

BL O/804/18

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 3203971 BY
FLORENTYNA DAWN LTD

TO REGISTER THE TRADE MARK



IN CLASSES 9, 38 AND 41
AND
THE OPPOSITION THERETO
UNDER NO 409147
BY
THE LADBIBLE GROUP LIMITED

BACKGROUND

1. On 23 December 2016, Florentyna Dawn Ltd (“the applicant”) applied to register the above trade mark for a range of goods and services in classes 9, 38 and 41 under the Nice Classification system¹.

Class 9

Publications in electronic format; downloadable publications; downloadable electronic publications; online electronic publications downloadable from the Internet; publications in electronic form supplied online from databases or from facilities provided on the Internet (including web sites); electronic magazines; multimedia recordings and publications; printed publications in electronically readable form; computer software and programs; computer games; downloadable software; computer software downloadable from the Internet; application software; application software for mobile communication devices; data recorded in electronic, optical or magnetic form; data carriers; data storage media; memory cards; audio and/or video recordings; downloadable and streamable audio and/or video recordings; pre-recorded videos, CDs, CDIs, CD-ROMs, discs, cassettes and other data carriers containing information recorded in magazine form; eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices.

Class 38

Telecommunications; communications services; broadcasting services; webcasting services; podcasting services; broadcasting via the Internet and other computer and communication networks; electronic communications services; broadcasting, transmission, reception and other dissemination of text, messages, information, data, sound and images; providing a multimedia content and video sharing portal; electronic transmission of data, messages and information; receiving and exchanging of information, text, sounds, images, data and messages; communications by and/or between computers and computer terminals and computer networks; retrieval, provision and display of information from a

¹ *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

computer stored databank; provision of access to computer databases in the fields of social networking and online communities; electronic display of information, text, images, messages and data; online communication services; chat room services; provision of online forums for communication on topics of general interest; online forums relating to education and entertainment, music, fashion, films, food, careers, women, travel, sports, adventure and lifestyle; provision of online community forums for uploading, posting, storing, displaying, sharing, watching, viewing, playing, editing, downloading, receiving, electronically transmitting or otherwise providing electronic media, multimedia content, audio and video content, movies, music, games, photos, images, pictures, graphics, text, messages, information, data, news and user-generated content via the Internet and other computer and communication networks; information, advisory and consultancy services relating to all of the aforesaid services.

Class 41

Entertainment services; education services; sporting and cultural activities; online education entertainment services; entertainment services provided via the Internet and other computer and communications networks; entertainment services featuring electronic media, multimedia content, audio and video content, movies, music, games, photos, images, pictures, graphics, text, messages, information, data, news and user-generated content provided via the Internet and other computer and communication networks; presentation of data, messages and documents for entertainment purposes; interactive information provided online via the Internet and other computer and communication networks, relating to education and entertainment, music, fashion, films, food, careers, women, travel, sports, adventure and lifestyle; provision of entertainment information for accessing via communication and computer networks; providing non-downloadable electronic publications; providing online publications (not downloadable); providing online non-downloadable magazines; production of video recordings and sound recordings; production of webcasts; production of podcasts; publishing services; publication of magazines, books, texts and printed matter; publishing by electronic means; digital video, audio and multimedia entertainment publishing services; provision of audio and/or visual material and games online (not downloadable); arranging, organising and conducting of games, contests, competitions, quizzes, awards, conferences, exhibitions, courses, seminars and events; organising, conducting and production of shows, displays and parties; arranging, organising, presentation and provision of concerts, live entertainment, musical performances; arranging and conducting award


ceremonies; presentation of awards for achievement; arranging, organising and conducting of events for cultural and sporting purposes; organisation of sporting competitions and sports events; gaming services; information, advisory and consultancy services relating to all of the aforesaid services.

2. The application was published on 27 January 2017, following which The Ladbible Group Limited (“the opponent”) filed a notice of opposition against the application. The opposition is brought in respect of all of the applicants’ goods and services.

3. The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (‘the Act’). The opponent relies upon the following trade mark registrations, for all of the goods and services for which they are registered, in respect of its opposition under sections 5(2)(b) and 5(3) of the Act:

Mark details and relevant dates	Goods and services relied upon
<p>EUTM: 12158713</p> <p>The LAD Bible</p> <p>Filed: 20 September 2013</p> <p>Registered: 14 February 2014</p>	<p>9, 16, 25, 35, 38, 41, 42</p>
<p>EUTM: 16019531</p> <p>The LADbible</p> <p>Filed: 9 November 2016</p> <p>Registered: 1 August 2017</p>	<p>9, 38, 41</p>

<p>UKTM: 3195897</p> <p>Series mark:</p> <p style="text-align: center;">BIBLE & bible</p> <p>Filed: 9 November 2016</p> <p>Registered: No – opposed 409660</p>	<p>Classes 9, 38 and 41</p>
<p>UKTM: 3196359</p> <p style="text-align: center;">LAD BIBLE</p> <p>AND</p> <p style="text-align: center;">LAD BIBLE</p> <p>Filed: 11 November 2016</p> <p>Registered: 7 April 2017</p>	<p>9, 38, 41</p>
<p>EUTM: 15216047</p> <p>The FOOD Bible</p> <p>Filed: 15 March 2016</p> <p>Registered: 3 February 2017</p>	<p>9, 16, 25, 35, 38, 41, 42</p>
<p>UKTM: 3113690</p> <p>The FOOTBALL Bible</p> <p>Filed: 17 June 2015</p> <p>Registered: 13 November 2015</p>	<p>9, 35, 38, 41</p>

<p>EUTM: 14266531</p> <p>The GAMING Bible</p> <p>Filed: 16 June 2015 Registered: 15 December 2015</p>	<p>9, 16, 25, 35, 38, 41, 42</p>
<p>UKTM: 2617178</p> <p></p> <p>Filed: 10 April 2012 Registered: 7 September 2012</p>	<p>9, 16, 41</p>
<p>EUTM: 15215981</p> <p>The LASS Bible</p> <p>Filed: 15 March 2016 Registered: 8 August 2016</p>	<p>9, 16, 25, 35, 38, 41, 42</p>
<p>EUTM: 14266514</p> <p>The ODDS Bible</p> <p>Filed: 16 June 2015 Registered: 28 December 2015</p>	<p>9, 35, 38, 41, 42</p>
<p>EUTM: 13065024</p> <p>The SPORT Bible</p> <p>Filed: 8 July 2014 Registered: 25 November 2014</p>	<p>9, 16, 25, 35, 38, 41, 42</p>

4. In its statement of grounds, with regard to section 5(2)(b), the opponent submits that the applicant’s mark is highly visually, phonetically and conceptually similar to each of the earlier marks, bearing in mind their distinctive and dominant components. It further submits that the parties’ goods and services are identical or highly similar.

5. Its case under section 5(3) is that the contested mark is highly similar to each of the earlier marks and:

“...as such, by virtue of the significant reputation enjoyed by the Opponent in relation to the Earlier Marks, the use of the Contested Mark, without due cause, will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the Earlier Marks.”

6. Under section 5(4)(a) of the Act the opponent relies on the following signs:

The opponent’s sign	Date of first use in the UK
BIBLE	2012
THE LAD BIBLE	2012
Family of BIBLE marks including: THE LAD BIBLE THE FOOD BIBLE THE ODDS BIBLE THE GAMING BIBLE THE FOOTBALL BIBLE THE LASS BIBLE THE FACTS BIBLE THE LENS BIBLE THE CONTENT BIBLE THE SCIENCE BIBLE THE STUDENT BIBLE BIBLE	2012

7. It states that these signs have been used for:

“Publication of online news and entertainment media content; electronic publications; downloadable publications; application software; electronic communication services; provision of online forums; telecommunications; broadcasting via the internet; electronic transmission of data, images and video; entertainment services; publishing services; education services; sporting and cultural activities; gaming services.”

8. The applicant filed a counterstatement in which it denied all the grounds of opposition:

“2.4 Notwithstanding any similarities between the goods and services covered by the Application, which is not admitted, the Earlier marks attract a low degree of distinction which affords a narrow degree of protection. On this basis, and due to the dissimilarities between the Earlier marks and [the application], it is denied there exists a strong likelihood of confusion (or indeed any likelihood of confusion) on the part of the public, that includes a likelihood of association, on which the Opponent can base an opposition under section 5(2)(b).”

9. Both sides filed evidence and skeleton arguments. A hearing subsequently took place before me, by video conference, at which the applicant was represented by Mr Terry Rundle of Wilson Gunn. The opponent was represented by Mr Julius Stobbs of Stobbs.

Preliminary issue

10. The opponent filed evidence in reply to which the applicant objected on the basis that it constituted further evidence in chief and therefore, should not be admitted. I considered the point at the beginning of the hearing.

11. Mr Stobbs for the opponent submitted that evidence of fact may be filed by the opponent only strictly in reply to the applicant's evidence. He maintained that this was the case here because the applicant's evidence sought to demonstrate third party use of marks which include the word 'Bible'. The opponent's evidence in reply responded to this evidence and noted that the applicant's evidence failed to show the commercial

scale of the use of those third party marks or, where some scale was provided, it was marginal compared to the opponent's number of followers.

12. I agreed that the opponent's evidence could properly be considered evidence in reply to the evidence filed by the applicant and admitted it into these proceedings, to the extent that it relates to dates which are relevant to the matter to be decided.

EVIDENCE

The opponent's evidence

Witness statement of Chris Dodd and exhibits CD1-CD29

13. Mr Dodd is a Chartered Accountant and the opponent's Head of Finance. He has worked for the opponent since February 2015. His witness statement is dated 23 November 2017. The salient points from his evidence are as follows:

14. The opponent is a publisher of online news and entertainment comprising original and user-generated content.

15. THE LAD BIBLE was first used on 7 July 2011 when its founders created a social media account on *Facebook*.

16. By 30 November 2016, THE LAD BIBLE Facebook page had 17.2 million followers. Mr Dodd submits that historic data broken down by geographic area is not available but confirms that on 22 November 2017 (after the relevant date) the *Facebook* following was 29.5 million of which 6.1 million, or 21%, was based in the UK.

17. In July 2011, the opponent launched a Twitter channel. Mr Dodd submits that historic data regarding numbers of followers. Geographic data is not available but Mr Dodd confirms that on 23 November 2017 (after the relevant date) the channel had 2 million followers.

18. In May 2014 the opponent launched THE LAD BIBLE as an Instagram channel.

Historic follower numbers are not available but on 23 November 2017 (after the relevant date), the opponent's following was 5.2 million of which 2.6 million (51%) was in the UK.

19. A YouTube channel was launched in January 2012 for THE LAD BIBLE. Mr Dodd submits that historic data is not available but on 23 November 2017 (after the relevant date), the opponent had 120k subscribers to its channel and the video content had received 23.4 million views.²

20. The domain name www.theladbible.com was first registered on 8 July 2011. Mr Dodd says that since that date:

"...a live, content-rich website has been operated from the domain, all of which has been branded with the trade mark THE LAD BIBLE."

21. He submits that in November 2016 the website had 94.7 million web visits, of which 55.8 million (59%) were from the opponent's UK audience.³

22. With regard to the opponent's market share, Mr Dodd submits that on 18 November 2016, Alexa UK (an independent agency which lists the most popular websites worldwide) ranked the opponent's website, www.theladbible.com as 13th most visited site in the UK, the 2nd most visited media website in the UK (the 1st being the BBC), and one of only two British companies to make the top 15 worldwide list.⁴

23. In the same month, the monthly rankings published by Tubular Labs showed The Lad Bible was the second biggest distributor of video content on *Facebook* in Europe with 3.2 billion views.

24. In July 2017, Tubular Labs monthly rankings revealed that The Lad Bible was the most watched video creator across the globe with 2.8 billion video views.

25. A page is provided from *Google* analytics for the website, www.theladbible.com. It

² Exhibit CD2 confirms the creation dates of the *Facebook* page, *twitter* and *Instagram* accounts as well as the YouTube channel.

³ Exhibit CD4 is a screenshot from WayBackMachine confirming this figure and showing that there has been content on the website from 16 June 2012 to 23 November 2017.

⁴ See exhibit CD5.

shows that between 1 November 2016 and 30 November 2016 the number of sessions per day on the website was between 2.5 and 5 million. The total number of sessions for the period is shown to be 94.7 million for approximately 20 million users.⁵

26. Mr Dodd submits that in addition to THE LAD BIBLE, the opponent has made significant use of a number of related trade marks, all containing the common formation THE (NOUN) BIBLE.

27. I will summarise the evidence relating to these additional marks if it becomes necessary, throughout the decision. The opponent provides the following table which provides an overview of the number of followers for a number of its marks relied on:

Social Media Platform	Brand	Total Number of followers (30 Nov16)	Total Number of followers (22 Nov17)	UK followers (22 Nov 17)	% of UK followers (22 Nov17)
Facebook	THE LAD BIBLE	17,259,249	29,552,765	6,143,520	21%
	THE SPORT BIBLE	8,842,371	10,372,331	1,840,826	18%
	PRETTY52 (was THE LASS BIBLE)	2,423,814	5,024,712	1,244,302	25%
	THE STUDENT BIBLE	196,901	288,728	146,209	50%
	THE ODDS BIBLE	350,383	649,507	145,232	22%
	THE SCIENCE BIBLE	264,115	325,298	112,537	35%
	THE FOOD BIBLE	2,141,617	2,441,317	863,576	35%
	THE GAMING BIBLE	1,751,780	2,797,366	660,475	24%
	THE CONTENT BIBLE	-	11,455	2,241	20%
	THE LENS BIBLE	-	33,500	11,700	35%
Instagram	THE LAD BIBLE	3,590,000	5,163,531	2,635,843	50%
	THE SPORT BIBLE	2,140,000	2,606,686	1,043,320	40%
	PRETTY52 (was THE LASS BIBLE)	79,090	140,733	101,344	72%
	THE FACTS BIBLE	245,870	798,566	447,490	56%
	THE LENS BIBLE	380,000	647,000	356,000	55%
Twitter	THE LAD BIBLE	Not available	2,016,466	Not available	Not available
	THE SPORT BIBLE	Not available	1,295,404	Not available	Not available
	PRETTY52 (was THE LASS BIBLE)	Not available	51,422	Not available	Not available
	THE ODDS BIBLE	Not available	666,430	Not available	Not available

28. In June 2016 the opponent commissioned the production of a video starring Dwayne ‘The Rock’ Johnson and Kevin Hart. The video was viewed 45 million times on Facebook. The evidence includes prints taken from the opponent’s Facebook page which shows that two such films were posted on 22 June and 30 June 2016, respectively. The following mark can be seen in the top left corner of the screen in both cases:⁶

⁵ See exhibit CD5.
⁶ See exhibit CD20.



29. In 2015 the opponent collaborated with Doritos⁷ to launch a campaign called THE SUMMER BIBLE which began with a 12-hour holiday challenge to Ibiza. Mr Dodd describes the campaign as, 'encouraging others to share their boldest holiday experiences', resulting in their adventures being featured on an online hub, inspiring others to make the most of the summertime.

The evidence includes a print of an article posted on www.omdukblog.com on 11 August 2015. It is titled, '*Doritos and TheLADbible set to inspire a bold summer*'.⁸



30. The article includes the following:

"The campaign kicked off yesterday with Doritos challenging The LADbible to go on the world's first 12-hour holiday. The LADbible checked in on Twitter, Periscope and Snapchat to share their whirlwind experience, with the challenge of leaving their office, flying to Ibiza, having an amazing holiday and then being back at their desk by 09:00am this morning. Now that is a challenge FOR THE BOLD! Now they are back, the editing begins to pull together a spectacular piece of video content that will launch as a SUMMERbible article on Sunday."

31. In July 2016, the opponent commissioned original live content entitled 'Last Lolly Standing'. 4.1 million people tuned in to watch 'the epic battle of the ice lollies'. Mr Dodd submits that this was one of the first pieces of content to use Facebook's new 'live'

⁷ The brand owned by Walkers Snack Foods).

⁸ See exhibit CD20.

feature. An article posted on www.RT.com published on 20 July 2016 refers to the video and states: *“At one point, the feed had over 80,000 live viewers who held on for 36(!) minutes to see which ice-cream would emerge victorious.”*⁹

32. In July 2016, the opponent partnered with the RNLI on their ‘Respect the Water’ campaign which aimed to create awareness of the dangers of the UK coastline. It was part of the RNLI’s aim to halve coastal drownings by 2024. The opponent produced three campaign documentaries on *Facebook*, which exceeded 4.2 million views.

33. In September 2016 the opponent launched a mental health campaign called ‘U OK M8?’ to raise awareness of male mental health issues. It was supported by the Movember Foundation, the Samaritans, the Mental Health Foundation and the Campaign Against Living Miserably (CALM). The campaign featured Louis Smith, Olympic gymnast, talking about his experiences with depression; a film about Andy’s Man Club (a Halifax based men’s group), as well as editorial pieces. Mr Dodd states that the campaign reached 36 million people, had 823k engagements and was viewed in excess of 4.8 million times.

34. An article on the opponent’s website, dated 12 September 2016 and titled, ‘TheLADbible launches mental health campaign ‘U OK M8?’’, includes the following:

*“TheLADbible Group is launching **“UOKM8?”** a three-month campaign to raise awareness of male mental health issues. We’re aiming to develop the broadest understanding of mental health and suicide risk in the UK. Currently, suicide is the biggest killer of British men under 45...*

*TheLADbible will also be also be gathering quantitative and behavioural data from our audience to develop the broadest picture on the scale of these issues ever achieved. We will share that data with policy makers and charities and build an open source information bank for all the relevant stakeholders.”*¹⁰

⁹ See exhibit CD20.

¹⁰ See exhibit CD21.

35. The following mark is shown on a promotional photograph of Louis Smith:



36. In July 2015 the opponent agreed to sponsor a local non-league football club. The opponent became the official shirt sponsor for Hyde United during the 2015/2016 season and one end of Hyde's Ewen Fields Stadium was renamed TheLADbible end.

37. An article about the sponsorship is included in evidence. It is taken from THE DRUM at www.thedrum.com and is dated 6 July 2015. It confirms the statement made by Mr Dodd and concludes:

“TheLADbible has offices in Manchester’s Dale Street and reaches more than 100m people a week.”

38. Mr Dodd submits that the opponent’s activities and campaigns are regularly featured in the press so that the “family of brands within [the opponent’s] portfolio receive a great deal of exposure by way of external media coverage.” He confirms that the opponent does not keep a press archive so only a selection of articles published after 2012 is available.¹¹

39. The first article is from the Drum, is dated 22 September 2016 and is titled, ‘The Lad Bible hires 16-year-olds in its newsroom to understand the next phase of digital media’.

40. The article describes the opponent as, “one of the UK’s fastest growing news and entertainment publishers” and refers to a number of the opponent’s marks:

“The community of readers that the Lad Bible is trying to create – across a portfolio of powerful and growing brands that also includes the Sport Bible, the Food Bible, the Gaming Bible and female-orientated Pretty 52 – has a

¹¹ See exhibit CD23.

different sensibility, and Clyne keeps a list in his office of the intrinsic qualities.”

“...the Lad Bible’s brands are strong across a range of social media platforms. It has launched the photography-focused the Lens Bible as its first Instagram-only brand. The combined strength of the portfolio is extraordinary, with the Sport Bible having 8.6 million followers on *Facebook* (and matching Trip Advisor for UK audience), while Pretty 52 attracts comparable traffic levels to the Sun (according to Alexa statistics) and is more popular on *Facebook* than *Cosmopolitan*.”

41. The second article, taken from *The Guardian* and dated 30 March 2016, is a report from the 2016 Guardian Changing Media Summit at which Mimi Turner, director of the opponent, gave a presentation.

“The Lad Bible has just launched an Instagram-only community aimed at budding photographers. Less than a month after launch the Lens Bible has more than 139,000 followers, nearly half the number of the Getty Images Instagram account. ‘There are two billion smartphones in the world,’ says Mimi Turner, marketing director at The Lad Bible, ‘that’s two billion connected cameras. If you have an agile mindset, it becomes logical to create communities at that scale.’”

42. The third article is taken from CNBC and is dated, 1 September 2016. It is titled, ‘With 3.1 billion views, this site is going after BuzzFeed...’. The site referred to is the opponent. Within the article the opponent’s chief operating officer says, “we’re actually the biggest video provider in Europe right now”.

43. The fourth article is taken from www.pressgazette.co.uk and is dated 17 August 2016. It is titled: ‘Lad Bible ranks as Europe’s ‘most watched’ for video content’. It includes a number of relevant paragraphs which are as follows:

“The Lad Bible Group has ranked as the number one most watched media property in Europe.

Tubular Labs' July rankings of top online video creators and brands put the UK-based company, which publishes irreverent news and entertainment stories, ahead of BBC Worldwide, Daily Mail, Sky and the RTL Group.

The site partnered with Tubular Labs, which tracks and analyses video content, in March to bolster its video views. It is followed by half of all UK men aged 18 to 24 and almost a quarter of UK women aged 18 to 24.

Globally, the Lad Bible was the third most watched media property behind BuzzFeed and Time Warner.

It reached 3.1 billion views across all platforms and Lad Bible Group publishers last month. BuzzFeed, Time Warner and The Walt Disney company generated 4.8 billion views, 3.2 billion views and 2.6 billion views respectively in July.

The Lad Bible Group's nine content brands include the Lad Bible, Sport Bible, Gaming Bible, and Food Bible.

All of these brands together recorded nearly four times more views than BBC Worldwide's 322 publisher channels, figures show.

Adam Clyne, chief operating officer at The Lad Bible Group, said...

'It's especially exciting to see how well Lad Bible Group is performing compared to some of the biggest media businesses in the world and to have moved from fourth to third place in the global rankings, moving ahead of a giant like the Walt Disney Company.'

He said innovation across new platforms such as Facebook Live, with the group producing 26 live broadcasts last month, including one video that received more than 6.4m views.

Denis Crushell, European vice president at Tubular Labs, said: “Our number one goal is to help our customers succeed in online video and commercialize their online video audiences.

‘The Lad Bible Group understands what content their audience wants to watch and engage with everyday. It publishes a minimum of 50 videos per day, with each video commanding on average 1.3 million views.’”

44. The fifth article is taken from www.somersetlive.co.uk and is titled, ‘The Grand Tour: LAD Bible’s Cheddar video is watched by 750,000 people...It is dated 21 December 2016 and refers to LAD Bible’s Hidden Britain Tour in which it visited Cheddar in Somerset.

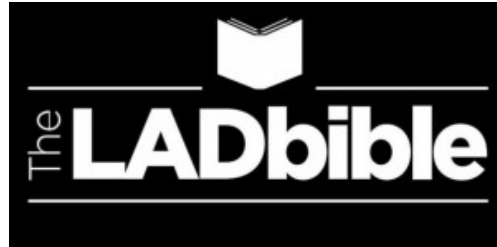
45. The sixth article is taken from www.business-reporter.co.uk, is dated 1 February 2016 and is titled, ‘How The LAD Bible became one of the UK’s most-visited websites’. The introduction reads:

“Through producing content which is engaging and shareable, The LAD Bible, established in May 2012, has come out of nowhere to be the eleventh most-visited website in the UK, according to data analytics website Alexa.”

46. The seventh article is taken from the Wall Street Journal blog and is dated 29 April 2015. It provides a list of the top publishers for *Facebook* video. Lad Bible is listed as number one with 1.6 billion views per month. Sport Bible is second with 921 million views per month.

47. An article from www.fasttrack.co.uk is titled ‘The Sunday Times Tech Track Ones to Watch’. It is not dated but includes league tables from 2016 and 2017. It is described as a showcase of companies that do not meet the criteria of the Tech Track 100 league table but have either raised significant venture capital investment or are forecasting for strong sales growth. The LAD Bible is on the 2016 list for year end July 2016. Sales are given as £7,500,000. On the 2017 list LADbible Group is listed for the year ending December 2016. The annual sales rise over three years is shown to be 208.17% with sales listed as £9,221,000.

48. A further article from www.thedrum.com is titled, 'The Lad Bible working on 'big' rebrand as it redefines the meaning of 'lad'.' It is dated 17 November 2016 and includes the following example of the opponent's mark:



49. An article from WIRED at www.wired.com is titled, 'How TheLADbible became the online voice of a generation'. It is dated 17 August 2016. The article refers to a meeting between David Cameron and 40 people from technology startups, at which they were encouraged to persuade young people to register to vote in the EU referendum. With regard to the opponent, it reads, *"Civil servants considered TheLADbible influential, as its 13.5 million Facebook followers included more than half of the UK's 18-24-year-old men."*

50. Mr Dodd provides an article from the BBC titled, 'How did The Lad Bible become so successful?'¹² It is dated 5 February 2015 and reports an interview with the opponent's marketing director who told BBC radio 5 live that the opponent's site was growing by 250,000 followers as week and was getting 3.5 million 'likes', 'shares' and 'comments' on its media every day. The author comments:

"The ability to attract clicks has made the Lad Bible highly sought after by advertisers.

BuzzFeed reported it made more than £1m a year from advertising."

¹² See exhibit CD24.

51. Mr Dodd also provides an article from The Independent dated 20 November 2015. It is titled, 'The Lad Bible: How a media success story has harnessed social media to fill the void left by lads' mags.'¹³ It includes:

"The brand has expanded to include TheSportBible which has more than seven million followers on Facebook."

Awards

November 2015	Digital Entrepreneur Awards Social Media Campaign of the Year (medium/large) Young Digital Entrepreneur of the Year
2016	Prolific North Awards Video of the Year Award
2016	North of England EY Entrepreneur of the Year Technology and Media Award
2017	Shortlisted for AOP (Association of Online Publishers) awards for 'Best use of social video' in respect of an environmental campaign launched in 2016, entitled 'Climate Change'.
2017	Brand Film Festival Awards, 'Best of the Best' for campaign with the RNLI.
October 2017	Won four Lovie awards, including an award for 'UOKM8?' campaign.

Trade Shows and Events

52. Mr Dodd submits that members of the opponent's team have attended and/or been invited to speak at a number of annual media events and conferences held in the UK and Europe. He provides the following examples:

¹³ See exhibit CD25.

- The Cannes Lions International Festival of Creativity is the world's biggest festival and awards ceremony for the creative and marketing communications, entertainment, design and technology industries.

53. An article from www.campaignlive.co.uk dated 21 June 2016 reported that The Lad Bible had been shortlisted for its 'SummerBible' campaign, at the Cannes Lions event.¹⁴

- Mindshare UK's Huddle Media Event bringing together key players in UK media and tech to attend and present at various workshop sessions;
- Adweek Europe which is the premier event/conference for marketing, brand, advertising, and technology professionals.

Turnover

54. Mr Dodd provides the following turnover figures and advertising expenditure for the UK since July 2012.

Financial Period	UK total turnover	UK advertising expenditure
Aug 2016 – Dec 2016	£4,874,560	£285,672
Aug 2015 – July 2016	£7,481,585	£685,614
Aug 2014 – July 2015	£3,820,284	£181,343
Aug 2013 – July 2014	£919,148	£41,109
Aug 2012 – July 2013	£143,765	None provided

55. With regard to its advertising strategy, Mr Dodd submits that the opponent's family of marks have been consistently advertised and promoted in a number of ways, including (but not limited to) the organic growth and reach of its social media audience including direct followers, likes and shares; *Facebook* paid advertising; the placement of advertisements in trade magazines; participating in and attending awards ceremonies.

Market Share

¹⁴ See exhibit CD27.

56. With regard to the opponent’s market share Mr Dodd’s submits:

“Given that [the opponent] operates in a unique and emerging commercial sphere, it follows that external data figures regarding market share are not readily available. Nonetheless, in an effort to demonstrate the UK market share held by [the opponent] in this specialist field, I have set out below three comparison tables each of which list [the opponent’s] 7 largest competitors in the UK together with their respective follower numbers across the three biggest social media platforms, namely Facebook, Twitter and Instagram.”

Facebook	Number of followers (at 22 Nov 2017)	% share held by LB
LADbible	29,552,765	24%
Unilad	34,252,202	28%
Joe.co.uk	4,175,033	3%
Viral Thread	19,668,185	16%
Vice	7,437,592	6%
Buzzfeed	10,980,531	9%
Daily Mail	13,330,534	11%
Metro online	1,836,448	3%
TOTAL	121,233,290	100%

Twitter	Number of followers (at 22 Nov 2017)	% share held by LB
LADbible	2,016,466	23%
Unilad	177,240	1%
Joe.co.uk	(No account)	(No account)
Viral Thread	(No account)	(No account)
Vice	(No account)	(No account)
Buzzfeed	6,262,378	70%
Daily Mail	203,768	2%
Metro online	277,171	4%
TOTAL	8,937,023	100%

Instagram	Instagram Followers at 22 Nov2017	%of total
LADbible	5,163,531	42%
Unilad	1,840,044	15%
Joe.co.uk	(No account)	(No account)-
Viral Thread	(No account)-	(No account)-
Vice	1,597,693	13%
Buzzfeed	3,283,404	26%
Daily Mail	339,044	4%
Metro online	-(No account)	(No account)-
TOTAL	12,223,716	100%

The applicant's evidence

Witness statement of Terry Roy Rundle and exhibit TRR 01

57. Mr Rundle is the applicant's representative. His evidence is provided in response to the opponent's claim to a family of 'bible' marks and seeks to show "use of other 'bible' marks not associated with the opponent."

The first page of this evidence is submissions from Mr Rundle which I will refer to in the remainder of this decision, where necessary.

58. Prints are provided from a number of social media accounts including, inter alia, *Instagram*, *twitter* and *Facebook* for the following - those that I have underlined have a UK or EU registered trade mark, those in bold have applied for a UK or EU trademark: The Lighting Bible, The Soccer Bible, The Whiskey Bible, The Winner's Bible, The Green Bible, The Fashion Bible, Style Bible, eBible, The Clubbing Bible, The Climbing Bible, The Parent Bible, Away Day Bible, The Manc Bible, The Cooking Bible, The Political Bible, The Left Wing Political Bible, The Travel Bible, **The hockey bible**, **The Beer bible**, The bitchy bible, The inbetweeners bible, The dank bible, Sesh bible, The forces bible, The car bible, the BRO Bible, Council estate bible, the sad bible, the hood bible, The premier league bible, Maga bible, The BPLbible, The Animal Bible, Film Bible, The BOLTON Bible, The Holy Bible, Snowboarders Bible, The Star Wars Bible, The Chef Bible, Scouse bitch bible, The car bible, The LAUGH Bible, The superhero bible, The BBQ Bible, The Real Madrid Bible, The Punjabi Bible, The Bullshit Bible, The Bible Series, Bird Bible, The Mackem Bible, The Ibiza Bible, The Erasmus Bible, The Fit Babe Bible, Hustlers Bible, The Bali Bible and Bartenders Bible.

The opponent's evidence in reply

Second witness statement of Chris Dodd and exhibits CD1A-CD9A

59. Mr Dodd's second statement concerns the opponent's reputation. He begins by explaining that recognition of the opponent's family of marks extends beyond its direct number of followers. Mr Dodd gives, as an example, *Facebook*, where each time a follower likes, shares or comments on content from one of the opponent's pages, it will potentially be seen by all of the users to whom they are connected. This is known as 'reach'. The number of people liking, sharing or commenting on content are shown by reference to an 'engagement' figure. Mr Dodd provides these reach and engagement figures for eight of its marks, but they are dated 16 March 2018, considerably after the relevant date.¹⁵

Mr Dodd also provides historic data of what he describes as the 'raw' reach figures for the week ending 23 December 2016. These are as follows:

Historical data figures from Facebook for week ending 23 December 2016		
Account name	Reach figure	% of UK population reached by content
@theladbible	26,672,251	41%
@thesportbible	14,176,259	22%
@theoddsbible	5,205,081	8%
@thegamingbible	5,205,081	8%
@thefoodbible	5,059,086	8%
@thestudentbible	3,174,317	5%
@thesciencebible	112,691	<1%
@thelensbible	63	<1%

60. Mr Dodd submits that the Office for National Statistics gives the mid-year population for 2016 in the UK as 65,648,000¹⁶ and this figure has been used to calculate the reach percentage.

¹⁵ See exhibits CD1A-CD8A.

¹⁶ See exhibit CD9A.

Approach

61. I will deal first with the opponent's case under section 5(2)(b) of the Act in respect of its plain word mark, The LAD Bible (EUTM 12158713).

Section 5(2)(b) of the Act states:

"5. - (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, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

62. 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, international trade mark (UK) or Community trade mark or international trade mark (EC) 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.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

63. None of the opponent's earlier marks is subject to proof of use because, at the date of publication of the application, they had not been registered for five years.¹⁷

In making this decision, I bear in mind the following principles gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C -342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

(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;

¹⁷ See section 6A of the Act (added by virtue of the Trade Marks (Proof of Use, etc.) Regulations 2004: SI 2004/946) which came into force on 5th May 2004.

(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

64. All of the goods and services in the application are identical to classes 9, 38 and 41 in the opponent's specification for its The LAD Bible mark, namely:

Goods and services in both parties' specifications:
Class 9

Publications in electronic format; downloadable publications; downloadable electronic publications; online electronic publications downloadable from the Internet; publications in electronic form supplied online from databases or from facilities provided on the Internet (including web sites); electronic magazines; multimedia recordings and publications; printed publications in electronically readable form; computer software and programs; computer games; downloadable software; computer software downloadable from the Internet; application software; application software for mobile communication devices; data recorded in electronic, optical or magnetic form; data carriers; data storage media; memory cards; audio and/or video recordings; downloadable and streamable audio and/or video recordings; pre-recorded videos, CDs, CDIs, CD-ROMs, discs, cassettes and other data carriers containing information recorded in magazine form; eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices.

Class 38

Telecommunications; communications services; broadcasting services; webcasting services; podcasting services; broadcasting via the Internet and other computer and communication networks; electronic communications services; broadcasting, transmission, reception and other dissemination of text, messages, information, data, sound and images; providing a multimedia content and video sharing portal; electronic transmission of data, messages and information; receiving and exchanging of information, text, sounds, images, data and messages; communications by and/or between computers and computer terminals and computer networks; retrieval, provision and display of information from a computer stored databank; provision of access to computer databases in the fields of social networking and online communities; electronic display of information, text, images, messages and data; online communication services; chat room services; provision of online forums for communication on topics of general interest; online forums relating to education and entertainment, music, fashion, films, food, careers, women, travel, sports, adventure and lifestyle; provision of online community forums

for uploading, posting, storing, displaying, sharing, watching, viewing, playing, editing, downloading, receiving, electronically transmitting or otherwise providing electronic media, multimedia content, audio and video content, movies, music, games, photos, images, pictures, graphics, text, messages, information, data, news and user-generated content via the Internet and other computer and communication networks; information, advisory and consultancy services relating to all of the aforesaid services.

Class 41

Entertainment services; education services; sporting and cultural activities; online education entertainment services; entertainment services provided via the Internet and other computer and communications networks; entertainment services featuring electronic media, multimedia content, audio and video content, movies, music, games, photos, images, pictures, graphics, text, messages, information, data, news and user-generated content provided via the Internet and other computer and communication networks; presentation of data, messages and documents for entertainment purposes; interactive information provided online via the Internet and other computer and communication networks, relating to education and entertainment, music, fashion, films, food, careers, women, travel, sports, adventure and lifestyle; provision of entertainment information for accessing via communication and computer networks; providing non-downloadable electronic publications; providing online publications (not downloadable); providing online non-downloadable magazines; production of video recordings and sound recordings; production of webcasts; production of podcasts; publishing services; publication of magazines, books, texts and printed matter; publishing by electronic means; digital video, audio and multimedia entertainment publishing services; provision of audio and/or visual material and games online (not downloadable); arranging, organising and conducting of games, contests, competitions, quizzes, awards, conferences, exhibitions, courses, seminars and events; organising, conducting and production of shows, displays and parties; arranging, organising, presentation and provision of concerts, live entertainment, musical performances; arranging and conducting award ceremonies; presentation of awards for achievement; arranging, organising and conducting of events for cultural and sporting purposes; organisation of sporting

competitions and sports events; gaming services; information, advisory and consultancy services relating to all of the aforesaid services.

The average consumer and the nature of the purchasing act

65. In accordance with the above cited case law, I must determine who the average consumer is for the goods and services at issue and also identify the manner in which they will be selected in the course of trade.

66. 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*¹⁸, Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

67. The opponent submits that the goods and services in question are intended for all consumers, but particularly:

“...those aged between 18-35 years of age bearing in mind that we are talking about online media and entertainment services”.

68. The opponent’s (and applicant’s) specifications include a broader range of goods and services than online media and entertainment services. For goods such as, eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile

¹⁸ [2014] EWHC 439 (Ch)

phones, computers and personal electronic devices, the average consumer is a member of the general public. The purchase is likely to be made through stores, websites or catalogues and will be a primarily visual purchase requiring at least an average degree of attention.

69. Services such as organising conferences and seminars are likely to be purchased by business customers and are purchased infrequently at higher cost, meaning that the level of attention paid is likely to be higher. These services will be accessed, for the most part, visually (via, inter alia, online searches, promotional material, trade press), but I do not rule out an aural element.

70. The vast majority of goods and services fall into the broad category of online media and entertainment services. Such services often do not require financial expenditure. They will be accessed by members of the general public primarily visually, are frequently accessed and are likely to require no more than an average degree of attention to be paid.

Comparison of marks

71. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the

light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

72. It would be wrong, therefore, to dissect the trade marks artificially, 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.

73. The competing marks are:

Opponent’s mark	Applicant’s mark
The LAD Bible	

74. With regard to the similarity of the respective marks the applicant submits that the marks must be compared as wholes. It describes its own mark as a figurative mark in which the dominant and distinctive element is “the U-shaped graphical element” and the verbal element is “THEUNIBIBLE in which UNI is emboldened.”

75. It describes the opponent’s The LAD Bible mark as having a degree of stylisation which is quite different from its own mark and submits that the middle word is capitalised and alludes to the content of the goods and services. It concludes that the visual and aural differences are plain and will be immediately noted by the average consumer.

76. The opponent submits:

“ii. From a visual point of view...the marks in question must be considered similar as they are identical to the extent that the first and last word components are identically present in all the marks and consistently appear in the same position within the marks. In each case, the central word consists of three letters...

In addition, where a sign consists of both verbal and figurative elements, the former are, in principle, considered more distinctive and dominant than the latter, because the average consumer will more easily refer to the goods or services in question by quoting their name rather than by describing figurative elements of the mark (*CFI, 22 May 2008, NewSoft Technology/OHIM – Soft, T-205/06, paragraph 54*)...

vi. From a pronunciation point of view, it is highly likely that the average consumer for the mark covered by the application will pronounce the brand THE UNI BIBLE, since the device element is purely a figurative element which is not clearly a pronounceable element...

vii. In the alternative, if the Hearing Officer considers that the Device will be perceived as a letter U, which is disputed by the Opponent, then it is of course possible that the average consumer may pronounce it as “U THE UNI BIBLE”, but this seems unlikely if the device element is simply there to reinforce the UNI element of the mark.

77. The applicant’s mark comprises the words, ‘THE**UNI**BIBLE’, below a large device. Both elements are presented in white on a square blue background. The device could be seen as a stylised ‘U’ or as the stylised representation of the end of a book. In either case it will be seen as referring to an element of the mark, either the U of UNI or a book which supports the word ‘BIBLE’. The three letters ‘UNI’ are presented in bold, which creates obvious division between the words resulting in the average consumer seeing the word element as THE-UNI-BIBILE, rather than a single invented word. The words and the device both play a part in the overall visual impression of the mark but the words make the greater contribution to the overall impression created by the mark.

78. The opponent's mark comprises three words, 'The-LAD-Bible'. The overall impression rests in the mark as a whole.

79. Visually, the applicant's mark consists of the three words THE**UNI**BIBLE below a large device. The absence of the device and the difference in the middle word when compared to the opponent's mark, result in significant visual differences between them. The marks have a low degree of visual similarity.

80. With regard to aural similarity, I agree with the opponent that the average consumer is unlikely to pronounce the device element in the application. Its size and position both point away from it being considered a letter which would be pronounced at the start of the mark and, as I have already discussed above, it is just as likely to be considered a pictorial element. The marks coincide in the first and third words, 'THE' and 'BIBLE' resulting in their being aurally identical in their first syllable and last two syllables. Both have a three-letter word between those two words, namely, 'UNI' in the application and 'LAD' in the opponent's mark. This means that the applicant's mark is one syllable longer overall. I find these marks to be aurally similar to at least a medium degree.

81. Neither side has made any submissions with regard to the conceptual similarity of the marks. There is a clear point of similarity in that each mark contains the word 'bible'. Prima facie, both marks will be considered by the average consumer to be providing information concerning or directed at their particular subjects; universities, in the case of the application and lads in the opponent's case. In other words, the application will be seen as the bible for universities and the opponent's will be seen as the bible for lads. To that extent, I find the marks to have a medium degree of conceptual similarity.

Distinctive character of the earlier mark

82. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been used as coming from a particular undertaking and thus to

distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger*.¹⁹

83. The opponent submits that its mark is inherently highly distinctive, having no meaning in respect of the goods and services for which it is registered. Furthermore, it submits that:

“...The enhanced distinctiveness of the Opponent’s Earlier Marks comes about because of the reputation the Opponent enjoys in its Earlier Marks. The evidence in this case demonstrates that the Opponent has a reputation. The average consumer would also be aware of the Opponent’s reputation in relation to online publishing and entertainment services, which are directly covered by the specification of the application.”

84. In its submissions filed within its evidence the applicant appears to indicate that ‘Bible’ is an element used often within trade marks and on websites and social media pages and that the opponent cannot claim a monopoly in such marks. If I understand the applicant’s submissions correctly, the applicant concludes from this that the bible element is non-distinctive and that (relying on the decision in *Attraction Tickets*²⁰) any enhanced distinctiveness resides in a mark as a whole and not a particular part of it.

85. I agree, I must assess the distinctiveness of the opponent’s mark as a whole. Before moving on to make such a consideration I will pause to consider the evidence filed by the applicant in which it has provided examples of a number of trade marks, website and social media pages which relate to third party use of the word ‘bible’.

86. The applicant submits that its evidence shows the word ‘bible’ has become known as ‘an authority for that particular fragmented genre’ and concludes that the opponent cannot be responsible for every other variant using ‘bible’, some of which pre-date the opponent’s use.

¹⁹ *Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.*

²⁰ BL O-171-17.

87. With regard to the trade mark examples, I bear in mind *Zero Industry Srl v OHIM*²¹ in which the General Court stated:

“73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘... there are no indications as to how many of such trade marks are effectively used in the market’. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71).”

88. The fact that a number of other trade marks exist which include the word ‘bible’ is not sufficient, in and of itself, without further explanation, for me to conclude that the distinctive character of the ‘bible’ element has been reduced as a result of such use. The applicant has not given any indication of the extent, duration or location of use of these trade marks, nor has it identified the goods and services for which any of the marks have been used. It has simply reproduced the specifications from the trade mark register.

89. In addition to trade mark prints, the applicant has provided prints taken from a number of social media pages which contain the word ‘bible’. Most take the form, ‘The _____ bible’, though not in all cases. I note, for example that ‘Whisky Bible’ does not use the definite article,²² ‘The’. It does have a trade mark and web page but the *Facebook* page is ‘Jim Murray’s Whisky Bible’ and its twitter account is simply, ‘Jim Murray’. In all cases, there is little information of use included in the printed pages or

²¹ Case T-400/06.

²² In addition, nor do Stylebible, ukfashionbible, AWAYDAY BIBLE and so on.

in the submissions supporting the exhibit. Start dates for accounts and follower numbers are often not included. Where follower numbers are included they tend to be fairly low²³ and even where they are higher, for example THE TRAVEL BIBLE which has 290,235 followers on *Facebook*, I have no indication of the extent to which they relate to the UK. The fact that the social media pages are present on such platforms as *Facebook* and *twitter* does not mean that the marks are used for the same services as those at issue in this case. In addition, the prints appear either undated or printed contemporaneously with the applicant's witness statement, so I cannot be sure what the position was at the relevant date.

90. For all of these reasons, I do not intend to give further consideration to the applicant's evidence about third-party use of bible marks.

91. Turning to the matter of inherent distinctiveness, the opponent's mark, 'The LAD Bible' is distinctive to a normal degree for some of the goods for which it is registered., namely, the following in class 9:

eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices.

92. For these goods, it neither describes nor alludes to any feature of those goods and I find the mark to be inherently distinctive to a medium degree.

93. With regard to the remaining goods and services, which broadly relate to online publishing, telecommunication services, social media, online magazines and entertainment, I find the opponent's mark to be lower in distinctiveness as it alludes to the likely content or target audience of such services. The 'bible' element serves to reinforce the message that these services provide all you need to know about lads, or it provides the lads with everything they need to know. Accordingly, I find the mark to possess a lower than average degree of inherent distinctiveness.

²³ The Winner's Bible has 529 Facebook followers and 102 followers on Twitter.

94. I will now consider the opponent's submission that the use of its marks, including The LAD Bible mark, has enhanced its distinctive character.

95. A Wall Street Journal blog, dated 29 April 2015, highlighted the top publishers for video on *Facebook* and listed The LAD bible as number one with 1.6 billion views per month.

96. The opponent has provided turnover figures which show that for August 2015 to July 2016 turnover in the UK amounted to £7,481,585 with advertising for the same period being £685,614. Whilst this is not broken down with regard to the particular marks it relates to, I am satisfied from the evidence that a substantial part of that turnover related to the opponent's The LAD Bible mark.

97. Some of the use relates to the opponent's stylised 'The Lad Bible' marks but all of the social media pages include use in plain text, as do the news articles, the website, published rankings and campaign and sponsorship publicity. Taking all of the evidence into account I have no hesitation in concluding that the opponent has enhanced the distinctive character of its 'The LAD Bible' mark due to the use it has made of it. Consequently, I find the mark to be highly distinctive for publication of news, information and entertainment (which includes original and user generated content). This enhanced distinctiveness applies to all of the opponent's goods and services with the exception of eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices in class 9.

Likelihood of confusion

98. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a lesser degree of

similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

99. I have found the marks to be visually similar to a low degree and aurally and conceptually similar to a medium degree. The parties' goods and services are identical.

100. The types of confusion were explained in *L.A. Sugar Limited v By Back Beat Inc*,²⁴ by Mr Iain Purvis Q.C., sitting as the Appointed Person:

“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 recognised 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.”

101. Furthermore, in *Duebros Limited v Heirler Cenovis GmbH*,²⁵ Mr James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

102. Taking into account all of the relevant factors and all of my findings so far, I find that there is no likelihood of direct confusion for any of the goods and services in the parties' specifications. The goods/services are selected with at least an average

²⁴ *BL O/375/10*

²⁵ *BL O/547/17*

degree of attention being paid. In my view, the common elements ‘the’ and ‘bible’ are not sufficient for one mark to be directly mistaken for the other.

103. With regard to eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices, I find that there is no likelihood of indirect confusion. The earlier mark is only averagely distinctive in relation to these goods. In these circumstances the common THE [3 letter noun] BIBLE similarity will do no more than call the other mark to mind.

104. For the remaining goods and services, I find the opponent’s mark to be highly factually distinctive. Whilst many of these services will be accessed visually, I bear in mind that real world use of social media sites, online entertainment and so on, requires the consumer to type the name of a site, page, tag or channel into a search system. In other words, it is the words which play the greater role than the device when the consumer actually uses these services. Furthermore, when reaching the required site, it is common practice (and the evidence supports my finding) for there to be profile pictures, logos and so on, featured alongside the name of the site. The stylized U or book device in the application is entirely in keeping with such presentation.

105. The content provided by both parties, across the range of identical goods and services will be considered by the average consumer to be directed at or relate to either lads or those at university. The content is described in the specifications as entertainment, fashion, etc. This is not a comparison between an authoritative text providing information about universities and a news and entertainment service directed at ‘lads’. These marks have identical specifications. Both cover entertainment.

106. A consumer familiar with, for example, amusing videos published online by The LAD Bible would, when encountering similar content provided online by THEUNIBIBLE simply see it as a related undertaking providing entertainment directed at or relating to those attending university.

107. In reaching this finding I have not ignored the large device in the applicant's mark, which I have concluded plays a role within the mark as a whole but, in respect of these particular goods and services, the device does not play as important a role as the words. The large U or book end device in the application is likely to be seen as no more than supporting the words **THEUNIBIBLE**.

108. The opposition under section 5(2)(b) of the act succeeds for all of the goods and services except the following in class 9:

eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses; digital photograph frames; covers and cases for mobile phones, computers and personal electronic devices.

The opposition under 5(3)

109. I will now assess the opponent's case under Section 5(3) of the Act in respect of its The LAD Bible mark. As I have found there to be a likelihood of confusion, it follows that there is the required link between the parties' respective marks. It also follows that there is unfair advantage because if the relevant public is confused, the applicant will benefit from that confusion in terms of increased custom. However, in case I am wrong about there being a likelihood of confusion, I will assess the section 5(3) case separately from my finding relating to confusion.

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

"5...

(3) A trade mark which-

(a) 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 (or, in the case of Community trade mark, in the European Community) and the use of the later mark without due cause

would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

111. Unlike the ‘standard’ protection afforded to registered marks by s.5(2) of the Act, the additional protection afforded by s.5(3) is based on the established reputation of the earlier registered mark. It is not therefore appropriate to assume normal and fair use of the earlier mark in relation to categories of goods/services for which the earlier mark is registered, but for which there is no evidence of use, or insufficient evidence of use to establish a reputation.²⁶ However, just as with the assessment required under s.5(2), I must consider all normal and fair use of the applicant’s mark in relation to all the goods and services specified in the application (as opposed to just the particular sub-sets of those goods that the applicant claims is its target market).

112. The opponent submitted the following in its statement of grounds:

“10. Established in 2012, the Opponent has made extensive use of the earlier marks throughout the United Kingdom. On the basis of extensive marketing and a significant creative and financial investment made by the Opponent in the Earlier marks, the Opponent has developed a huge reputation in relation to the provision and publication of online news and entertainment media content and related goods and services. The Opponent has acquired a momentous online social media following (over 56 million fans and followers), resulting In the Opponent’s content reaching over 250 million people a week via their website (www.theladbible.com) and multiple social media platforms including, but not limited to, Facebook, Instagram, Snapchat, Twitter, Vine, You Tube, Apple TV, and their iOS application.

11. Given the nature and extent of the Opponent’s reputation identified above, and the similarity between the Earlier marks and the Contested Mark, it is submitted that by using the Contested Mark, the Applicant would benefit from the power of attraction, the reputation and the prestige of the

²⁶ See the judgement of Kitchen L.J. in *Roger Maier and Another v ASOS* [2015] EWCA Civ 220, at paragraphs 122 and 140 with which Underhill L.J. agreed.

Earlier marks. It is submitted that when consumers view the Contested Mark, the Earlier marks are brought to mind due to their similarity and reputation. As such, this would enable the Applicant to unfairly exploit the Opponent's marketing efforts and investment, and free ride upon the coat tails of the Opponent's reputation in, and the distinctive character of, the Earlier marks. Further, or in the alternative, consumers seeing the Contested Mark may also believe that the Contested Mark is a trade mark of the opponent, or that there is an economic connection between the Applicant and the Opponent, thereby giving the Applicant an unfair advantage.

12. Furthermore, the Opponent submits that if the type or quality of the goods or services offered by the Applicant are poor, over which the Opponent has no control, this could result in detriment to the distinctive character or repute of the Earlier marks. For example, if the goods or services of the Applicant are of a lower standard than those of the Opponent, this could tarnish or harm the reputation enjoyed by the Opponent in relation to the Earlier marks and could affect the economic behaviour of the relevant public. Further, or in the alternative, use of the Contested Mark could also have the effect of diluting the distinctive character of the Earlier marks by diminishing their ability to distinguish the Opponent's undertaking from others. As such, there would be detriment to the distinctive character or repute of the Earlier marks.”

113. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. 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 Saloman, 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*.

(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 on 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 proprietor 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*).

114. It is clear from my findings earlier in this decision that the opponent has a reputation in the mark 'The LAD Bible'. The opponent claims to have developed a huge reputation in relation to the provision and publication of online news and entertainment media content and related goods and services. I note that the opponent has given no indication of what it considers those related goods and services to be. Earlier in this decision I found that the use the opponent has made of its mark rested in publication of news, information and entertainment (which includes original and user generated content). The extensiveness of the use shown in evidence leads me to conclude that the opponent has a significant reputation in the same terms.

Link

115. In addition to the earlier mark having a reputation, a link must be made between the mark applied for and the earlier mark. In *Intel Corporation Inc v CPM (UK) Ltd*²⁷ ("Intel") the CJEU provided guidance on the factors to consider when assessing whether a link has been established. They are:

²⁷ C-252-07

The degree of similarity between the conflicting marks;

116. The similarity of signs under sections 5(2) and 5(3) of the Act are assessed in the same way.²⁸ I have found the marks to be visually similar to a low degree and aurally and conceptually similar to a medium degree.

The nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;

117. The applicant's trade marks include, 'eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses' in class 9. Having considered all of the necessary criteria such as users, uses, nature, trade channels, complementarity and whether or not the services are in competition, I can find no meaningful areas of similarity between these services and those for which the opponent has a reputation.

118. The remaining goods and services in classes 9, 38 and 41 are either identical or similar (to varying degrees) to those for which the opponent has a reputation.

The strength of the earlier mark's reputation;

119. I find that the opponent had a strong reputation for the publication of news, information and entertainment (which includes original and user-generated content), at the relevant date.

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

120. At the relevant date the opponent's mark was highly distinctive for the publication of news, information and entertainment (which includes original and user-generated content).

²⁸ See *Addidas-Salomon, Case C-408/01*

The existence of the likelihood of confusion on the part of the public.

121. Earlier in this decision I found a likelihood of confusion for all of the applicant's services in classes 38 and 41 and some of the applicant's goods in class 9.

122. In *Intra-Press SAS v OHIM*,²⁹ the CJEU stated that:

“72...The Court has consistently held that the degree of similarity required under Article 8(1)(b) of Regulation No 40/94, on the one hand, and Article 8(5) of that regulation, on the other, is different. Whereas the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks at issue so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation. Accordingly, the types of injury referred to in Article 8(5) of Regulation No 40/94 may be the consequence of a lesser degree of similarity between the earlier and the later marks, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (see judgment in *Ferrero v OHMI*, C-552/09 P, EU:C:2011:177, paragraph 53 and the case-law cited).”

123. In other words, the level of similarity required for the public to make a link between the marks for the purposes of 5(3) may be less than the level of similarity required to create a likelihood of confusion. Consequently, if a significant section of the relevant public simply thinks about the opponent's mark when they see (or hear) the applicant's mark, then the necessary link is established.

124. I find that when the applicant's marks are encountered, even for the goods and services that are somewhat different to those of the opponent, the opponent's reputation is such that the applicant's mark will cause the opponent's 'The Lad Bible'

²⁹ *Joined cases C-581/13P & C-582/13P*

mark to be brought to mind. In other words, the relevant public will make a link between the parties' marks. That said, I do not find that there will be a link between the services for which I found the opponent to have a reputation and the following goods in class 9, which are too far removed: eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses.

Unfair advantage

125. It is not suggested that the applicant intended to take unfair advantage of its mark. In *Jack Wills Limited v House of Fraser (Stores) Limited*³⁰ Arnold J. considered the earlier case law and concluded that:

“80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

126. Consequently, evidence of subjective intention is not necessary. It is sufficient if, viewed objectively, the applicant's mark takes unfair advantage of the opponent's mark.

³⁰ [2014] EWHC 110 (Ch).

127. I note that in *Intel* the CJEU stated (at paragraph 67 of the judgment) that:

“The more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that the current or future use of the later mark is taking unfair advantage of, or is detrimental to, the distinctive character or the repute of the earlier mark.”

128. In effect, the opponent’s complaint is that the applicant is unfairly exploiting its marketing efforts and investment, and is free riding upon the coat tails of the opponent’s reputation. I agree. The success of the earlier mark and its standing amongst users of social media will make it easier for the attraction of the earlier mark to be projected on to the applicant’s mark. I find that *prima facie* there is a risk, which is not hypothetical, that use of the contested mark will make it easier for the applicant to offer its goods and services to a section of the relevant public. Therefore, use of the contested mark is likely to affect the economic behaviour of such consumers in the applicant’s favour.

129. I therefore accept the claim of unfair advantage with regard to all of the services, in classes 38 and 41 applied for by the applicant.

131. The opponent’s claim to unfair advantage has mostly succeeded. Its claims under tarnishing and dilution were not pleaded beyond the sentences that I have reproduced above and I decline to go on to consider the other two heads of damage, as they would put the opponent in no better position.

The opposition under 5(4)(a)

132. The opponent has succeeded in respect of all of the goods in the application except eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses in class 9.

133. In respect of its claim under section 5(4)(a) the opponent relies on a number of signs. One of these is THE STUDENT BIBLE, which, given its conceptual similarity

with the applicant's THEUNIBIBLE mark, in my view, represents its best case under this ground (the other signs relied on put the opponent in no better position than the mark I have already considered).

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

“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, or

(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.”

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

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

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants' customers or potential customers are deceived,

³¹ [2017] EWHC 1400 IPEC

but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc*).”³²

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

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

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

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

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

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

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

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

³² [2012] EWCA Civ 1501, [2013] FSR 21

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

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

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

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

137. The first hurdle for the opponent is to show that it has the necessary goodwill. The principle was best described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd*:³³

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

138. The relevant date is 23 December 2016, the filing date of the contested trade mark.³⁴

139. The opponent claims to have used the sign THE STUDENT BIBLE since 2012 (when the domain name was registered). The first use shown in evidence is a print from facebook dated 22 August 2012. It shows a profile picture which is the words ‘Student Bible’. No posts are visible on the page, either from the student bible itself, or

³³ [1901] AC 217 (HOL)

³⁴ There is no evidence or claim by the applicant that their mark has been used prior to this date. Accordingly, the matter need only be assessed as of 23 December 2016.

from any of its followers. The number of followers of the page is not shown. A second facebook page is undated other than the date it was printed, namely 23 November 2017, which is considerably after the relevant date. It shows the page to have 289,031 followers, but this does not tell me the situation at the relevant date. A page from Twitter is dated 21 May 2015 and shows the page to have 329 followers. Mr Dodd, the opponent's witness, states that the facebook page had 202 thousand followers at the end of 2016, though it is unclear how many of these were in the UK. The opponent submits an approximate figure that 55% of facebook users of THE STUDENT BIBLE are UK users, based on figures from 2017. I cannot be sure how much of the opponent's turnover relates to THE STUDENT BIBLE sign.

140. There is no other evidence provided which relates to use of THE STUDENT BIBLE. I cannot be sure how many UK users there were during the relevant period, nor can I deduce the extent or nature of the content available. In its totality I find that the opponent's evidence is insufficient to show the necessary goodwill in the sign THE STUDENT BIBLE, at the relevant date.

141. The opposition under 5(4)(a) fails in respect of THE STUDENT BIBLE sign.
The remaining signs relied on under this ground put the opponent in no better position.

Outcome

142. The application will be refused in classes 38 and 41. It will also be refused in class 9 other than for the following goods, for which, subject to appeal, the applicant's mark may proceed to registration:

Class 9

eyewear; glasses; spectacles; sunglasses; lenses; frames for spectacles and sunglasses; cases and boxes for spectacles and sunglasses; cords, straps and chains for spectacles and sunglasses.

Costs

143. The opponent has been more successful than the applicant and is entitled to a contribution towards its costs. My assessment is as follows:

Official fee:	£200
Filing a notice of opposition and considering the counterstatement:	£400
Filing evidence and considering the other side's evidence:	£900
Attending the hearing:	£700
Total:	£2200

144. I order Florentyna Dawn Ltd to pay The Ladbible Group Limited the sum of £2200. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 13th day of December 2018

Al Skilton
For the Registrar,
The Comptroller-General