O/1126/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003952413
BY HUBX LIMITED TO REGISTER:

AS A TRADE MARK IN CLASSES 35, 36, 41, 44 & 45

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 445160 BY
THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

BACKGROUND AND PLEADINGS

1. On 2 September 2023, hubx limited ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The applicant's mark was published for opposition purposes on 6 October 2023 and registration is sought for the services set out in the **Annex** of this decision.

2. On 8 January 2024, the applicant's mark was opposed by The Association of Chartered Certified Accountants ("the opponent"). The opposition is reliant upon sections 5(2)(b), 5(3), 5(4)(a) and 5(4)(b) of the Trade Marks Act 1994 ("the Act"). Under the section 5(2)(b) and 5(3) grounds, the opponent relies on the following marks:

UK registration no. 913904636[1]

Colour claimed: Red; Grey.

Filing date 1 April 2015; registration date 23 December 2016

Expiration date: 1 April 2025[2]

Relying on goods and services, namely:

[1] The opponent's marks are comparable marks based on earlier EUTMs. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

[2] While the opponent's first mark has expired, it remains relevant to these proceedings on the basis that the expiration of that mark came after the relevant date of these proceedings, being the filing date of the applicant's mark.

Class 9: Computer programs and computer software featuring training or educational materials in the field of accountancy; electronic software featuring training and educational materials in the field of accountancy; accountancy practice management software; information stored in or on electronic, magnetic and/or optical means featuring training or educational materials in the field of accountancy; electronic publications; instructional and teaching apparatus included in Class 9; all the aforesaid goods relating to accountancy, financial and business matters, management and business studies, or advice, information or education for those engaged in such fields.

Class 16: Printed matter; printed publications; books; periodical publications, magazines and journals; stationery; paperweights; decalcomanias and calendars; instructional and teaching materials; all the aforesaid goods relating to accountancy, financial and business matters, management and business studies, and advice, information or education for those engaged in such fields.

Class 41: Education, teaching and training services; training; training of accountants; vocational skills training; organising and conducting classes, seminars, symposiums, conferences and exhibitions; organisation of educational examinations; publishing services; arranging and conducting of workshops; business training services; certification of education and training awards; commercial training services; on-line training services; computer based training; setting of training standards; setting of educational standards; academic examination services; design of educational courses, examinations and qualifications; education examination; provision of educational examination facilities; provision of

information and advice relating to education, educational establishments and careers; provision of information, help and advice for new students in higher education; provision of information relating to education, educational establishments, jobs and careers, what's on information, current events, news and entertainment news; organising competitions; information and advisory services relating to all of the aforementioned services.

("the opponent's first mark"); and

UK registration no. 913904495

Colour claimed: Red; Grey.

Filing date 1 April 2015; registration date 4 August 2015

Relying on all goods and services, which are identical to those relied upon under opponent's first mark.

("the opponent's second mark").

3. Under the section 5(2)(b) ground, the opponent claims that the marks are highly similar and the goods and services at issue are identical or similar. It is claimed that this results in a likelihood of confusion on the part of the public, including a likelihood of association.

4. Turning to the section 5(3) ground, the opponent claims to enjoy a reputation in all of the goods and services relied upon and that the applicant's mark would create a link or association with the opponent's marks in the mind of the public. It is claimed that use of the applicant's mark would cause an unfair advantage because it would cause confusion as to the origin of the mark and that it would free-ride on the reputation of the opponent. Further, the opponent claims that the

distinctiveness and reputation of its marks would be diluted as a result of the applicant's use of its mark.

5. Under the section 5(4)(a) ground, the opponent relies on unregistered signs that are identical to its first and second marks, which are shown above. It is claimed that these have been used throughout the UK since 2015 in respect of the same goods and services relied upon under the 5(2)(b) and 5(3) grounds. I will refer to these as the opponent's first and second signs in line with the corresponding marks listed above. In addition, the opponent relies on the following sign, which it also claims to have used throughout the UK since 2015 for the same goods and services:

("the opponent's third sign").

6. The opponent claims that by virtue of its use of the signs relied upon, it has built up a considerable goodwill and, as such, use of the applicant's mark can be prevented in the UK by the law of passing off.

7. Lastly, under the section 5(4)(b) ground, the opponent claims that it benefits from rights as the owner of the following copyright work:

8. It is claimed that as the device in the applicant's mark is identical to the above work, it constitutes copyright infringement within the meaning of sections 16 and 17 of the Copyright Designs and Patents Act 1988 ("CDPA").

9. The applicant filed a counterstatement wherein it denied the claims against it.

10. The applicant is unrepresented and the opponent is represented by Penningtons Manches Cooper LLP. Only the opponent filed evidence. No hearing was requested and both parties filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

12. The opponent's evidence came in the form of the witness statement of Andrew William Stent dated 1 August 2024. Mr Stent is the Head of Legal for the opponent, a position he has held since 2007. Mr Stent's evidence was accompanied by 40 exhibits, being AWS1 to AWS40, and was adduced in support of the various grounds relied upon.

13. I do not intend to summarise the opponent's evidence in full here (or its submissions, for that matter). However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Section 5(2)(b): legislation and case law

14. Section 5(2)(b) of the Act reads as follows:

> "(2) A trade mark shall not be registered if because-
>
> (a) …
>
> (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 or association with the earlier trade mark."

15. Section 5A of the Act states as follows:

> "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

16. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

> "(6)(1) In this Act an "earlier trade mark" means –
>
> (a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark

in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

17. The opponent's marks qualify as earlier trade marks under the above provisions. The opponent's marks did complete their registration processes more than five years before the filing date of the applicant's mark. However, the applicant did not request that the opponent provide proof of use for the marks relied upon. As such, they are not subject to the use provisions and the opponent may, therefore, proceed to rely on all the goods and services for which its marks are registered.

18. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

19. The applicant's services are listed in the Annex of this decision and the opponent's goods and services are listed at paragraph two above.

20. Some of the services in the applicant's specification are identical to the services on which the present ground is based. For example, the applicant's terms of "education, teaching and training" and "publishing, reporting, and writing of texts" are identical (either self-evidently or under the principle outlined in the case of *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05) to "education, teaching and training services" and "publishing services" in the opponent's specification, respectively. As such, I do not consider it necessary to undertake a full comparison of the goods and services. Instead, the opposition will proceed on the basis that some of the contested services are identical to those covered by the opponent's specification. If, in taking the approach that the services are identical, the opposition fails then it follows that the opposition will also fail where the applicant's services are similar, regardless of the degree. In the event that the present ground succeeds for the aforementioned identical services, I will return to compare the remaining services.

The average consumer and the nature of the purchasing act

21. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) 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.”

22. The services at issue will be sought by members of the general public at large, business users and professional users. For example, an individual (be that in the course of their profession, or not) may seek educational services whereas a business is commonly the consumer of services that involve publishing. The services will likely be selected from the provider of the services directly where the consumer will encounter them on lists (be that online or physical pamphlets) or on placards in physical premises. As such, I find that the visual component will dominate the selection process but I do not discount the fact that consumers are also likely to engage in discussions with sales assistants.

23. In terms of the cost and frequency of selection of the services, I consider that this will vary depending on who is selecting them. An individual looking for educational services is likely to select them infrequently, however, someone who needs education and training for their job is likely to make their selection on a more frequent basis. In terms of cost, this too will vary as some educational courses will be relatively cheap but some more complex, multi-year courses may be more expensive. The same applies to publishing services as a user may look to publish just one book in a limited number but others may look for repeat publications in high volume. In terms of the level of attention paid, I find that this will vary from a medium degree to a relatively high degree (though not outright high). I say this because some services will attract relatively ordinary considerations from members of the public whereas business or professional users are likely to

consider the services as important to their careers or the operation of their businesses.

Comparison of the marks

24. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

25. The Court of Justice of the European Union ("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."

26. 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.

27. The respective trade marks are shown below:

The opponent's marks	The applicant's mark
 ("the opponent's first mark")  ("the opponent's second mark")	

28. I have submissions from the opponent as to the similarity of the marks at issue. I do not intend to discuss these here but will, where necessary, address them below.

Overall impression

29. The applicant's mark is a figurative mark that consists of the element 'HUBX'. The letters 'H-U-B' are in a standard black typeface whereas the letter 'X' is slightly stylised and in blue. The stylisation is fairly banal as it merely involves a simple dissection of the cross-section of the 'X'. In terms of the overall impression of this mark, I note that in its submissions (when considering the likelihood of confusion), the opponent claims that the 'X' in the applicant's mark is the dominant element of the same. While this part of the mark is in a different colour to the word 'HUB', it is a relatively ordinary representation of a single letter and as such, is not particularly remarkable. Further, despite its different colour and stylisation, I do not consider

that consumers will see it as being separate from the remaining verbal element of the mark, being 'HUB'. As such, I am of the view that the overall impression of the mark will be dominated by the 'HUBX' element, with the stylisation of the 'X' playing a minor role due to its banal nature.

30. The opponent's first mark is a figurative mark that consists of a stylised letter 'X' device which sits above the words 'ACCA-X'. The 'X' device is red and grey and, like the applicant's mark, is partially dissected at its cross-section. The word 'ACCA-X' is presented in a red standard typeface. The second mark is also a figurative mark featuring the same elements as the first mark; however, the letter 'X' is placed to the left of the 'ACCA-X' element. In respect of the opponent's marks, the opponent argues that the 'X' device dominates. I see no basis for this argument as while the 'X' device will clearly be noticed, consumers will view the verbal element 'ACCA-X' as being the marks' indicator of origin. Therefore, it is 'ACCA-X' that will be attributed the strongest role in the opponent's mark. As for the 'X' device, this will play a lesser role as, despite its placement within the marks, it will simply be viewed as a decorative element that is a stylised iteration of the last letter of the 'ACCA-X' branding.

Visual comparison

31. While the stylisation used is fairly banal, I appreciate that both parties' marks include a similarly styled presentation of a letter 'X'. However, this element is not identical across the marks as the 'X' in the opponent's marks consists of a contrived colour split of red and grey where that letter in the applicant's mark is blue. Further, the similarly stylised X's are located at different locations in their respective marks. On this point, I appreciate that there is an additional overlap in that the opponent's marks include the letter 'X' at their ends, although this letter is not stylised. In terms of their visual difference, the opponent's marks include the word 'ACCA' while the applicant's mark includes the word 'HUB'. Taking all of this into account and

bearing in mind what I have said regarding the overall impression of the marks, I find that the marks are visually similar to a low degree.

Aural comparison

32. The opponent's submission is that the opponent's marks will be pronounced as 'X-ACCA-X'. Further, it claims that the marks are aurally similar to a moderate degree due to the shared use of 'X'. Firstly, I do not consider that the first 'X' in the opponent's marks will be pronounced as consumers will simply see it as a device element that reinforces the presence of the letter 'X' that sits within the verbal element of the marks. Secondly, I do not agree that the marks are moderately similar. I say this because, save for the shared use of just one letter, the marks are entirely dissimilar. In my view, the shared use of one letter at the end of marks is, in the present case, only sufficient to give rise to a low degree of aural similarity, especially when you consider that the beginnings of marks tend to have more impact than the ends.[3]

33. Even if consumers were to pronounce the letter 'X' twice in the opponent's marks, the duplication of the same letter at the beginning of the opponent's marks does not act as an additional point of similarity. Therefore, even if I am wrong on that point, it will not impact upon the outcome reached above.

Conceptual comparison

34. While the evidence sets out that the 'ACCA' element of its marks is an initialism for the opponent's name (being the Association of Chartered Certified Accountants), I note that it has not sought to argue that consumers will derive this concept from its marks. Instead, the opponent submits that neither party's marks have a particular concept. I agree to some extent as while 'ACCA' stands for 'Association of

[3] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Chartered Certified Accountants', it will be viewed as a made-up word with no obvious meaning. I do not consider that the addition of '-X' to the end of 'ACCA' will do anything to change this.

35. As for the applicant's mark, I find that consumers, when confronted with 'HUBX' will notice that it includes the word 'HUB' and that this is a well-known English language word with multiple meanings. Those meanings are '*the central portion of a wheel, propellor or fan'*, '*a device for connecting computer in a network'*, '*a location from which many services operate and connecting journeys can be made'* and *'a place where the skill and knowledge necessary for a particular activity are concentrated'*.[4] While the addition of 'X' will not give the mark, as a whole, any obvious meaning, I consider that the association with the known word, HUB, is such that consumers will derive some meaning from the mark. As a result of the fact that one mark has some meaning whereas the other does not, I find that the marks are conceptually dissimilar.[5]

Distinctive character of the opponent's marks

36. 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).

[4] https://www.collinsdictionary.com/dictionary/english/hub
[5] On this point, see paragraphs 22 and 23 of *ZOOMO* (BL O/0866/25)

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)."

37. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use and while the opponent did not plead that its marks have an enhanced degree of distinctiveness, it did file evidence of use. Before assessing this evidence, I will consider the inherent position.

38. While I have found that the 'X' device in the opponent's marks plays some role in their overall impressions, I consider that the distinctiveness of the same will derive from the 'ACCA-X' element. I say this because it is this element that will denote the origin of the marks, with the 'X' device being seen more so as a decorative element that reflects the fact that 'X' sits at the end of 'ACCA-X'.[6] As I have discussed above, 'ACCA' will be viewed as a word with no obvious meaning and that the addition of '-X' will do nothing to change this. This element is neither descriptive or

[6] For the avoidance of doubt, this is not to say that the 'X' device is wholly non-distinct but, instead, that it does not contribute to the distinctive character of the mark to any material degree so as to elevate its distinctiveness beyond that which derives in the 'ACCA-X' element.

allusive of the services at issue and, as a result, I find that the opponent's marks enjoy a high degree of inherent distinctive character.

39. I turn now to consider the position regarding an enhanced degree of distinctiveness. The evidence is extensive and, in my view, somewhat unfocused. I say this because while it does cover use relating to the 'ACCA-X' branding, it goes into extensive detail regarding the 'ACCA' brand. On this point, the evidence goes back and forth as to its actual focus. For example, the evidence begins with discussions surrounding 'ACCA' before eventually moving to discuss 'ACCA-X'. However, it repeatedly returns to the overall 'ACCA' branding, which is not the mark at issue. This is a problem for the present assessment because while the evidence does demonstrate that the 'ACCA' brand is, clearly, a very large global organisation,[7] the assessment here is based on the 'ACCA-X' brand. Further, the 'ACCA' evidence relates heavily to accountancy whereas the relevant services of the opponent do not cover such an operation.[8]

40. The above being said, the opponent's evidence does describe the 'ACCA-X' branding as covering an online learning program which offers courses to everyone, including registered 'ACCA' students. As such, where the evidence does focus on the 'ACCA-X' branding, it is of relevance here because such services can be said to fall within "education, teaching and training services", which are at issue. While that may be the case, the evidence in respect of 'ACCA-X' is either not at a particularly high level or is global in nature. The latter point is an issue here because an assessment of an enhanced distinctive character is focused on the UK market. I have no intention to discuss the extensive evidence in full but will discuss what I consider to be the most salient points below.

[7] I say this because the annual global revenue of 'ACCA' is in the hundreds of millions of pounds (see paragraph 43 of Mr Stent's witness statement) and, further, the 'ACCA' brand had a UK "market share of 32.7% of total members and students across major accountancy bodies in 2022" (see paragraph 63 of Mr Stent's witness statement).

[8] I appreciate that the goods that are relied upon by the opponent are limited to the field of accountancy. However, even if I were to have conducted a full goods and services comparison, the services of the applicant are disparate to such a field so would not have resulted in any similarity with such goods in any event.

41. Between 2021 and 2023, the opponent attracted a total of 149,648 views to its 'ACCA X' website (being 'acca-x.com') from visitors within the UK. Figures for 2024 are provided but these are from after the relevant date so are of no assistance here. In addition, I note that during the same period, the 'ACCA X' sub-section of the 'ACCA Global' website (being 'accaglobal.com') attracted 210,113 views from the UK. I note that the evidence provides overall visitor figures for the 'ACCA Global' website. These are at a high level and cover visits from UK users in the multiple of millions per year between 2021 and 2023. It appears to me that the opponent is attempting to argue that such visits contribute to the distinctiveness of the 'ACCA-X' brand as, in discussing these figures, Mr Stent states that the text 'ACCA-X' is shown on each page of the 'ACCA Global' website and at least one link to 'www.acca-x.com' is included. While noted, the printout of the 'ACCA Global' website that is provided in evidence only shows limited reference to 'ACCA-X' in the 'useful links' section at the bottom of the 'ACCA Global' homepage.[9] I do not consider that such a limited reference to the 'ACCA-X' sub-brand is sufficient to demonstrate that the visitors to 'ACCA Global' would have been made aware of 'ACCA-X'

42. In terms of student numbers, the evidence demonstrates that for the years 2015 to 2023, there ranged from somewhere between 56,000 and 66,000 students that used the 'ACCA-X' platform in the UK per year. In respect of these figures, it is possible that students who used the opponent's services over a multiyear period would have been included in each year they were students of the 'ACCA-X' service. As such, I do not consider that the figures provided are to be taken cumulatively.

43. Over the same period as covered by the student figures (2015 to 2023), the 'ACCA-X' branding obtained in the region of £428,228 worth of turnover. It is noted that this is shown as being the worldwide turnover so the overall figures are not

[9] See pages 37 and 38 at AWS8

particularly very helpful to the present assessment which, as above, is focused on the UK consumer. Without anything further, it is not possible for me to determine how much of this global turnover is attributable to the UK market. Given that the evidence sets out that the opponent's 'ACCA-X' brand was used in 230 countries,[10] the imprecise nature of this evidence is such that I do not consider it to be of any assistance to the present assessment.

44. I note that the opponent's evidence goes into detail regarding promotional campaigns, awards and media coverage. This is noted but is rife with its own issues. On this point, I note the following examples for illustrative purposes:

a. There is an example of a newsletter sent to students provided in evidence.[11] However, this is dated from after the relevant date in January 2024 and refers to a discount to 'ACCA-X' courses in dollars, not pounds. It is, therefore, of no assistance here;
b. Examples of an article from the opponent's 'Student Accountant' magazine are provided in evidence.[12] While it is claimed that these are sent to 400,000 ACCA students, the articles are undated and the screenshots all appear to have been captured in July 2024, being after the relevant date. Further, the first article refers to a student in Singapore, further emphasising the lack of UK focus of the evidence as a whole;
c. The awards evidence includes reference to awards given in 2016[13] and 2017.[14] As is often the case with award evidence, there is no indication as to how these awards were decided upon, be that via a judging panel or votes from consumers who actually use the opponent's services. Further, there is nothing to suggest how well known these awards are amongst the UK consumer base. On this point, I appreciate that the first award referenced is discussed in a

[10] See paragraphs 56.1 and 57.1 of the witness statement of Mr Stent.
[11] AWS21
[12] AWS22
[13] AWS28 and 29
[14] AWS30

Financial Times online article and that the evidence sets out that the Financial Times newspaper is read by over 7 million people in the UK every month. However, the article is from the Education section of the website and there is no indication that this article made it into the print edition of the newspaper, being that which the above figures relate to. Further, there is no evidence as to the readership of this sub-section of the website; and

d. The press coverage articles provided appear to focus on the global reach of the opponent's ACCA-X brand.[15] For example, an article from the Financial Times in 2016 discusses the fact that the 'ACCA-X' education service had enrolled more than 100,000 people from 230 countries. While I do not doubt that this was the case, I repeat that the present assessment is focused on the UK so while I appreciate these articles may have been read by UK consumers, they do not necessarily speak to the reach of the 'ACCA-X' brand in the UK beyond the figures of actual students I have discussed above.

45. Overall, while it is clear to me that there has been consistent use of the 'ACCA-X' branding in respect of its educational platform in the UK since 2015, I am not convinced that the level of use shown in respect of the 'ACCA-X' branding is at a high enough level in order to warrant a finding that the opponent's marks enjoy an enhanced degree of distinctive character. I have no evidence as to the size of the actual market for the opponent's education services and, as such, I am unable to determine how sizeable the opponent's use actually was prior to the relevant date in the UK. On this point, the opponent had a maximum of around 66,000 UK students during 2016 and the numbers did not stray too much below this into the run up to the relevant date. While these figures may seem relatively sizeable, I repeat what I have above in that there is nothing to assist me in determining whether this was sufficient in the context of the relevant market. Further, there are significant issues with the evidence as to its focus on the UK or at the relevant date. Lastly, I appreciate that the 'ACCA' branding itself is a very large global operation,

[15] See AWS31 to 33

however, the evidence in respect of the presence of the 'ACCA-X' brand in the UK is at nowhere near that level.

46. As a result, I am unwilling to find that the opponent's marks would be known to a significant proportion of consumers in the UK due to the use made of them. Therefore, the opponent's marks do not benefit from an enhanced degree of distinctive character. On this point, I remind myself that the inherent position was already high meaning that this finding is not necessarily detrimental to the opponent.

Likelihood of confusion

47. 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 down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, 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 services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier registrations, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

48. I have proceeded on the basis of there being identity between some of the parties' services. The average consumer base for said services is formed of members of the general public, professional and business users. In respect of the selection

process, I have found that some consumers will select the goods via primarily visual means (though not discounting an aural component). I have concluded that average consumers will pay varying degrees of attention, ranging from medium to relatively high (though not outright high). In respect of the similarity of the marks, I have found them to be visually and aurally similar to a low degree and conceptually dissimilar. Lastly, I have found the opponent's marks to be inherently distinctive to a high degree.

49. In respect of direct confusion, the opponent argues that the 'X' device has an independent distinctive character in the marks and, as such, the *Medion* principle[16] applies meaning that the marks will be directly confused. While the opponent's argument on this point is noted, it is somewhat misguided. I say this because the opponent's position is that simply because both marks consist of a similar 'X' device, then they will be directly confused. On this point, I refer to the case of *Be:FIT* (BL O/385/18) wherein Professor Philip Johnson, sitting as the Appointed Person, set out that:

> "9. Unfortunately, parties too often see *Medion* as authority for the proposition that if a composite mark includes an earlier trade mark then the comparison should be between just the common element. In simple terms if the earlier mark (X) is included in the composite mark X+Y then the comparison can be between two identical (or very similar) X's and Y can be ignored. Put another way, if the later mark contains the earlier mark there is no need to find a likelihood of confusion. This is not what *Medion* held.
>
> […]

[16] See *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04

13. Essentially, *Medion* is a very structured way of addressing whether the use of the composite mark would cause "indirect confusion" in the mind of the average consumer"

50. As a result of the above, it is not correct to apply the *Medion* principle to the issue of direct confusion. While I will consider the *Medion* principle when considering indirect confusion below, I will not mention it here.

51. In considering direct confusion, taking all of the above into account and even bearing in mind the principle of imperfect recollection, I see no reason why consumers would incorrectly recall or misremember the marks for one another. Put simply, I do not consider that consumers would ignore the elements 'ACCA' and 'HUB' in the parties' marks and then, in noticing the shared use of a similarly styled letter 'X', misremember which mark was which. While the common use of a similarly styled letter 'X' device may be noticed, it is not what consumers would pin their recollection of the marks on. Consequently, I do not consider that there exists a likelihood of direct confusion, even in circumstances where the marks are viewed on identical services. For the avoidance of doubt, even if the services at issue were to somehow attract a lower degree of attention from consumers, I consider that the above finding would apply.

52. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental

process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

53. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

54. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

55. As set out above, the opponent has sought to reply on the *Medion* principle and while this was not applicable to direct confusion, I will consider it here. On this point, I refer to the case of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch). wherein Arnold J (as he then was) considered the impact of the CJEU's judgment in *Bimbo* on the *Medion* case. The judge said that:

> "18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.
>
> 19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole,

and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

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

56. I appreciate that the opponent's marks *may* each be viewed as consisting of two signs that have distinctive character independent of their wholes.[17] However, I do not consider that this applies to the applicant's mark. While the 'X' may be a different colour and slightly stylised, I see no reason why consumers would view it as having distinctive significance independent of the mark as a whole. Instead, the mark will simply be viewed as being the singular sign, 'HUBX'. As such, my primary view is that the *Medion* principle does not apply.

57. Alternatively, however, even if the *Medion* principle were to apply and the applicant's mark was deemed as consisting of two distinctive signs, it would still be

[17] On this point, it could be argued that the 'X' device only serves to emphasise the 'X' in 'ACCA-X' so would not be seen as carrying its own independent significance within the marks themselves. However, for the sake of completeness, I raise the possibility of it doing so here so as to demonstrate that the *Medion* principle is of no assistance in any event.

of no assistance to the opponent. As set out in paragraph 21 of *Whyte and Mackay* (a paragraph that was also specifically cited by Professor Johnson in *Be:FIT*), just because marks may share a common element that has its own distinctive character independent of the whole, it does not automatically follow that there is confusion. In considering the present case, even if consumers were to identify the marks at issue as consisting of two or more signs ('HUB' and the 'X' device in the applicant's mark and the 'X' device and 'ACCA-X' in the opponent's marks), I do not consider that they would believe the shared use of a similarly styled 'X' device is indicative of a common origin. I say this because, put simply, the common element is just one letter with banal stylisation. This is hardly a remarkable element from a trade mark perspective and while I appreciate that they play a role in both parties' marks, the 'X's' are not particularly distinctive, alongside other elements in each mark which are, themselves, entirely different. 'ACCA-X' on the one hand and 'HUB' on the other are not likely to be put down to the respective goods/services coming from the same or economically linked undertakings. To suggest otherwise would mean that the use of similarly stylised single letter devices would give rise to confusion regardless of the other elements within the mark.

58. In considering indirect confusion more generally, I note that the opponent has provided submissions beyond the application of the *Medion* principle. The opponent submits that:

> "The average consumer, familiar with the Earlier Marks by reason of their enhanced distinctive character, will assume that the Device indicates a hub or place to find the services offered by the Opponent under the Sign. The switch of 'ACCA' for 'HUB' is a natural switch (i.e. the average consumer, familiar with the Earlier Marks and the Sign within the Earlier Marks will assume the Application is a hub or place where relevant materials can be located for the provision of goods and services associated with the Opponent)."

59. To me, it appears that the above argument relies on the finding that the common element of 'X' would be seen as the indicator of origin and that 'HUB' and 'ACCA' are the indicators of a brand extension. Even if the opponent's marks were to benefit from an enhanced distinctive character, I see no reason why consumers would view the marks in this way. I appreciate that circumstances exist wherein 'HUB', as a suffix, for example, may be viewed as a logical indicator of a brand extension.[18] However, such a finding only applies where 'HUB' is accompanied by something that indicates brand origin to the point that the addition of 'HUB' would be viewed as logical. I do not consider that this is the case here. 'HUBX' does not, in my view, convey to consumers that the mark indicates a 'hub' which is operated by the 'X' brand. Instead, I consider that the indicator of origin for the applicant's mark will be, simply' HUBX'. In addition, given that it has no meaning, I see no reason why 'ACCA' would be seen as a sub-brand or brand extension of 'X' either. Overall, I find that consumers would not see any economic connection between the parties' marks and, as a result, I find that there exists no likelihood of indirect confusion. This applies even where the marks are viewed on identical services and, for the avoidance doubt, even in a scenario wherein the services were selected with a lower degree of attention from consumers.

Final remarks on section 5(2)(b)

60. I remind myself that under the present ground, I proceeded on the basis that some of the services at issue were identical. Given that the present ground failed against these identical services, I repeat what I have said at paragraph 20 above in that it follows that it would have also failed against the remaining services, regardless of if they were found to be identical or similar to varying degrees.

61. As a result of my findings above, the present ground fails in its entirety. I will now proceed to consider the remaining grounds of opposition.

[18] See my decision in the case of *LOGICOM HUB* (BL O/529/21), for example.

Section 5(3)

62. Section 5(3) of the Act states:

> "5(3) A trade mark which –
>
> > is identical with or similar to an earlier trade mark, […] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

63. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; General Motors, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; General Motors, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; Adidas Salomon, paragraph 29 and Intel, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; Intel, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; Intel, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; Intel, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; Intel, paragraphs 76 and 77 and Environmental Manufacturing, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; Intel, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; L'Oreal v Bellure NV, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure).

64. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks at issue are similar. Secondly, the opponent must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public throughout the UK. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods or services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

65. The opponent's position is that the applicant has conceded that the opponent's marks have a reputation in the field of education, in particular education in the field of accountancy. On this point, I note that the applicant's actual comments in respect of a reputation are as follows:

"Whilst the Opponent claims to have a reputation in the UK, the Opponent's goods and services in relation to the earlier mark is in relation to Accounting and therefore its reputation in the field of Accountancy. The Application covers a broad range of goods and services albeit in education and career." (my emphasis added).

66. I fail to see how this can be construed as a concession that the opponent has a reputation in the field of education in accountancy. The opponent's position on this point is, therefore, unsupported. Turning to the evidence filed, I remind myself that I have briefly touched upon this at paragraphs 39 to 46 above. I reiterate my issues in that while it is clear that the 'ACCA' brand is large and relates to accountancy, it is not particularly compelling insofar as it relates to the 'ACCA-X' sub-brand, being the sub-brand under which the opponent offers education services. As a result, I am of the primary view that the evidence falls short of demonstrating that the opponent enjoys a reputation in the relevant services. On this point, I am of the view that even if I were to have found the opponent's marks enjoy a strong reputation, it would not succeed. My reasons follow.

Link

67. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

68. Under the section 5(2)(b) ground, I found that all of the marks at issue were visually and aurally similar to a low degree and conceptually dissimilar.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

69. Above, I proceeded on the basis that there was identity between some of the services at issue. I take the same approach here and, again, reiterate that if the present ground fails in respect of the same, it will also fail in respect of the similar or dissimilar services.

The strength of the earlier mark's reputation.

70. I have proceeded as if the opponent's marks enjoy a strong reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use.

71. I have found that the opponent's marks are inherently distinctive to a high degree. In terms of an enhanced distinctiveness, I do not consider that the evidence is sufficient to increase the distinctiveness beyond its inherent level, which is already high. For the avoidance of doubt, I consider this to be the case regardless of the fact that I have proceeded with the present ground on the basis that the opponent's marks enjoy a reputation.

Whether there is a likelihood of confusion

72. I have found that there is no likelihood of confusion between the marks at issue.

Conclusion on link

73. Despite the fact that I have proceeded on the basis that the opponent's marks enjoy a strong reputation, it is my view that the consumer would not even bring to mind

the opponent's marks when confronted by the applicant's 'HUBX' mark, even where some of the applicant's services are identical to the reputed services of the opponent. Further, I do not consider that the consumer would be caused to wonder if the marks at issue were linked. I make this finding because while the marks share a similarly styled letter 'X', the 'ACCA' and 'HUB' elements are entirely distinct from one another and I see no reason why consumers would believe that they are linked to one another. As such, I do not consider that the shared use of the letter 'X' device is sufficient to lead the consumer to automatically thinking of the opponent's marks when confronted with the applicant's. For the avoidance of doubt, I find that this applies even in circumstances where the consumer confronted with the applicant's marks was aware of the opponent's strong reputation.

74. Taking all of the above into account, I find that there exists no link between the marks at issue. Without a link between the marks, there cannot be any damage and, as such, I find that the section 5(3) ground fails at this stage. Alternatively, if the shared device element was to give rise to any link between the marks, such a link would be too fleeting to result in any damage being caused. Therefore, even in such a scenario, the present ground fails.

75. Lastly, and for the avoidance of doubt, I appreciate that the present ground may succeed for dissimilar goods and services. However, for the same reasons set out above when considering identical services, I find that the present ground would have failed where the marks were viewed on similar or even dissimilar goods/services.

Section 5(4)(a)

76. Section 5(4)(a) of the Act states as follows:

> "5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

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

77. Subsection (4A) of section 5 of the Act 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."

78. I consider that I can deal with the present ground, insofar as it relates to the opponent's first and second signs, briefly. Even if there were to be a protectable level of goodwill in these two signs, I do not consider that the reliance upon them under the present ground is of any assistance to the opponent. I remind myself that, under the section 5(2)(b) ground, I found there to be no likelihood of confusion between the marks at issue. In assessing the present ground, I refer to the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchin LJ set out that it was doubtful whether the difference between the legal tests for likelihood of confusion and misrepresentation will (all other factors being equal) produce different outcomes. As the opponent's signs are identical to the marks relied upon under the section 5(2)(b) ground (so too are the goods and services relied upon, for that matter), I am of the view that this principle

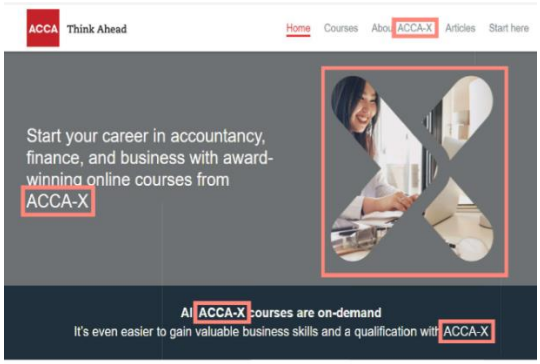
applies here. As such, I find that there exists no misrepresentation in respect of the opponent's first and second signs. Without a finding of misrepresentation, there can be no damage meaning that this ground of opposition fails in its entirety.

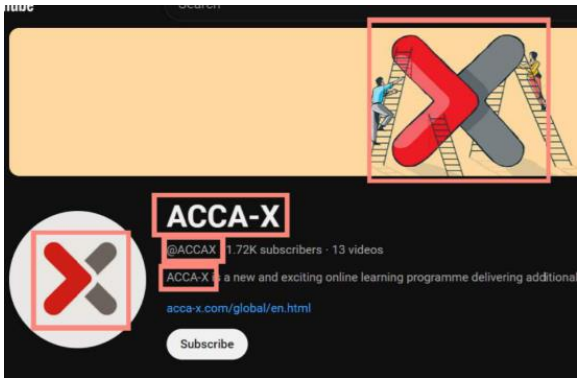
79. The above being said, the opponent has sought to rely on its third sign, which I remind myself is as follows:

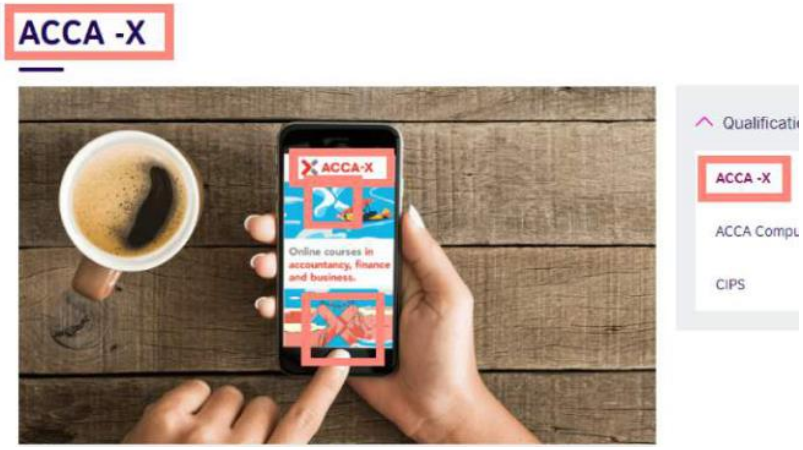
80. This sign was not at issue under the section 5(2)(b) ground so warrants some further discussion here.

81. Plainly, the third sign will be seen as a device of a stylised letter 'X'. The problem I have with the reliance upon this sign is that I am not convinced that consumers would associate any goodwill in the opponent's business with this single letter device. I say this because even though the evidence does show various references to this being used solus,[19] each example of such use is also alongside the 'ACCA-X' branding. I do not intend to go over each example but reproduce the following for illustrative purposes:[20]

[19] I do not intend to discuss all of the examples where 'X' appears solus, but I refer to Annex 2 of the opponent's submissions which set out the instances where it is used on its own. However, as shown here, the overwhelming majority of such use is always alongside, or in close proximity with, 'ACCA-X'.
[20] See AWS3 (page 10), AWS11 (page 109) and AWS25 (page 233), respectively. For the avoidance of doubt, the emphasis shown in these examples were added by the opponent.







82. When consumers are confronted with such evidence, I accept that they will notice the banal 'X' device element but I am of the view that it is the 'ACCA-X' branding that they would associate with any goodwill attributed to the opponent. As such, I do not consider that the opponent's third sign would be attributed any goodwill. The reliance upon it therefore falls at the first hurdle.

83. For the avoidance of doubt, even if the opponent's third sign could be said to be distinctive of or associated with any of the opponent's protectable level of goodwill, I do not consider that it gets the opponent anywhere. This is on the basis that it is simply a fairly banal representation of a single letter and to find misrepresentation based on another mark having a similarly stylised letter within it would offer far too broad a level of protection for such signs. On this point, I refer to the case of *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39 wherein Lord Simonds stated that:

"Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion. A greater degree of discrimination may fairly be expected from the public where a trade name consists wholly or in part of words descriptive of the articles to be sold or the services to be rendered."

84. I appreciate that the cited case refers to descriptive words so is not on all fours with the present case. However, I consider that a similar principle applies on the basis that the shared use of one similarly banal styled letter would, in my view, give rise to an inevitable risk of some confusion. In short, if the opponent adopts a banal stylised letter 'X', some risk of confusion to other marks that consist of a similarly stylised letter is inevitable. In my view, upon the consumer seeing the above sign and the applicant's mark, they would apply a greater degree of discrimination to the differences in colour used by the applicant in the letter 'X' and the fact that its mark includes the word 'HUB'. As a result, I do not consider that consumers would be deceived into believing that the applicant's mark was connected to or associated with the opponent's third sign.

85. As a result of the above, I find that the section 5(4)(a) ground fails in its entirety. I will now proceed to consider the last ground of opposition, being that brought under section 5(4)(b).

Section 5(4)(b)

86. Section 5(4)(b) of the Act states:

"5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) […]

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs."

87. Section 1 of the CDPA provides for copyright to subsist in original artistic works. Section 4 of the CDPA further provides:

"4 – Artistic works.

(1) In this Part *"artistic work"* means –

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

[…]

(2) In this Part –

[…]

"graphic work" includes –

(a) any painting, drawing, diagram, map, chart or plan […]"

88. I remind myself that the work that the opponent relies upon is as follows:

("the Work")

89. I accept that, in principle, the Work qualifies for copyright protection as a graphic work under the above provisions. The opponent claims that the Work was created in 2015. Given the date on which the Work was created, it qualifies for copyright protection in the UK.

90. For an opposition based on 5(4)(b) grounds to succeed, the opponent is required to show that the ownership in the Work resides in it and that the applicants copied the work.

91. In respect of the ownership of the Work, I note that the opponent's evidence sets out that it consulted a design company called 'WHITESPACE' to assist in the development of its brand identity. The narrative evidence sets out that 'WHITESPACE' was commissioned to "design a 'visual brand identity'" and to "produce a visual brand identity" for 'ACCA-X'.[21] The opponent has provided a schedule to what it refers to as 'Statement of Work' of the works that 'WHITESPACE' was contracted to undertake.[22]

92. Subsequent to this agreement, a number of works were provided to the opponent and these are exhibited in a document dated 16 February 2015.[23] The narrative evidence of Mr Stent sets out that the opponent went with 'Route 1A' and I note that, from the document, this included the following work:

[21] Both quotes can be found at paragraph 71 of the witness statement of Mr Stent.
[22] AWS38
[23] AWS39

93. The issue I have with the opponent's case here is that the evidence demonstrates that the Work was created by a commissioned entity, being 'WHITESPACE'. Section 9 of the CDPA sets out that the author of a copyrighted work is the person who creates it. Further, Section 11 of the CDPA states that the author of the work is the first owner of any copyright in it. This is subject to the provision that if a work is made in the course of the author's employment, the employer will own the work. While noted, that does not appear to be the case here as 'WHITESPACE' was not an employee of the opponent but instead, an agency commissioned to design the visual brand identity of 'ACCA-X'.

94. In light of the above, it is WHITESPACE that would be considered the first owner of the Work. The problem for the opponent is that it has filed no evidence to demonstrate that the ownership of the Work was ever assigned to it. On this point, I refer to Article 2 of the Trade Marks (Relative Grounds) Order 2007, SI 2007 No. 1976 ("the Order"), which states that:

> "The registrar shall not refuse to register a trade mark on a ground mentioned in section 5 of the Trade Marks Act 1994 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right."

95. As the opponent is relying on Work created by a commissioned party, it is not the proprietor of the Work and, without any evidence of an assignment of the ownership of the same, the opponent is not permitted to rely on the Work. On this point, if it were the case that the Work was formally assigned to the opponent then I consider it reasonable to suggest that express evidence of this should have been adduced. As such, the present ground fails at this point. However, even if I am wrong and the opponent was deemed to be the owner of the Work, the present ground would fail in any event. This is because the opponent has failed to demonstrate that the applicant has copied the Work.

96. In respect of the allegation to have copied the Work, the opponent has filed evidence of the applicant's website dated 24 July 2023 which shows the following sign:

97. I appreciate that the similar 'X' device is more prominent in the above example (and separate from the 'HUB' element). However, this is not the applicant's mark. Further, with respect to the allegation of copying, the opponent's evidence sets out that:

> "In my view, the Work and the Application have objective similarities which are sufficiently close, numerous and extensive so as to give rise to the inference of copying, and these similarities relate to substantially the whole of the Works from both a qualitative and quantitative perspective."

98. In addition, I note that the opponent submits that:

> "80. Whilst the Applicant suggests that the Work is not original, it does not dispute that it copied the Work. The evidence of Mr Stent is that the Work was available on the websites of the Opponent from 2015, long before the filing date of the Application.
>
> 81. It is therefore a reasonable inference that the Applicant copied the Work and incorporated it in the Device. In particular, the Opponent relies on the relatively unusual stylisation of the 'X' in the Work, the many other ways in which

an ‘X’ could be depicted and the remarkable similarity between the Work and the ‘X’ in the Device.”

99. While the applicant’s primary position in its counterstatement is that the Work itself is not original, there is no express concession that it was aware of the existence of the Work or that it copied it as the basis for the ‘X’ in its own mark. As such, I do not consider that the applicant’s silence on the topic of copying can be taken as an admission on the point.

100. In considering the claim of copying, I refer to the case of *Designers Guild v Russell Williams (Textiles) Ltd* [2000] 1 WLR 2416. In that case, Lord Millett set out the approach to assessing whether artistic copyright has been infringed. He said as follows:

“The first step in an action for infringement of artistic copyright is to identify those features of the defendant's design which the plaintiff alleges have been copied from the copyright work. The court undertakes a visual comparison of the two designs, noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is similar, but to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely to be the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are commonplace, unoriginal, or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying.”

101. In considering the applicant’s mark and the Work, it is clear that the way in which the ‘X’ device is stylised is similar. However, as I have set out throughout this decision, I do not consider that the stylisation used is particularly remarkable.

On the contrary, it is a fairly banal representation of a letter 'X'. I am of the view that such banal stylisations to single letters are relatively commonplace in trade marks and, as such, I am of the view that the similarities are those that are commonplace, unoriginal and consist of general ideas. Therefore, the similarities between the applicant's mark and the Work are more likely a result of coincidence as opposed to copying. On this point, I also note that there is nothing before me in evidence to demonstrate that the applicant had any prior access to the Work. For example, while the evidence before me demonstrates widespread use of the 'ACCA' brand, the use in relation to 'ACCA-X' is at a significantly lower level. As such, I see no reason to conclude that the applicant would have seen the Work in the market due to any widespread use of the 'ACCA-X' branding. Lastly, the opponent has failed to adduce any evidence that directly demonstrates that the applicant copied its Work.

102. As a result of the above, I find that the opposition reliant upon the section 5(4)(b) ground fails in its entirety.

CONCLUSION

103. The opposition fails in its entirety and the applicant's mark will, subject to any successful appeal of my decision, proceed to registration for all of the services applied for.

COSTS

104. As the applicant has succeeded, it is entitled to a contribution towards its costs. On this point, I note that the applicant was unrepresented during these proceedings. As such, any costs award is to be awarded in line with the ordinary approach for litigants in persons. In order for a litigant in person to claim costs in Tribunal proceedings, it is required to file a costs proforma setting out the time

undertaken for certain tasks associated with the proceedings. The applicant claims that it spent the following amount of time on these proceedings.

Notice of defence:	3 hours
Considering forms filed by the other party:	3 hours
Considering opponent's evidence, preparing, amending and proof reading the applicant's final submission:	3 hours
Total:	9 hours

105. I consider the time claimed to be reasonable. That being said, I do wish to discuss the fact that in the 'total' sections of its cost proforma, the applicant entered £600 and £300, respectively. This seems to indicate that the applicant is claiming costs of £100 per hour. The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. Despite the reference to £100 per hour, I see no reason to award anything other than this**. I therefore award the applicant the sum of £171** (9 hours at £19 per hour) in respect of its costs proforma.

106. I hereby order The Association of Chartered Certified Accountants to pay hubx limited the sum of £171. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 28th day of November 2025
A COOPER
For the Registrar

ANNEX

Class 35

Career advisory services (other than education and training advice); Marketing, advertising and promotion services; Online advertising; Digital advertising services; Consultancy services relating to advertising, publicity and marketing; Advertising for others; Advertising of business web sites; Marketing; Career planning consultancy; Career information and advisory services (other than educational and training advice); Employment counselling; Job placement consultancy; Market survey analysis; Employment recruitment; Internship placement services; Business management consultancy in the field of executive and leadership development; Career placement consulting services; Assistance and advice regarding business management; Transcription of messages; Transcription of recorded communications; Typing services; Writing of résumés for others; Writing of business reports; Secretarial services; Professional business consultations; Professional business consultancy services; Professional business consultation relating to the operation of businesses; Professional business consultation relating to the setting up of businesses; Business management for freelance service providers; Career networking services; Business expertise.

Class 36

Providing educational scholarships; Providing student loan information; Fundraising and sponsorship; Preparation and quotation of exchange rate information.

Class 41

Education, teaching and training; Education and training services; Educational services for providing courses of education; Career counseling [education]; Education academy services for teaching languages; Information (Education -); Linguistic education and training services; Education and training consultancy; Online education services; Provision of physical education; Career counselling relating to education and training; Education and training services in the field of occupational health and safety;

Research in the field of education; Education information services; Education services relating to medicine; Educational and teaching services; Training or education services in the field of life coaching; Career counselling [training and education advice]; Education, entertainment and sports; Organization of competitions for education or entertainment; Educational and training services relating to healthcare; Foreign language education services; Career counselling and coaching; Career advisory services (education or training advice); Life coaching (training); Personal development courses; Personal development training; Education and training; Publication of multimedia material online; Production of video and audio recordings; Provision of entertainment via podcast; Production of video recordings; Arranging of an annual educational conference; Video editing; Business mentoring services; Career information and advisory services (educational and training advice); Training relating to employment skills; Training for parents in parenting skills; Advice relating to medical training; Training in business skills; Education and instruction; Provision of online training; Translation and interpretation; Publishing, reporting, and writing of texts; Writing of texts; Photo editing; Photography; Photographer services; University education services; Written text editing; Electronic publication; Proof reading of manuscripts; Publication of texts and images, including in electronic form, except for advertising purposes; Issue of publications; Preparation of texts for publication; Publishing of scientific papers; Publication of fact sheets; Online publication of electronic books and journals; Publication of electronic books and journals online.

Class 44

Professional consultancy relating to health; Medical counseling; Conducting of medical examinations; Health advice and information services; Medical consultation; Medical counselling.

Class 45

Legal advice; Legal consultancy services; Legal support services; Personal letter writing; Concierge services.