

O/536/21

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 3276944

IN THE NAME OF NATIXIS WEALTH MANAGEMENT

FOR THE FOLLOWING TRADE MARK

VEGA INVESTMENT MANAGERS

IN CLASSES 35 AND 36

AND

AN APPLICATION FOR INVALIDATION THEREOF

UNDER NO. 502524

BY

VEGA FINANCE LTD

Background and pleadings

1. Natixis Wealth Management (“the proprietor”) is the registered proprietor of trade mark registration no. 3276944 for the mark:

VEGA INVESTMENT MANAGERS

2. The trade mark was filed on 3 June 2013 and registered on 30 March 2018. It is registered for various services in classes 35 and 36.
3. On 26 March 2019, VEGA FINANCE LTD (“the applicant”) sought invalidation of the trade mark registration on the basis of Section 5(4)(a) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its alleged earlier rights in the marks VEGA and VEGA FINANCE. The applicant seeks the partial invalidation of the proprietor’s mark, in respect of the following services:

Class 35: Efficiency experts and business information; business research; business management; business administration; economic forecasting; market research; projects (business management assistance); monitoring and processing of computer-processed data, of signals, images and information; construction of databases, namely compilation and systemisation of information into computer databases; advertisement services; promotion and publicity; administrative consultancy relating to organisation in the field of financial goods.

Class 36: Financial analysis; financial evaluation; financial consultancy; financial information; financial and banking management; research services relating to finance; arranging the provision of finance; valuations (fiscal -); financial management; management of portfolios and financial investments; consultancy relating to the stock exchange; fiscal and financial valuations and assessments; financial loan services; professional consultancy in the banking, financial and monetary sectors; management of real estate investments.

4. The applicant claims to have been providing ‘Business consulting; business management; business administration; office functions; business consulting via the internet; all of the aforesaid services in relation to financial issues; Financial consulting

for business; corporate finance; financial services; financial services provided by the internet' under the signs it relies on since 18 October 2012, in London and throughout the UK generally, and has acquired goodwill under the signs. It states that use of the contested registration would therefore be a misrepresentation to the public and would result in damage to the applicant's aforementioned goodwill.

5. The applicant states that it has been using its marks since 2012 in the UK and that it applied for those marks as UK trade marks in 2014. Those applications were opposed on the basis of the European Union Trade Mark (EUTM) 'VEGA INVESTMENT MANAGERS' (No. 11865979) which was at that time owned by Banque Privée but is now owned by the proprietor Natixis. The applicant states that it took action at the European Union Intellectual Property Office (EUIPO) and was successful in the invalidation of the EUTM relied upon in the opposition of its UK trade mark applications. However, it asserts that the proprietor converted the EUTM into a national UK registration in 2018, some four years after the filing of the applicant's trade marks in the UK and some six years after the applicant commenced providing services in England under the mark VEGA FINANCE, in 2012.
6. The proprietor filed a counterstatement denying the claims made and putting the applicant to strict proof regarding its claim to have used the marks relied upon since 2012 in the UK. It also denies that the applicant had acquired goodwill in the marks relied upon at the relevant date. The proprietor asserts that, even if it is shown to be the case that the applicant can show earlier use of the marks relied upon, misrepresentation would not occur, and the applicant would not suffer damage.
7. The proprietor states that the invalidation action taken against its EUTM is irrelevant as this action was based on a Greek national registration, hence the reason why the proprietor was successfully able to convert the EUTM into a national UK registration. It adds that the date of the conversion of its EUTM is also irrelevant as it does not affect the date of commencement of the proprietor's registered rights in the UK.
8. Neither party provided written submissions. Only the applicant submitted evidence, which will be summarised to the extent that it is considered necessary. Neither party

requested a hearing and so this decision is taken following a careful perusal of the papers.

9. The applicant is represented by Forresters IP LLP. The proprietor is represented by Walker Morris LLP.

Legislation

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

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

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

11. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

12. The relevant parts of section 47 state:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Evidence

13. The applicant filed evidence to show use of the earlier marks relied upon. The evidence comprises a witness statement of Mr Ilias Koutsogiannopoulos dated 27 January 2020, accompanied by thirteen exhibits.

14. Mr Koutsogiannopoulos is the Managing Director of Vega Finance Limited, a position he has held since February 2013. He states that before incorporation of the applicant in the UK, he used the trade name Vega Finance in relation to business and financial consulting in Greece since 1997.

15. In his witness statement Mr Koutsogiannopoulos states that the evidence provides the following information:

16. Exhibit 1 shows two certificates from the Athens Chamber of Industry and Commerce dated 1997 and 1998, showing that the applicant was trading in Greece at that time. Exhibit 2 provides details of two Greek trade mark registrations for the marks VEGA and VEGA FINANCE, both valid until 2027. Exhibit 3 comprises European Union Intellectual Property office (EUIPO) decisions in which the applicant's Greek trade marks served as the basis for partial cancellation of the proprietor's EUTM's 11866167 and 11865979. Exhibit 4 comprises a decision of the UK Intellectual Property Office (IPO) in the unsuccessful opposition of the applicant's UK mark 3079118. Exhibit 5 provides information from a report of the City of London Corporation as to the large number of Greek speakers in the Greater London Area (approximately 280,600 – 300,000). This information is taken from a Wikipedia page titled 'Greeks in the United Kingdom'.

17. Mr Koutsogiannopoulos states that following market research, opportunities to offer services to Greek speakers in the UK became apparent and he began to expand his business activities to the UK in 2012. He registered the domain name 'vegafinance.co.uk' on 18 October 2012, as shown in Exhibit 6 which provides a copy of a Nominet registration certificate showing that the domain name was registered to the applicant but was due to expire on 18 October 2013.

18. Exhibit 7 comprises a copy of the Certificate of Incorporation from Companies House showing that the applicant VEGA FINANCE LTD was incorporated in the UK on 12 February 2012.

19. The applicant states that a website 'went live' shortly after its incorporation in 2012 and that the applicant has been offering consultancy services relating to the following services across the UK since at least the beginning of 2013:

Corporate strategy; corporate structure; corporate governance; budgeting; risk management; venture capital; private equity; joint ventures; financial studies.

20. These services, Mr Koutsogiannopoulos states, are mainly provided through the preparation of studies and business reports, business meetings and presentations.

21. The applicant states that Shareholder funds have increased steadily since its incorporation and provides the following Shareholder funds figures:

2014: £1,503; **2015:** £5,614; **2016:** £12,175; **2017:** £18,206; **2018:** £23,923; **2019:** £23,509.

Exhibit 8 provides copies of the Micro-entity Accounts of the applicant confirming the above figures.

22. The applicant provides samples of invoices to clients and from suppliers under Exhibit 9 which is comprised of 92 pages. The majority of this information comprises invoices from other parties to the applicant. Those invoices are made up largely of bills from Abbi Becka Accountancy to Vega Finance Ltd, and from hotels that have provided accommodation to the applicant. A number of invoices are from a company called Coddan CPM Limited to Vega Finance Ltd, for services rendered in what appears to be the setting up of new companies, on behalf of third parties which it appears are clients of the applicant. The final 30 pages of exhibit 9 provide invoices from the applicant Vega Finance Ltd to customers. These invoices show that the applicant has provided the following services during the relevant period:

Financial management services; Annual company fees; Financial consulting services; Consultancy services for the incorporation of a new company; Business consultancy services for market expansion in the UK and in the setting up of a new company; Management consulting services; Management services.

23. I note that these invoices, excluding the final four invoices (three from ZEINCRO UK LTD) which fall outside of the relevant date, are directed to ten customers. Of these ten customers, three are Greek companies based outside the UK. The applicant provided services to these parties in the area of business expansion into the UK and, in one instance, in the negotiation of an agreement with one of its UK customers, Fractals Productions Ltd.

24. Of the applicant's seven UK based customers, I note that all seven are based in London and further, I note that five of them, namely Digicom IT Solutions Ltd; Marketsage Ltd; Interen Ltd; N Pelekoudas Ltd and Barckon Ltd, all share the same

address: 20-22 Wenlock Road, London, N1 7GU. It is also the case that the first two invoices from Digicom IT Solutions show that initially it was trading from 145-147 St John Street, London, EC1V 4PW, the same address as a sixth UK customer Grecolicious Ltd.

25. The total value of the 28 sample invoices which fall within the relevant period is £52,633. £14,460 came from Barckon Ltd, £9600 from Digicom IT Solutions Ltd, £6900 from N Pelekoudas Ltd and £6618 from Fractals Productions Ltd. These invoices are dated from 18 October 2013 to 2 May 2019, showing activity across the period.
26. The marks relied upon are not shown in any of the sample invoices however the applicant's name Vega Finance Ltd is displayed at the head of each.
27. Mr Koutsogiannopoulos states that the applicant relies on recommendations from existing clients and states that the services provided under VEGA are marketed by word of mouth by existing clients and suppliers. Exhibit 10 comprises a marketing brochure, which the applicant states has been used since May 2014. This brochure shows the VEGA and VEGA FINANCE marks being used. The brochure is undated and provides information about the applicant company and the services it provides.
28. Exhibit 11 comprises an example of a promotional pen which the applicant has given away to clients and prospective customers. Mr Koutsogiannopoulos states that approximately 500 of these pens have been given out since the applicant was incorporated in 2012. Two pictures are provided, showing the name VEGA FINANCE LTD running along the side of a pen.
29. Mr Koutsogiannopoulos states that the mark Vega Finance features heavily on the applicant's social media platforms including LinkedIn. Exhibit 12 contains two pages showing some use of the marks VEGA and VEGA FINANCE on the applicant's LinkedIn platform, which has 671 followers and was set up in 2013. This information is undated other than the print date of the pages, which is 22 January 2020.
30. Exhibit 13 is a brief statement executed on behalf of Abbi Becka Accountancy. This information shows that the aforementioned accountancy firm has been cooperating

with the applicant since 2013 and provides accountancy services to it and to some of its clients.

Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant Date

33. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, as the Appointed Person, endorsed the registrar’s assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

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

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

34. The relevant date in this matter is 3 June 2013, being the date on which the application for the contested registration was filed.

Goodwill

35. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) goodwill was described in the following manner:

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

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

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

BALI Trade Mark [1969] R.P.C. 472). Thus, the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

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

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

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

38. In *Hart v Relentless Records* [2002] EWHC 1984 (Ch), Jacob J. (as he then was) stated that:

“62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in *BALI Trade Mark* [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference

between the two is vanishingly small. That cannot be the case. It is also noteworthy that before the relevant date of registration of the BALI mark (1938) the BALI mark had been used “but had not acquired any significant reputation” (the trial judge's finding). Again, that shows one is looking for more than a minimal reputation.”

39. In *Smart Planet Technologies, Inc. v Rajinda Sharm* [BL O/304/20], Mr Thomas Mitcheson QC, as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, *HL and Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

“.. a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

40. After reviewing the evidence relied on to establish the existence of a protectable goodwill Mr Mitcheson found as follows:

“The evidence before the Hearing Officer to support a finding of goodwill for Party A prior to 28 January 2018 amounted to 10 invoices issued by Cup Print in Ireland to two customers in the UK. They were exhibited to Mr Lorenzi’s witness statement as exhibit WL-10. The customers were Broderick Group Limited and Vaio Pak.

37. The invoices to Broderick Group Limited dated prior to 28 January 2018 totalled €939 and those to Vaio Pak €2291 for something approaching 40,000 paper cups in total. The invoices referred to the size of “reCUP” ordered in each case. Mr Lorenzi explained that Broderick Group Limited supply coffee vending machines in the UK. Some of the invoices suggested that the cups were further branded for onward customers e.g. Luca’s Kitchen and Bakery.

38. Mr Rousseau urged me not to dismiss the sales figures as low just because the product was cheap. I have not done so, but I must also bear in mind the size

of the market as a whole and the likely impact upon it of selling 40,000 cups. Mr Lorenzi explained elsewhere in his statement that the UK market was some 2.5 billion paper coffee cups per year. That indicates what a tiny proportion of the market the reCUP had achieved by the relevant date.

39. Further, no evidence was adduced from Cup Print to explain how the business in the UK had been won. Mr Rousseau submitted to me that the average consumer in this case was the branded cup supplier company, such as Vaio Pak or Broderick Group. No evidence was adduced from either of those companies or from any other company in their position to explain what goodwill could be attributed to the word reCUP as a result of the activities and sales of Cup Print or Party A prior to 28 January 2018.

40. Various articles from Packaging News in the period 2015-2017 had been exhibited but again no attempt had been made to assess their impact on the average consumer and these all pre-dated the acquisition of the goodwill in the UK. I appreciate that the Registry is meant to be a less formal jurisdiction than, say, the Chancery Division in terms of evidence, but the evidence submitted in this case by Party A as to activities prior to 28 January 2018 fell well short of what I consider would have been necessary to establish sufficient goodwill to maintain a claim of passing off.

41. This conclusion is fortified by the submissions of Party B relating to the distinctiveness of the sign in issue. Recup obviously alludes to a recycled, reusable or recyclable cup, and Party B adduced evidence that other entities around the world had sought to register it for similar goods around the same time. The element of descriptiveness in the sign sought to be used means that it will take longer to carry out sufficient trade with customers to establish sufficient goodwill in that sign so as to make it distinctive of Party A's goods."

41. However, a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its goodwill and reputation may be small. In *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, the Court of Appeal in England and Wales held that the defendant had passed off its LUMOS nail care products as the claimant's

goods. The claimant had been selling LUMOS anti-ageing products since 2007. The goods retailed at prices between £40 and £100 per bottle. The Claimant's sales were small, of the order of £2,000 per quarter from early 2008 to September 2009, rising to £10,000 per quarter by September 2010. The vast majority of these sales were to the trade, including salons, clinics and a market. As at the relevant date (October 2010) the Claimant had sold to 37 outlets and by that date it was still selling to 25 outlets. There was evidence of repeat purchases. Although the number of customers was small, or, as the judge at first instance put it, "very limited", the claimant's goodwill was found to be sufficient to entitle it to restrain the defendant's trade under LUMOS.

42. In order to determine whether the applicant holds goodwill in the marks VEGA and/or VEGA FINANCE, on which it relies, I must consider the evidence it has provided carefully and within the context of the case law set out above.

43. I begin by determining that the applicant's first five exhibits are of no relevance in the establishment of the applicant's claim of a goodwill in the earlier marks relied upon in the UK. None of the information within those exhibits provides evidence of the applicant's business activities in the UK. I also note that the information provided by the applicant, and responded to by the proprietor, regarding previous actions taken at the EUIPO and the UK IPO, involving various other trade marks of both parties, has no relevance in the assessment I must make regarding the establishment, or otherwise, of the proprietor's goodwill in the words VEGA and VEGA FINANCE, for the purposes of this cancellation action.

44. The remainder of the evidence has established that the applicant has had just seven UK based customers between 2013 and 2019. It has also shown that at least five of these customers share the same address and may therefore possibly be linked in some way. The evidence in exhibit 9 shows that the applicant has received revenue of £52,633 between October 2013 and May 2019, which indicates average sales of its services amounting to less than £10,000 per year.

45. I have previously noted that the applicant has shown in evidence that it had three customers based in Greece during the relevant period. I have not taken into account the sales figures coming from the invoices to those customers, as it is the case, as set

out in *Starbucks*, that “a claimant in a passing off claim must establish that it has actual goodwill in this jurisdiction, and that such goodwill involves the presence of clients or customers in the jurisdiction for the products or services in question”.¹

46. The relevant markets for the services that the applicant has claimed it uses its marks on in the UK are the financial services sector and the business consultancy sector. These markets can be said to be substantial and likely to be worth in the region of hundreds of millions, if not billions, of pounds per annum. The applicant did not provide any indication of market share in its evidence however, it is reasonable to adduce that in a market worth at least hundreds of millions of pounds per year, annual revenue of less than £10,000 amounts to a miniscule fraction of that market.

47. The applicant has stated that it relies on word of mouth and recommendations as a means of gaining new clientele. It does not appear to have a marketing or promotional budget. Other than word of mouth, it relies largely on a marketing brochure that it states was created in 2014. Although that brochure is still in use, there is no indication as to how many of those brochures have been given out. The applicant does advertise by way of ‘give-away’ pens however the evidence shows that only 500 of these pens have been given out between 2012 and 2019. The applicant’s word of mouth approach to promoting itself may have had an extremely limited success, as five of its seven UK based customers share the same address. The applicant has stated that its Shareholder funds have increased steadily since its incorporation, and whilst it is shown that these funds have grown year on year, the figures provided are very small, beginning with £1,503 in 2014 and growing to £23, 509 in 2019.

48. Unlike in the LUMOS case cited above, the services provided by the applicant are not particularly cheap, often more than £1000 a time. The level of revenue of the applicant amounts to just over £50,000 in six years of trading, which is sufficiently low to distinguish this matter from the LUMOS case.

49. Based on the evidence before me, and noting the applicant’s very limited sales of services in an extremely large market; combined with a very small pool of recurring customers; no advertising or marketing budget to speak of; no evidence of any

¹ *Starbucks (HK) Limited and Another v British Sky Broadcasting Group Plc & Others*, [2015]

significant promotional activity; and business activity limited solely to London; I find that the applicant has not demonstrated that it has significant or substantial goodwill in either of the marks it relies on. What goodwill it may possibly be said to hold, can only be considered to be a very trivial one at best.

50. I conclude therefore, that the applicant has not established that it holds a goodwill in either of the two marks relied upon. As I have concluded that the applicant does not hold goodwill in the marks VEGA or VEGA FINANCE, the cancellation application fails.

Conclusion

51. Cancellation application 502524 has been unsuccessful. Subject to any successful appeal, the proprietor's registration remains registered.

Costs

52. The proprietor has been successful and is entitled to a contribution towards its costs, which are sought on the usual scale (contained in Tribunal Practice Notice 2/2016). I award the proprietor the sum of £800 as a contribution towards the cost of the proceedings. That sum is calculated as follows:

Considering the applicant's statement of grounds and preparing a counterstatement	£300
Considering the applicant's evidence	£500
Total	£800

53. I therefore order VEGA FINANCE LTD to pay Natixis Wealth Management the sum of £800. The above sum should 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 16th day of July 2021

Andrew Feldon

For the Registrar

The Comptroller-General