

**O-601-20**

**TRADE MARKS ACT 1994  
IN THE MATTER OF  
TRADE MARK APPLICATION NO 3251844  
BY SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD.  
TO REGISTER**


**SPDB**

**AS A TRADE MARK  
IN CLASSES 14 & 36  
AND OPPOSITION THERETO (UNDER NO. 410956)  
BY  
SPB, SOCIETE ANONYME**

## Background and pleadings

1. Shanghai Pudong Development Bank Co., Ltd (“the applicant”) applied for the trade mark outlined on the title page on 22 August 2017. The mark was published in the Trade Mark Journal on 8 September 2017 in classes 14 and 36, although only class 36 form part of these opposition proceedings. The applicant’s services will be set out later in this decision.

2. SPB, Societe Anonyme (“the opponent”) opposed the application’s class 36 services on 4 December 2017 under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on some services in class 36 registered under its two earlier EU marks, the details of which are set out below.

EU TM No.658260	EU TM No. 11913449
<p><b>SPB</b></p> <p>Filing date: 17 October 1997 Registration date: 1 September 2004</p>	 <p>Filing date: 19 June 2013 Registration date: 2 January 2014</p>
<p><b>Services being relied on:</b></p> <p>36: Services rendered in the financial, banking and insurance policy fields, including insurance brokerage of all kinds; insurance consultancy and information; design and management of insurance and assistance products; financial evaluations</p>	<p><b>Services being relied on:</b></p> <p>35: Business management and organization consultancy; Business management; Auditing and consultancy in the field of communications; Computerized file management; Advertising; Direct mail advertising; Dissemination of advertising matter; On-line advertising on a computer network; Arranging newspaper subscription; Public relations; Sales promotion for others; Organisation of promotional and entertainment events; Business operations for encouraging or creating</p>

	<p>incentives for a company's clients or employees; Market research; Arranging of subscriptions to services for the installation, maintenance and repair of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Arranging subscriptions to maintenance and private DIY services; Arranging subscriptions to computer maintenance and repair services; Arranging subscriptions to practical travel assistance services and travel assistance services relating to hotels and restaurants; Arranging subscriptions to shopping services for dependent persons; Arranging subscriptions to assistance services for dependent persons (preparation of meals); Arranging subscriptions to medical assistance services; Providing information by telephone in the area of subscriptions; Purchase and acquisition of second-hand goods and used goods in the field of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, make-up preparations, preparations for removing make-up, shaving preparations,</p>
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	<p>preservatives for leather (polishes), creams for leather, incense, candles for lighting, hand tools and implements (hand-operated), cutlery, apparatus, tools and instruments for gardening, plants and flowers, scientific, nautical, photographic, cinematographic, optical, weighing and measuring apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs or optical discs, data processing equipment, computers, computer software, computer peripherals, spectacles (optics), optical goods, telephony apparatus, touchscreen tablets, childcare articles, household electrical appliances, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, apparatus or installations for air-conditioning purposes, apparatus and machines for purifying air or water, vehicles and parts and fittings for the aforesaid, caravans, trailers, jewellery, horological and chronometric instruments, jewellery boxes or cases of precious metal, casings, straps, chains, springs or</p>
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	<p>crystals for watches, novelty keyrings, cases for cigars or cigarettes, printed matter, photographs, stationery, artists' materials, writing and drawing implements, table linen of paper, trunks and travelling bags, umbrellas and parasols, walking sticks, pocket wallets, purses not of precious metal, handbags, backpacks, wheeled bags, bags for climbers, bags for campers, travel bags, beach bags, school bags, vanity cases (not fitted), leatherware, furniture, bedding, mirrors, picture frames, belts for clothing, wickerwork, boxes of wood, non-electric household or kitchen utensils and containers (not of precious metal or coated therewith), combs and sponges, brushes (except paint brushes), brush-making materials, hand-operated articles for cleaning purposes, tableware not of precious metal, porcelain and earthenware, bed covers, table covers, bed linen, household linen, table linen not of paper, bath linen (except clothing), clothing, footwear, headgear, games and playthings, decorations for Christmas trees (except lighting), party favours, lighters for smokers, boxes or cases for cigars, not of precious metal, boxes or cases for cigarettes, not of precious metal, ashtrays for smokers, not of precious metal, goods, tools or</p>
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	<p>apparatus for DIY, construction, repair and maintenance of the home, articles and equipment for camping, gymnastic and sporting articles; Presentation of the aforesaid goods on all kinds of communications media for retail in shops or online; Business consultancy and information relating to the purchase and acquisition of second-hand goods and used goods; Management of campaigns relating to image, reputation and standing on the Internet, social networks and computer networks; Consultancy and strategy for businesses or individuals relating to their image, reputation and standing on the Internet, social networks and computer networks; Promotion of brand images on the Internet, social networks and computer networks; Management of business databases; Consultancy and information relating to marketing and communication relating to image, reputation and standing on the Internet, social networks and computer networks; Consultancy and information relating to all the aforesaid services; Assistance with administrative procedures relating to the loss and theft of documents and personal effects; Practical assistance relating to the loss and theft of documents and personal effects, namely assistance with administrative</p>
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	<p>procedures; Practical assistance relating to the recovery of documents and personal effects, namely assistance with administrative procedures; Administrative assistance in the arranging and settling of pension entitlements; Administrative research, evaluation and management of individual pension entitlements; Consultancy in strategy and organisation for information and financing in the field of pensions, Namely organisational consultancy and Business management services; Searching for and locating vehicles in databases and computer files; Providing of help and assistance for private individuals consisting of the completion of all necessary procedures vis-à-vis the administrative authorities following the loss or theft of personal documents; Support in relation to administrative procedures for re-establishing pension points; Providing assistance to dependent persons in the area of administrative procedures; Assistance in the area of administrative procedures relating to the loss and theft of luggage, official documentation, bank cards and keys; Arranging of subscriptions to services for locating vehicles in the event of theft; Telephone call centres, namely providing of administrative</p>
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	<p>and/or business information via telephone in the field of assistance for dependent persons, relating to the loss and theft of documents and personal effects, relating to the identification of repairs needed for household electrical equipment, audiovisual equipment, electronic apparatus, computer hardware and telephony apparatus (repair assistance), relating to the repair of household electrical appliances, audiovisual equipment, electronic apparatus, computer hardware and telephony apparatus, relating to the recovery of documents and personal effects, namely assistance with administrative procedures, relating to the arranging and settling of pension entitlements, and relating to campaigns connected with image, reputation and knowledge on the Internet, social networks and computer networks; Telephone call centres, namely providing of administrative information via telephone relating to the completion of all necessary procedures vis-à-vis the administrative or other authorities following the loss or theft of personal documents.</p> <p>Class 36: Services provided in connection with financial affairs, monetary affairs and insurance;</p>
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	<p>Insurance relating to personal assistance in the event of water, gas and electricity leakages; Insurance brokerage operations; Insurance information and consultancy; Design and management of insurance products; Advice on finance for retirement; Providing information by telephone in the field of insurance; Estimation of the price of second-hand goods and used goods; Providing of consultancy and information relating to the estimation of the price of second-hand goods and used goods; Providing of consultancy and information in the field of insurance; Insurance including the purchase and acquisition of the insured goods when they have been used, for a price estimated by the insurer; Financial research, evaluations and management of individual pension entitlements; Telephone call centres, namely providing of information via telephone in the field of insurance; Telephone call centres, namely providing of information via telephone relating to means of payment.</p>
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3. The opponent's registrations both have filing dates that are earlier than the application and, therefore, they are earlier marks, in accordance with Section 6 of the Act. As the registration procedure for EU TM No. 658260 was completed more than 5 years prior to the publication date of the application, it is subject to the proof of use conditions, as per section 6A of the Act whereas the opponent's other EU TM, No.

11913449, is not subject to proof of use, having not been registered for five years. The opponent made a statement of use in respect of the services it relies on.

4. Following the Notice of Opposition, the parties entered into a cooling off period requested by means of a Form TM9C dated 8 February 2019. There was a further extension to the cooling off period dated 17 September 2018

5. The applicant subsequently filed a Form TM8 and a counterstatement on 18 June 2019 denying that the respective marks were similar but conceding that a number of services in its class 36 specification were identical or similar to the opponent's services for its earlier mark EU TM no.11913449 and for EU TM 658260, provided that the opponent was able to demonstrate genuine use of those services. The applicant also identified a number of services which it claims are dissimilar. I will return to these services later in the decision.

6. Both parties are represented. The applicant is represented by Urquhart-Dykes & Lord LLP and the opponent by Dolleymores.

7. The opponent provided evidence in these proceedings and filed written submissions during the evidence rounds. Neither party requested a hearing, however, the Applicant provided written submissions in lieu. This decision is taken following a careful reading of the papers before me.

### **Approach**

8. The opponent relies on two earlier registrations. The first of those marks, EU TM no. 658260, is a word mark and therefore closer to the contested application. It is also subject to proof of use. The remaining earlier mark, EU TM no.11913449, is a word and device mark, not subject to proof of use and has broader specifications. Bearing this in mind, I will proceed to consider the earlier word mark in the first instance and make my findings then I shall return to the word and device mark to the extent that it proves necessary.

## Opponent's evidence

9. The first issue is to establish whether, or to what extent, the opponent has shown genuine use of the earlier marks within the 'relevant period'. The relevant period is defined as being a period of five years ending with the publication date of the contested application. In this case the relevant period is 18 September 2012 to 18 September 2017.

10. The opponent provided evidence in the form of a witness statement dated 26 February 2020 in the name of Jean-Marie Guian ("the declarant") and three annexed exhibits. The declarant is the Chairman of the opponent and has held that position since 2000.

11. The most pertinent points from the witness statement are

- The opponent has used the mark in the EU since 1965 and in the UK since 2010.
- The mark has been used in respect of affinity insurance and services. Affinity insurance is clarified by the declarant as insurance services linked to a service or a product from a third party, for example credit card fraud insurance, mobile phone insurance.<sup>1</sup>
- the opponent has a number of large clients such as Lloyds Bank, Barclaycard and Samsung.
- the opponent has 50 million insurance policy holders throughout the EU.
- the opponent has an annual turnover of €290,000,000 (£248,000,000) in the EU.

12. In addition the declarant provided the following table containing turnover specifically in the UK and Ireland

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<sup>1</sup> See paragraph 8 the witness statement.

2012	£2,673,188.00
2013	£7,178,015.00
2014	£6,985,591.00
2015	£7,549,698.00
2016	£8,934,390.00
2017	£10,332,526.00

13. Exhibit 1 comprises a selection of screenshots from the opponent's website [www.spb.eu](http://www.spb.eu). Of particular note is page 8 which sets out the opponent's corporate timeline since it was founded in 1965 when it offered banking insurance. The remaining pages of this exhibit outline the opponent's current affinity insurance services for use across various sectors including banking, retail, telecommunications and technology companies. The opponent's insurance products cover financial services, technology equipment, utilities, white goods, domestic and home insurance, transport, travel and leisure. Also notable are the opponent's customers including Samsung, Toshiba, EDF, Orange, BNP Paribas amongst others.

14. Exhibit 2 comprises several press articles dated between 2013 and 2019. Pages 28-30 contain press articles dated 2013 which relate to the opening of the opponent's new UK head office in Portsmouth, moving from its previous base on the Isle of Wight where it had been situated since 2001. The articles state that the opponent is the EU leader in affinity insurance. Page 31 contains an article dated 2019 about the opponent's acquisition of two UK insurance providers. I note this article is outside of the relevant period.

15. Exhibit 3 contains annual account documents dated between 2013 and 2017 of the opponent's UK subsidiary company SPB UK & Ireland Limited. The financial accounts indicate that the opponent provided affinity insurance services. I note that other than for the 2014 annual accounts, the other remaining documents have had their figures redacted. As the available figure for 2014 matches that figure given in the table set out by the declarant in the witness statement (which is referenced above in paragraph 12), I have concluded that on the balance of probability, absent any evidence to the contrary, the redacted figures in this exhibit match those figures given in the witness statement.

## **Proof of use provisions**

16. The relevant statutory provisions for proof of use are as follows:

“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.”

17. 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 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 Bunderversvereinigung 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].”



18. Section 100 of the Act 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.”

19. As the earlier registration is an EU trade mark the following case law is also appropriate. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union noted that:

“36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).”

20. The court held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

21. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

“228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark,

was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use.”

22. The General Court restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM. This applies even where there are no special factors, such as the market for the goods/services being limited to that area of the Union.

23. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the Union during the relevant 5 year period. In making the required assessment I am required to consider all relevant factors, including:

- i) The scale and frequency of the use shown
- ii) The nature of the use shown
- iii) The goods and services for which use has been shown
- iv) The nature of those goods/services and the market(s) for them
- iv) The geographical extent of the use shown

### **Sufficiency of use**

24. The evidence shows the opponent's mark used in plain text form. The opponent has demonstrated a consistent turnover during the relevant period. The evidence

provided shows use for services provided in the EU and confirms that the opponent is a significant player in affinity insurance, as demonstrated by its very high-profile clients and millions of insurance policy holders. I find that the evidence supports the statements made by the opponent in its witness statement and find that there has been genuine use of the earlier **SPB** mark during the relevant period.

### **Framing a fair specification**

25. The next stage is to decide whether the opponent's use entitles it to rely on all of the services for which it is registered. In framing a fair specification for those services, I rely on guidance given in the following judgements. 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:

“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.”

26. 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."

26. The evidence demonstrates that the opponent has used its mark for the provision of insurance across a large number of products and industries. This has taken the form of affinity insurance where, as I understand it, the insurance is attached to a product or service provided by another undertaking. Given the variety of insurance policies offered by the opponent which includes everything from mobile phone insurance, credit card insurance and funeral insurance, I find that a fair specification which reflects use made of the mark is "insurance services". That is

neither too wide nor too narrow and is how the average consumer would refer to services provided by the opponent.

## **Decision**

27. Section 5(2)(b) of the Act is as follows:

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

28. 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.

### **The principles**

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

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

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case, an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.



## Comparison of services

29. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

31. The following case law is also applicable to these proceedings.

32. In *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

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

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

34. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

*“...the applicable principles of interpretation are as follows:*

*(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.*

*(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.*

*(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.*

*(4) A term which cannot be interpreted is to be disregarded.”*

35. In its counterstatement the applicant conceded that the following services were identical or similar to the opponent’s services.

*Accident insurance underwriting; insurance brokerage; insurance underwriting; fire insurance underwriting; health insurance underwriting; marine insurance underwriting; life insurance underwriting; insurance consultancy; insurance information; instalment loans; banking; mutual funds; capital investment; exchanging money; issuance of travellers' cheques; clearing, financial; loans [financing]; fiscal valuation; financial evaluation [insurance, banking, real estate]; financing services; financial management; mortgage banking; savings bank services; hire-purchase financing, lease-purchase financing; financial analysis; check [cheque] verification; financial consultancy; processing of credit card payments; processing of debit card payments; electronic funds transfer; financial information; issuance of tokens of value; issuance of credit cards; financial sponsorship; online banking; business liquidation services, financial; instalment credit financing relating to land vehicles; instalment credit financing relating to telecommunications equipment; retirement payment services; antique appraisal; art appraisal; jewellery appraisal; numismatic appraisal; stamp appraisal; financial customs brokerage services; lending against security.*

36. The remaining services to be compared are

Opponent’s relied on services	Applicant’s remaining services
Class 36: Insurance services	Class 36: actuarial services; debt collection agency services; organization of collections; rent collection; agencies for commodity futures trading; tax

	<p>services [financial]; rental of real estate; real estate agency services; accommodation bureau services [apartments]; real estate brokerage; real estate appraisal; real estate management; apartment house management; rental of apartments; rental of offices [real estate]; rental of farms; brokerage; charitable fund raising; surety services; trusteeship; fiduciary; pawn brokerage; factoring; rental of offices for co-working.</p>
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37. I find that the opponent’s *insurance services*, will encompass the *actuarial services; brokerage; surety services* provided by the applicant and as such it is considered to be identical on the *Meric* principle.

38. I have considered the applicant’s remaining services, namely *debt collection agency services; organization of collections; rent collection; agencies for commodity futures trading; tax services [financial]; pawn brokerage; rental of real estate; real estate agency services; accommodation bureau services [apartments]; real estate brokerage; real estate appraisal; real estate management; apartment house management; rental of apartments; rental of offices [real estate]; rental of farms; charitable fund raising; trusteeship; fiduciary; factoring; rental of offices for co-working* and do not find these services to be similar to the opponent’s services. The applicant’s remaining services are of a different nature and purpose to the opponent’s and are neither competitive or complementary.

39. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is

served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

40. As I do not find that the services as set out in paragraph 38 above are similar, it follows that the opposition must fail in relation to these.

### **Average consumer and the purchasing process**

41. I next consider the role of the average consumer and how the services are purchased. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

42. 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.”

43. The average consumers for the contested services are the general public and businesses. Given that the contested services relate to financial and insurance matters, they are likely to be infrequent and potentially expensive purchases. I would categorise the degree of attention being paid during the purchasing process as high. These services are such that consumers will be choosing them based on their own

particular requirements and will require attention to detail around things like terms and conditions, premiums, exemptions etc. The purchasing process will be predominantly visual as consumers will research services online from websites or from printed materials. However, there will be a more significant aural consideration as it is common for such services to be taken out in consultation with a professional advisor.

### Comparison of the marks

44. 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 the marks, 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.”

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

46. The marks to be compared are

Opponent's registration	Applicant's mark
<b>SPB</b>	<b>SPDB</b>

47. The opponent's registration is a three letter combination **SPB** presented in upper case although notionally they can be used in any case<sup>2</sup>. The overall impression is derived solely from these letters.

48. The applicant's mark consists of a four letter combination, namely **SPDB**, presented in upper case although notionally they can be used in any case. The overall impression is derived solely from these letters.

49. In a visual comparison the marks share the letter structure **S\_P\_B** in that same order, albeit that in the applicant's mark the letters **P** and **B** are intersected by an additional letter **D**. The first two letters are the same in each mark, namely **SP**. The application has the additional letter **D** as a point of difference, so that the second half of the mark is made up of **DB**, while the opponent's mark ends with **B**. Taking these factors into account, I find there to be a fairly high degree of visual similarity.

50. In an aural comparison, it is usual for letter combinations which do not form an easily pronounceable word or acronym to be verbalised by consumers letter by letter. The opponent's mark in this case will be verbalised as **ESS-PEE-BEE**, whereas as the applicant's mark will be **ESS-PEE-DEE-BEE**. Clearly, even where there are other possible pronunciations of individual letters, the three shared letters will be pronounced identically. The aural difference apparent when the marks are verbalised is an extra syllable being sounded in the applicant's mark. But overall, I find there is a high level of aural similarity.

51. Finally in a conceptual comparison, neither of the respective marks has an immediately graspable concept<sup>3</sup>. Some consumers may perceive the marks to be the initials of a company name, but others may not and see the marks as merely letters of the alphabet. On that basis I find the marks conceptually neutral.

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<sup>2</sup> *Bentley Motors Limited v Bentley 1962 Limited* BL O/159/17

<sup>3</sup> It has been highlighted in numerous judgments such as *The Picasso Estate v OHIM*, Case C-361/04 that it is only concepts capable of immediate grasp by the consumer that are relevant.

### **Distinctiveness of the earlier registration**

52. The degree of distinctiveness of the earlier registration must be assessed. This is because the more distinctive the earlier registration, based either on inherent qualities or because of the use made of it, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

53. I have considered the inherent distinctiveness of the earlier registration. The registration consists of the letter combination SPB. Although the letters **SPB** do not describe or allude to the relevant services, it is not unusual to have letter combinations representing the initials of company names. On that basis, I find the earlier registration to be inherently distinctive to a medium degree.



54. The opponent has provided evidence of use of its earlier registration. Applying the criteria set out in *Windsurfing* above, the evidence indicates that the mark has been used in the UK since 2010 for insurance services. No market share figures nor advertising expenditure figures were provided for the UK use. Although the declarant in the witness statement at paragraph 11 states that the opponent has 50 million insurance policy holders in the EU, it does not specify how many of those are in the UK, which is part of the determination I must make with regard to the mark's geographical spread. Taking these factors into account, in my view, the evidence provided is insufficient for the reasons given above to show that the distinctiveness of the earlier mark has been enhanced through use.

### **Likelihood of confusion**

55. There is no scientific formula to apply in determining whether there is a likelihood of confusion. It is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer and the nature of the purchasing process for the contested goods and services. In doing so, I must be aware that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.


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

57. In its written submissions the applicant conceded that a number of its services were identical and similar to the opponent's services. In the course of this decision I concluded that some of the remaining services, which the applicant did not concede, were identical to the opponent's services. In addition, I found that some services were dissimilar.

58. I also concluded that

- The average consumers are the general public and businesses who would select the services through visual and aural means and would be paying a high degree of attention during the purchasing process.
- The competing trademarks are visually and aurally similar to a high degree, whilst I found that they were conceptually neutral.
- The earlier registration has a medium degree of inherent distinctiveness.

59. In making a finding I have considered the distinctiveness of the earlier mark, the nature of the services and the level of attention paid by the average consumer and not least the areas of similarity and difference between the respective marks. Having weighed up these factors, and taking into account the notion of imperfect recollection whereby a consumer will not see the respective marks side by side but will retain an imperfect image of them in their minds, and taking account of the degree of attention likely to be paid to these services, I find there is a likelihood of direct confusion. In my view the single letter difference does not outweigh the overall similarity of the marks which leads me to conclude that a consumer of the identical and/or similar services encountering one of the marks, is likely when encountering the other, to misremember them and confuse one for the other.

60. Having reached this conclusion in respect of the word mark relied upon by the opponent, I must now go on to consider the position in respect of the opponent's other earlier mark which is  .

61. The services which remain to be considered in the application are as follows: *debt collection agency services; organization of collections; rent collection; agencies for commodity futures trading; tax services [financial]; pawn brokerage; rental of real estate; real estate agency services; accommodation bureau services [apartments]; real estate brokerage; real estate appraisal; real estate management; apartment house management; rental of apartments; rental of offices [real estate]; rental of farms; charitable fund raising; trusteeship; fiduciary; factoring; rental of offices for co-working.*

62. The opponent's registration is a composite mark consisting of a geometric shape, coloured blue and pink, and the letter combination **spb** in lower case which is depicted in a slightly stylized typeface. I find the device and verbal elements make an equal contribution to the overall impression of the mark given the size and positioning of the device.

63. In a visual comparison, as previously stated, the marks share the letters s\_p\_b. Clearly the opponent has the device element as a point of difference and the applicant has the additional letter D. Taking the above factors into account, I find there is a medium degree of visual similarity.

64. In terms of an aural comparison, given that the device element would not be taken into account, I draw the same conclusion as in paragraph 50 where I found the aural similarity was high.

65. With regard to the conceptual comparison, the opponent's device is an additional point of conceptual difference but in my view, it has no concept other than it is a geometric shape which does not add or detract from the letter combination. On that basis I still find the marks to be conceptually neutral.

66. In terms of the distinctiveness of the earlier word and device registration, I find this to be slightly above a medium degree given the presence of the device.

67. My comments concerning the average consumer and the nature of the purchasing process remain the same for this mark as they do for the earlier **SPB** word mark.

68. Turning now to the services comparison I do not find any similarity between the opponent's class 35 services and the applicant's services. In class 36 I find there is some similarity between *Services provided in connection with financial affairs, monetary affairs* in the opponent's specification and the applicant's services as the respective services both relate to financial and monetary affairs.

69. Bearing in mind all of the necessary factors which go into the assessment of a likelihood of confusion I find that the opponent's stylised earlier mark with the device element is not close enough to the applicant's mark to give rise to a likelihood of confusion. The combination of the significant device at the start of the mark and the presentation of the letters in lower case, in a slightly stylised typeface are sufficient to create differences which will be noticed by the average consumer. That and the fact that these are services where the consumer will be paying a not insignificant degree of attention to the marks means that no confusion will arise.

### **Conclusion**

62. The opposition brought under section 5(2)(b) of the Act has succeeded in part against class 36. Subject to any appeal against this decision, the application will be partially refused.

63. The application will be refused for the following services:

*Accident insurance underwriting; insurance brokerage; insurance underwriting; fire insurance underwriting; health insurance underwriting; marine insurance underwriting; life insurance underwriting; insurance consultancy; insurance information; instalment loans; banking; mutual funds; capital investment; exchanging money; issuance of travellers' cheques; clearing, financial; loans [financing]; fiscal valuation; financial evaluation [insurance, banking, real estate]; financing services; financial management; mortgage banking; savings bank services; hire-purchase financing, lease-purchase financing; financial analysis; check [cheque] verification; financial consultancy; processing of credit card payments; processing of debit card payments; electronic funds transfer; financial information; issuance of tokens of value; issuance of credit cards; financial sponsorship; online banking; business liquidation services, financial; instalment credit financing relating to land vehicles; instalment credit financing relating to telecommunications equipment; retirement payment services; antique appraisal; art appraisal; jewellery appraisal; numismatic appraisal; stamp appraisal; financial customs brokerage services; lending against security; actuarial services; brokerage; surety services.*

64. The application can proceed to registration for class 14 in full as this class did not form part of these proceedings and for the following services in class 36:

*debt collection agency services; organization of collections; rent collection; agencies for commodity futures trading; tax services [financial]; pawn brokerage; rental of real estate; real estate agency services; accommodation bureau services [apartments]; real estate brokerage; real estate appraisal; real estate management; apartment house management; rental of apartments; rental of offices [real estate]; rental of farms; charitable fund raising; trusteeship; fiduciary; factoring; rental of offices for co-working.*

### **Costs**

65. The opponent has been largely successful. As such it is entitled to a contribution towards the costs incurred in these proceedings. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs to the opponent as follows:

£100 TM7 official fee

£300 Preparing Notice of Opposition

£400 Preparing written submissions

**£800 Total**

46. I order Shanghai Pudong Development Bank Co., Ltd to pay SPB, Societe Anonyme the sum of £800. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 30th day of November 2020**

**June Ralph**

**For the Registrar**

**The Comptroller-General**