been made of it, the competent authority must make an overall assessment of the evidence that the mark has come to identify the product concerned as originating from a particular undertaking and thus to distinguish that product from goods of other undertakings;*

*- If the competent authority finds that a significant proportion of the relevant class of persons identify goods as originating from a particular undertaking because of the trade mark, it must hold the requirement for registering the mark to be satisfied;*

*- Where the competent authority has particular difficulty in assessing the distinctive character of the mark in respect of which registration is applied for, Community law does not preclude it from having recourse, under the conditions laid down by its national law, to an opinion poll as guidance for its judgment.”*

26. I am also mindful of the CJEU decision in *Bovemj Verzekeringen NV v Benelux Merkenbureau (Europolis) C-108/05*, where it was held that a trade mark may be registered on the basis of acquired distinctiveness “...only if it is proven that the trade mark has acquired distinctive character through use throughout the territory of a member state”.

27. The proviso to section 3 of the Act based on acquired distinctiveness does not establish a separate right to have a trade mark registered. It allows an exception to, or derogation from, the grounds of refusal listed in section 3(1)(a) - (d) of the Act and as such, its scope must be interpreted in light of those grounds of refusal - see e.g. case T-359/12 *Louis Vuitton Malletier v OHIM* and case law referred to at para [83]. The established principles to consider when assessing a claim to distinctiveness acquired through use can be summarised as follows:

- Mere evidence of use, even if substantial, does not make the case for acquired distinctiveness.

A significant proportion of the relevant consumers need to be educated that the sign has acquired distinctiveness.

- If, to a real or hypothetical individual, a word or mark is ambiguous in the sense that it may be distinctive or descriptive then it cannot comply with the requirements of the Act for it will not provide the necessary distinction or guarantee.

- It follows that, with regard to the acquisition of distinctive character through use, the identification by the relevant class of persons of the product or service as originating from a given undertaking must be as a result of the use of the mark as a trade mark. The expression 'use of the mark as a trade mark' in section 3 refers solely to use of the mark for the purposes of the identification, by the relevant class of person, of the product as originating from a given undertaking.

- Acquired distinctiveness cannot be shown by reference only to general, abstract data such as predetermined percentages (see also *Windsurfing Chiemsee* (para [52]) case and others).

- The mark must have acquired distinctiveness through use throughout the territory of the UK.

28. Paragraph 51 of the *Windsurfing* decision, referred to above, advises of the criterion to be taken into account when assessing distinctive character. These are i) the market share held by the mark; ii) how intensive, geographically widespread and long-standing use of the mark has been; iii) the amount invested by the undertaking in promoting the mark; iv) the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; v) and statements from chambers of commerce and industry or other trade and professional associations.

29. Regarding the market share held by the mark, as the market for the goods and services are the general public or students and those involved in supplying courses relating to 'communications' this would not appear to be significant. It is clear from the evidence supplied that the goods and services sold under this mark are limited to those who are involved with the Church of Scientology and are only advertised through Church of Scientology. I also note that between 2012 and 2019 only 1,140 courses were sold (and we cannot take into account those sales which took place in the second half of 2018 and in 2019 as the proviso to Section 3(1) makes it clear that the mark should have acquired a distinctive character as a result of the use made of it before the date of application.

30. When granting a national mark through distinctiveness acquired through use, we have to be assured that the mark has become known throughout the UK and not just to a limited market. In this respect I refer to the comments made in the *Windsurfing* decision para 46 –

*“the trade mark must be used in the Community as a whole or, at least in a substantial part thereof, in such a way that a sufficiently large part of the relevant class of persons recognises the sign as a distinctive trade mark at the time the application is filed.”*

31. I do not consider that, despite the length of time the mark has been used, there is evidence to show that a significant proportion of the relevant class of persons recognise the sign as a distinctive trade mark. The mark has only been used and promoted in the Church of Scientology which is not sufficient to show that a significant proportion of consumers would recognise the sign as a trade mark, rather than just the name of a course, (the 2011 United Kingdom Census conducted by the Office for National Statistics found that there were 2,361 Scientologists in the UK at the time of the survey – although according to Wikipedia the Church claims a membership of 118,000 members in the UK). I was not so concerned with the fact that the mark has not always been used as filed. There is some evidence to show that the mark has been used as filed, but where it has not, the alternative use has little stylisation. In this respect I refer to the decision of *Thomas Pink Limited v Victoria's Secret Limited* [2014] EWHC 2631 (Ch) UK, where it was confirmed that proprietors do not consistently use a mark precisely in the form of registered and minor variations can be taken into account.

32. At the hearing Mr Wake asked how long a mark would have to be used before we could accept it on the basis of distinctiveness acquired through use. I explained that it is not always the length of time that is a deciding factor. Obviously the longer a mark is used, the more likely it is that it will have gained distinctiveness because of the use made of it. However, if that long use is limited, as it is in this case, it is unlikely that the mark will become known as a trade mark by the relevant consumer.

33. Mr Wake queried if there was some way that the specifications could be limited to overcome the objection. I could not see any way that they could, however I allowed three months for Mr Wake to put forward any specifications he felt would assist. On 17 March 2020 Mr Wake wrote to us suggesting a limitation to the specification of “*all the aforesaid goods/services being based on the teachings of L. Ron Hubbard and being offered exclusively by authorised Church of Scientology organisations*”. I did not consider that this helped, as stated above, the average consumer for the goods and services are the general public at large and not just those who are members of, or who are interested in the Church of Scientology and the teachings of L Ron Hubbard. The limitation is not ‘legally certain’ for third parties in the sense that for example, others may wish to provide courses about, or which may include, incidentally or otherwise ‘L Ron Hubbard’ and the Church of Scientology. Secondly, the limitation does not make good the defects in the evidence. That is to say, even for the limited consumer, the evidence does not show that they regard the sign as a trade mark, guaranteeing, origin, as distinct from the name of a course which could equally be used by many others.

34. Taking the evidence as a whole, I am unable to conclude that the applicant has educated a significant proportion of relevant consumers to believe that the mark applied for, would indicate a trade mark of the provider of the goods and services.

## **Conclusion**

35. Having given due care and attention to all of the arguments put forward during the proceedings, the application is refused under Section 3(1)(b) for all goods and services. This conclusion reflects the fact that the evidence of purported acquired distinctiveness was considered insufficient.

**Dated this 10<sup>th</sup> day of August 2020**

**Linda Smith  
For the Registrar  
Comptroller-General**