

O-051-11

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NUMBER
2534124
BY O2 HOLDINGS LIMITED
TO REGISTER THE FOLLOWING TRADE MARK IN
CLASSES 9, 38, 41 AND 42:**

THE BASICS

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THE BASICS

Background

1. On 11 December 2009, O2 Holdings Limited ('the applicant') applied to register UK trade mark application number 2534124, consisting of the word-only mark THE BASICS ('the mark'), for the following goods and services:

Class 09: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting

services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; support services relating to telecommunications and apparatus; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 41 Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; television services; Internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information technology; information services relating to information technology; technical consultancy services relating to information technology; computer programming services; programming of data processing apparatus and equipment; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; consultancy in the field of computer software; conversion of data or documents

from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites) of others; engineering services relating to telecommunications; technical consulting; rental of computers; monitoring of telecommunications network systems; services of information brokers and providers, namely product research for others; weather forecasting; research relating to telecommunications; research of field telecommunication technology; expert advice and opinion relating to technology; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

2. On 21 December 2009, the Intellectual Property Office ('IPO') issued an examination report in response to the application. In the report, an objection was raised under section 3(1)(b) and (c) of the Trade Marks Act 1994 ('the Act') on the grounds that the mark designates the kind of the goods and services e.g. "the provision of a basic or base level package of goods and/or services in a field".

3. In response to the objection, an *ex parte* hearing was requested which subsequently took place on 19 February 2010. At the hearing, the agent argued that the phrase 'the basics' failed to provide any specific indication of the goods or services intended for coverage; that it was entirely open to the subjective interpretation of the consumer encountering the phrase used in trade; and that it could not therefore be deemed descriptive of the goods and services claimed.

4. In my hearing report I confirmed that the sign was both descriptive and devoid of any distinctive character pursuant to sections 3(1)(b) and (c), but only in respect of those goods and services for which the relevant consumer would understand the sign as being a denotation of type or characteristic i.e. those products (including service 'products') likely to possess a basic range of functions; those products which represent the simplest or most fundamental of their type; and those services which focus on providing basic facts or principles about something. The objection was therefore maintained in respect of the following:

Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; data processing equipment and computers; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware;

computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; computer software recorded onto CD Rom; SD-Cards (secure digital cards); contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; support services relating to telecommunications and apparatus; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 41: Education; providing of training; sporting and cultural activities; information services provided by means of telecommunication networks; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; information and consultancy services relating to information technology; consultancy services relating to information technology; engineering services relating to information

technology; information services relating to information technology; technical consultancy services relating to information technology; consultancy in the field of computer hardware; maintenance of computer software; consultancy in the field of computer software; engineering services relating to telecommunications; services of information brokers and providers, namely product research for others; research relating to telecommunications; research of field telecommunication technology; expert advice and opinion relating to technology; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

5. In the note, I also confirmed that the objection had been waived in respect of those goods and services which were not considered to fall into the categories set out at paragraph 4 above. Those goods and services are as follows:

Class 9: Automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines; glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; mouse mats; magnets; mobile telephone covers, mobile telephone cases.

Class 41: Entertainment; interactive entertainment services; electronic games services provided by means of any communications network; entertainment services provided by means of telecommunication networks; provision of news information; television services; Internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

Class 42: Design and development of computer hardware and software; computer programming services; programming of data processing apparatus and equipment; recovery of computer data; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; conversion of data or documents from physical to electronic media; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites) of others; technical consulting; rental of computers; monitoring of telecommunications network systems; weather forecasting; information and

advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services provided over a telecommunications network.

6. Although the agent was granted one post-hearing extension of time in order to file further submissions, no more correspondence was received. This led to a partial refusal in respect of the goods and services highlighted above which, in turn, prompted the agent to submit a form TM5 requesting a statement of reasons for the Registrar's decision.

7. I am now asked under section 76 of the Trade Marks Act 1994 and rule 69 of the Trade Marks Rules 2008, to state in writing the grounds of my decision and the materials used in arriving at it. No formal evidence of use has been put before me for the purpose of demonstrating acquired distinctiveness. Therefore, in respect of the goods and services listed at paragraph 4 above, I have only the *prima facie* case to consider.

The applicant's case for registration

8. In the absence of any written submissions from the agent, the only arguments put forward in support of *prima facie* acceptance were those made orally at the *ex parte* hearing on 19 February 2010. These arguments centred on subjective interpretation of the phrase 'the basics' and its alleged inability to constitute an objective description of any specific characteristic of the products intended for protection. Using mobile telecommunications apparatus as an example, the agent sought to demonstrate that different users will perceive different functions as being 'essential' (reference was made to someone who might use a mobile phone for infrequent calls and/or emergencies, as opposed to someone who might perceive more sophisticated web browser facilities as being essential to the value of a mobile telecommunications device). Our discussions also broached the concept of notional and fair use, with the agent inviting me to consider how the sign would be perceived displayed in standard fashion on product packaging. In all cases, the agent strongly maintained that the sign was capable of denoting trade origin, without any prior education required on the part of the consumer.

The Law in relation to section 3(1)(c)

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

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

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose,

value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services."

Decision - Section 3(1)(c)

10. In *JanSport Apparel Corp v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-80/07* the General Court (GC) gave a helpful summary of the considerations to be taken into account in relation to article 7(1)(c) of the regulation, the equivalent of section 3(1)(c) of the Act:

"18. Under Article 7(1)(c) of Regulation No 40/94, 'trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service' are not to be registered. In addition, Article 7(2) of Regulation No 40/94 (now Article 7(2) of Regulation No. 207/2009) states that, 'paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Community'.

19. By prohibiting the registration of such signs, that article pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (Case C-191/01 P *OHIM v Wrigley* [2003] ECR I-12447, paragraph 31).

20. Furthermore, the signs covered by Article 7(1)(c) of Regulation No 40/94 are signs regarded as incapable of performing the essential function of a trade mark, namely that of identifying the commercial origin of the goods or services, thus enabling the consumer who acquired the product or service to repeat the experience, if it proves to be positive, or to avoid it, if it proves to be negative, on the occasion of a subsequent acquisition (Case T-219/00 *Ellos v OHIM (ELLOS)* [2002] ECR II-753, paragraph 28, and Case T-348/02 *Quick v OHIM (Quick)* [2003] ECR II-5071, paragraph 28).

21. The signs and indications referred to in Article 7(1)(c) of Regulation No 40/94 are thus only those which may serve in normal usage from a consumer's point of view to designate, either directly or by reference to one of their essential characteristics, goods or services such as those in respect of which registration is sought (see the judgment of 9 July 2008 in Case T-323/05 *Coffee Store v OHIM (THE COFFEE STORE)*, not published in the ECR, paragraph 31 and the case-law cited). Accordingly, a sign's descriptiveness can only be assessed by reference to the goods or services concerned and to the way in

which it is understood by the relevant public (Case T-322/03 *Telefon & Buch v OHIM– Herold Business Data (WEISSE SEITEN)* [2006] ECR II-835, paragraph 90).

22. It follows that, for a sign to be caught by the prohibition set out in that provision, there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the goods and services in question or one of their characteristics (see Case T-19/04 *Metso Paper Automation v OHIM (PAPERLAB)* [2005] ECR II-2383, paragraph 25 and the case-law cited).

23. It must finally be pointed out that the criteria established by the case law for the purpose of determining whether a word mark composed of several word elements is descriptive or not are identical to those applied in the case of a word mark containing only a single element (Case T-28/06 *Rheinfelsquellen H. Hövelmann v OHIM (VOM URSPRUNG HER VOLLKOMMEN)* [2007] ECR II-4413, paragraph 21)."

11. Furthermore, in Case C-363/99 *Koninklijke KPN Nederland NV and Benelux-Merkenbureau, C-363/99 (Postkantoor)*, the Court of Justice of the European Union stated:

"98. As a general rule, a mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics for the purposes of Article 3(1)(c) of the Directive. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned....

102. It is also irrelevant whether the characteristics of the goods or services which may be the subject of the description are commercially essential or merely ancillary. The wording of Article 3(1)(c) of the Directive does not draw any distinction by reference to the characteristics which may be designated by the signs or indications of which the mark consists. In fact, in the light of the public interest underlying the provision, any undertaking must be able freely to use such signs and indications to describe any characteristic whatsoever of its own goods, irrespective of how significant the characteristic may be commercially."

12. In order to determine whether or not the mark is excluded by section 3(1)(c) on account of it performing a descriptive function, the Registrar must consider both the

goods and services intended for protection under the mark, and the perception of the average consumer for such products. In the case of the former, I have already identified those goods and services which are no longer subject to an objection, and those for which the sign remains unacceptable. In the case of the latter, the Registrar is obliged to identify the relevant consumer, and gauge the level of attention likely to be exercised where the sign is encountered in trade.

13. For most of the terms subject to an objection, it is reasonable to assume that the relevant consumer will be the general public. Although technical by nature, the majority of products claimed in classes 9 and 38 are now likely to be purchased by everyday householders. IT and technical literacy is such that one no longer needs any specialist knowledge in order to use mobile telecommunications devices, palm-top computers and the like, and most of us make frequent use of services providing web access, email and digital content. Such goods and services are therefore likely to be directed towards a fairly non-specialist public. Similarly, class 41 contains a range of broad, non-specialised terms such as 'entertainment' and 'sporting activities', which denote services likely to be used by the general populace. For most of these terms, the relevant consumer is likely to be someone without any particular technical expertise, but also, given the reasonably high unit price of telecommunications apparatus and services, someone who is likely to exercise an above-average level of attention when considering a purchase.

14. At the same time, the application contains a smaller range of terms which reflect goods and services directed towards a more specialist consumer base. These would include *inter alia* electrical apparatus and protective clothing in class 9, telecommunications planning in class 38, and virtually all the scientific and technological services claimed in class 42, most of which are likely to be purchased with a greater degree of consumer attention. On balance therefore, when assessing consumers' perception of the sign 'THE BASICS' in respect of *all* the terms claimed, I have assumed that the average consumer will apply an above-average level of attention.

15. Turning my assessment to the mark applied for, I refer to dictionary entries for the word 'basics' (as a noun) where it is defined follows:

basics (*noun*) informal the essential facts or principles of a subject or skill: *I learnt the basics of programming on a course | teachers are going back to basics to encourage pupils to learn English.* ■ essential food and other supplies: *people are facing a shortage of basics like flour.*

(Taken from *New Oxford Dictionary of English* (Oxford University Press, 2001))

basics (*plural noun*) the simplest and most important facts, ideas or things connected with something

(Taken from Cambridge Dictionaries Online)

16. Although these definitions do not specifically address the phrase applied for (i.e. '*the basics*'), they nevertheless form the basis for use of that phrase in common parlance. In normal language, 'basics' has been expanded to 'the basics' where it is intended to denote any collection of essential facts, ideas or 'things'. The examples of use provided in these definitions (italicised) demonstrate how the term can be used to signify both tangible and intangible characteristics. In respect of the former, this might be where the term is used to denote physical and/or visible objects, articles and functions deemed as being essential to overall effectiveness, whilst in respect of the latter, the term might be used to denote those opinions, principles or assumptions which are considered fundamental to a particular subject. Both have relevance to this assessment.

17. For class 9, the section 3(1)(c) objection is based on the premise that the term 'the basics', used in respect of products such as mobile phones, computers, content carrying media and other electronic items, would be understood as a reference to the feature set and/or functionality of such items. For example, the basic features of a standard laptop computer might be recognised as being Wi-Fi connectivity, installation of the latest operating system to ensure compatibility with peripherals, and the presence of USB ports. Similarly, by general consensus, the basic features of a mobile phone are likely to be the ability to make domestic and international phone calls and send text messages. Such functions and features are as likely to be referred to by the phrase 'the basics' as they are via the more complete phrase 'the basic features'. In essence, the former (i.e. the mark applied for) is a natural abbreviation of the latter. To illustrate this point, I have included as part of my appendix to this decision a print taken from www.microsoft.com/windowsmobile/en-xm/help/v6-0/Basics.aspx which clearly shows use of the phrase 'the basics' in reference to the essential features of its mobile phone software.

18. In drawing these conclusions, the Registrar recognises that one's interpretation of what 'the basics' actually signifies is a largely subjective process depending on consumer expectation. Therefore, a mobile phone consumer accustomed to using smart phones may consider features such as web connectivity, high-definition video streaming, and a digital camera as being essential or basic features when considering a purchase, whilst a less frequent user of mobile phones may consider them to be unnecessary luxuries (and not, therefore, basics). It is acknowledged and accepted that the mark applied for may mean different things to different consumers. However, a trade mark's capacity for subjective interpretation does not render it distinctive (as confirmed by the ECJ in the *Doublemint* case - see paragraph 10 above – where that mark's capacity to describe multiple meanings did not assist its claim to inherent distinctiveness).

19. Given dictionary definitions, this mark's capacity to be used in trade for descriptive purposes is relatively broad. For the goods in class 9 other than those used for the purposes of telecommunications, the mark may serve *inter alia* to designate products deemed essential for electrical maintenance (apparatus and instruments for conducting, switching and regulating electricity); for meeting safety requirements (fire extinguishing apparatus and protective clothing); or for creating a home entertainment system (MP3 players, CDs and DVDs). Via similar reasoning, the services in class 38 are equally subject to a 3(1)(c) objection given that providers of broadband, digital television and email services normally provide a range of service options dependent on the consumer's need and budget, and are likely to present - possibly as their cheapest option - a *basic* package. In this context (and referring back to the dictionary definitions provided above), the term 'the basics' may describe either the product itself, or a set of principles, rules or instructions allowing the customer to make full use that product (see Internet use taken from www.radioandtelly.co.uk/satellitetelevision.html included in the appendix).

20. For the services in classes 41 and 42, the mark is more likely to be used in order to denote intangible characteristics such as any basic principles or facts relating to a particular subject. Therefore, an educational facility may provide courses on the basics of anything from Shakespeare to motor mechanics and, in accordance with the public policy underlying section 3(1)(c), the phrase 'the basics' should therefore remain free for other traders to use. Similarly, a personal trainer (as covered by the application's claim to 'sporting activities' at large) may use the phrase in order to convey the basics of cardio-vascular exercise (see www.channel4.com/4beauty/wellbeing/getting-fit/pilates-the-basics included in the appendix), whilst technical consultancies providing services such as those claimed in class 42 may use the term 'the basics' to denote a particular level of expertise on offer (particularly where that expertise focuses on basic or essential principles).

21. Having found the mark to be excluded from registration by section 3(1)(c) of the Act in respect of those goods and services listed at paragraph 4 above, that effectively ends the matter. However, in case I am found to be wrong in that respect, I will go on to determine the matter under section 3(1)(b).

Decision – Section 3(1)(b)

22. In relation to section 3(1)(b), the ECJ held in *Postkantoor* (cited above) that:

“86. In particular, a word mark which is descriptive of characteristics of goods or services for the purposes of Article 3(1)(c) of the Directive is, on that account, necessarily devoid of any distinctive character with regard to the same goods or services within the meaning of Article 3(1)(b) of the Directive. A mark may

none the less be devoid of any distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive.”

23. I approach this ground of objection on the basis of the following principles derived from the ECJ cases referred to below:

- An objection under section 3(1)(b) operates independently of objections under section 3(1)(c) – (*Linde AG (and others) v Deutsches Patent-und Markenamt*, Joined Cases C-53/01 to C-55/01, paragraphs 67 to 68);
- For a mark to possess a distinctive character it must identify the product (or service) in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product (or service) from the products (or services) of other undertakings (*Linde* paragraphs 40-41 and 47);
- A mark may be devoid of distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive (*Postkantoor*, paragraph 86);
- A trade mark’s distinctiveness is not to be considered in the abstract but rather by reference to the goods or services in respect of which registration is sought and by reference to the relevant public’s perception of that mark (*Libertel Group BV v Benelux Merkenbureau*, Case C-104/01 paragraphs 72-77);
- The relevant public must be deemed to be composed of the average consumer who is reasonably well-informed and reasonably observant and circumspect (*Libertel* paragraph 46 referring to Case C-342/97 *Lloyd Schuhfabrik Meyer*).

24. Taking all of the above into account, the Registrar is obliged to reject a trade mark pursuant to section 3(1)(b) where, although it may be considered too imprecise a term to indicate a direct and specific relationship with the goods or services at issue without further thought, the mark remains generally non-distinctive. For reasons already given, the Registrar clearly does consider the sign to be descriptive of specific characteristics. However, in the context of 3(1)(b), the mark is also clearly non-distinctive. The agent’s submissions in respect of subjective interpretation on the part of the consumer may have more weight in respect of this provision, than in relation to section 3(1)(c) i.e. one might argue that a mark with the capacity to convey multiple subjective meanings renders it less capable of being found to denote one dominant meaning. If that is the case, and it is found that the sign is not descriptive, I still believe that the sign would not perform the essential function of a

trade mark. The Registrar is obliged to consider notional and fair use, including use of the mark on promotional literature, advertising materials and, in the context of goods, packaging. Given the general and broad range of meanings conveyed by the phrase 'the basics', the relevant consumer would not attach it with any trade origin signification when viewed in the normal manner. He or she would not consider the mark to be that of any particular supplier of electronic goods, telecommunications, education, or technical consultancy services; it could properly be at home on such goods and services provided by any supplier.

25. I therefore conclude that the mark applied for will not be identified as a trade mark without first educating the public to that effect; that it is devoid of any distinctive character; and this it is therefore excluded from prima facie acceptance under section 3(1)(b).

Conclusion

26. In this decision, I have considered all documents filed by the applicant/agent and all arguments submitted to me in relation to this application. Having done so, and for the reasons given above, the application is partially refused – for the foods and services listed at paragraph 4 above – under the terms of section 37(4) of the Act because it fails to qualify under sections 3(1)(b) and (c) of the Act.

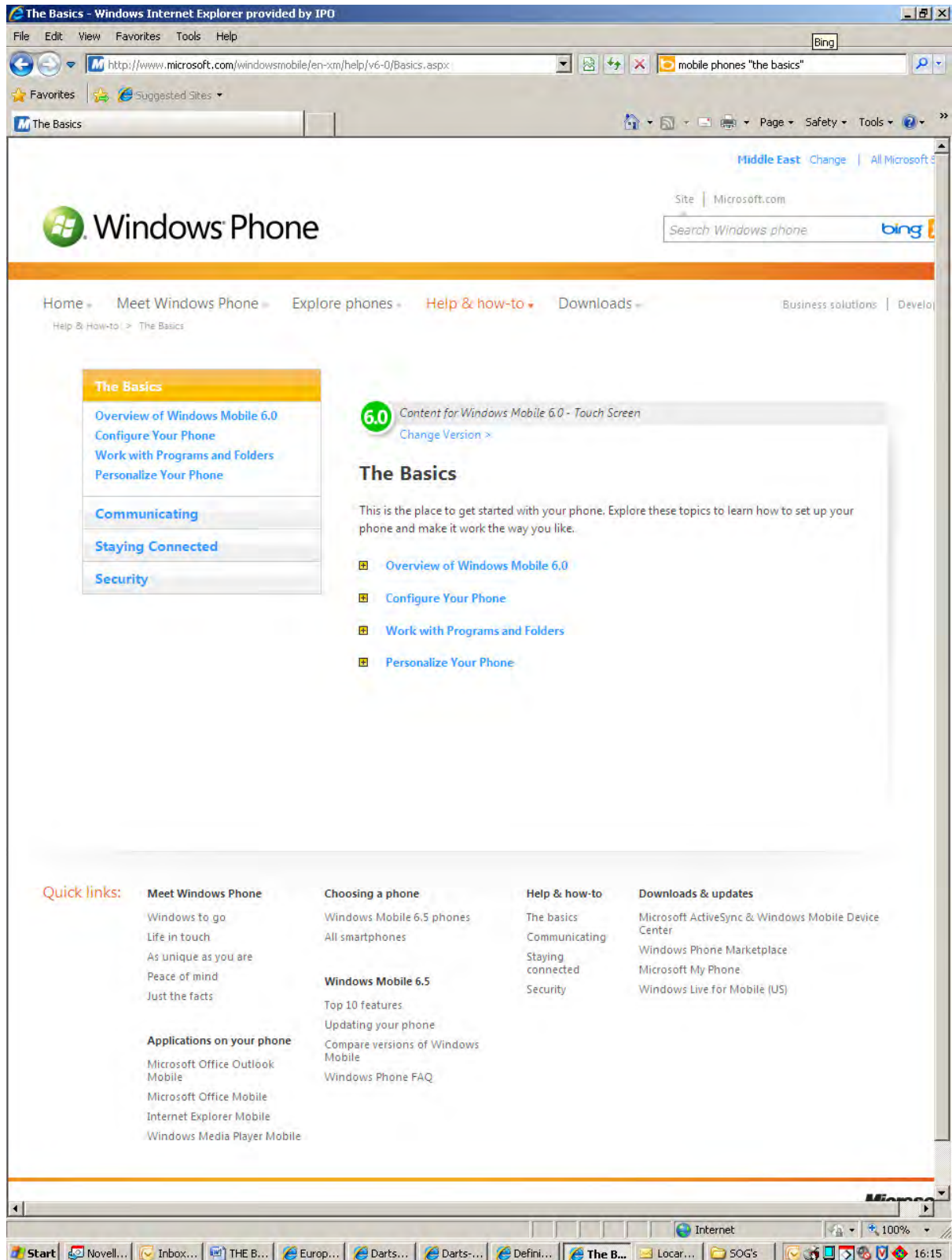
Dated this 17 day of February 2011

**Nathan Abraham
For the Registrar
The Comptroller-General**

APPENDIX

Taken from:

www.microsoft.com/windowsmobile/en-xm/help/v6-0/Basics.aspx



Taken from:
www.radioandtelly.co.uk/satellitetelevision.html

Satellite TV - Sky Digital and Freesat Explored - Windows Internet Explorer provided by IPO

File Edit View Favorites Tools Help

RT http://www.radioandtelly.co.uk/satellitetelevision.html

digital tv "the basics"

Satellite TV - Sky Digital and Freesat Explored

Sky Digital TV: The Basics

Sky Digital offers the highest number of digital TV channels, and can be received by 98% of homes in the UK - far better coverage than [Freeview](#) or [cable TV](#).

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For a little extra, you can also add premium channels such as the ten Sky Movies channels. Sports fans are well-served with the **Sky Sports** channels. The Disney channels, Music Choice and **Sky Arts** are available, as is [adult content](#), and you can get new films with **Sky Box Office**.

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Here's a look at the offers for those looking to get Sky:

- Offer 1 - Free HD box:** Get a free Sky+ HD box with free installation if you order with Sky's broadband and phone service - online only, for a limited period. [More info](#)
- Offer 2 - Free calls and broadband:** Save by getting TV, phone and [Broadband](#) from Sky - Get one of Sky's channel packs, digibox, Broadband Internet, a free [Broadband](#) router, plus free UK evening and weekend landline calls... Price? From **£19.50 a month**. [More info](#)

Full details of these offers at sky.com/shop/tv (Also [Sky Ireland](#))

£50
M&S
voucher

Marks and Spencer voucher available for new customers signing to Sky's HD service online, for a limited time. Conditions apply. [Order Sky now](#)

How do I get Sky Digital?

You'll need to have a satellite dish and a special Sky digibox installed at your home, and you'll need to pick one or more channel packages to subscribe to.

You can order Sky TV online at www.sky.com. When you book, you arrange an installation appointment (including Saturday and Sunday). One of Sky's installers will turn up and install the Sky dish and digibox, connect it all to your telly, and set everything up for you.



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BT Vision - What's on

Start Novell... Inbox... THE B... Europ... Darts... Darts... Defini... Satell... Locar... SOG's 16:17

Taken from:

www.channel4.com/4beauty/wellbeing/getting-fit/pilates-the-basics

The screenshot shows a Windows Internet Explorer browser window displaying the Channel 4 website. The address bar shows the URL <http://www.channel4.com/4beauty/wellbeing/getting-fit/pilates-the-basics>. The page content includes the Channel 4 logo, navigation menus for 'HOME', 'TV LISTINGS', 'PROGRAMMES', 'WATCH 4oD', and 'Search'. A pink navigation bar highlights '4Beauty' with sub-menus for 'On TV', 'Style', 'Make-Up & Skin Care', 'Make-Up Videos', 'Hairstyles', 'Wellbeing', and 'Wedding'. The main article is titled 'Pilates: The Basics' and features a photo of a woman being assisted by a trainer. A list of topics includes: Neutral Spine: Lying Down, Neutral Spine: Standing, Connecting With Your Abdominals, Engaging the Mid-Back, and Rest Position. An advertisement for the 'fitu' app is visible on the right. The browser's taskbar at the bottom shows several open applications and the system clock at 16:20.

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Wellbeing > Getting Fit > Pilates: The Basics

Pilates: The Basics

1 2 3 4 5



- Neutral Spine: Lying Down
- Neutral Spine: Standing
- Connecting With Your Abdominals
- Engaging the Mid-Back
- Rest Position

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By **Tatiana Novaes Coelho**

Feel like it's time to get fit? 4Beauty's Pilates fitness plan will set you on your way. Pilates focuses on building your core strength and improving your posture - as well as giving you a greater sense of how your body works. These are the basic Pilates movements and positions that you should learn before trying our [thigh exercises](#), [stomach exercises](#), [back exercises](#), [exercises for love handles](#), [hip exercises](#) and [arm exercises](#).

These exercises are undertaken at your own risk. Please speak to your doctor before undertaking exercise if you have any health problems. It is always best to exercise under the supervision of a qualified person.

Neutral Spine

Neutral spine is the natural position of your spine. Your spine has natural curves that should be maintained throughout the day whether you are standing, lying, sitting or kneeling.

How to Find Neutral Spine When Lying Down



- Lie on the floor on your back with your knees bent and feet hip-width apart (this is known as **semi-supine position**).
- Gently tilt your hips up towards the ceiling