

**DECISION OF THE CONTROLLER OF PATENTS, DESIGNS AND TRADE
MARKS IN PROCEEDINGS UNDER THE TRADE MARKS ACT, 1996**

In the matter of an application for registration of Trade Mark No. 242409 and in the matter of an Opposition thereto.

COLLEGEWOOD STREET LIMITED

Applicant

(Represented by Cruickshank)

TBH LIMITED

Opponent

(Represented by Maclachlan & Donaldson)

The Application

1. On 12 October, 2009, Collegewood Street Limited, an Irish company, of 18 Fitzwilliam Place, Dublin 2, Ireland made application (No. 2009/01833) under Section 37 of the Trade Marks Act, 1996 (“the Act”) to register the word “BETPACK” as a Trade Mark in respect of *“Gambling and betting services; bookmaking services; gaming services, amusement and entertainment services; entertainment; organisation and conducting competitions; providing of casino facilities; providing casino services; services for the operation of computerised bingo; on-line bingo; organising competitions; provision of the aforesaid services on-line from a computer database or the internet; provision of information relating to gaming services accessible via a global computer network; provision of information on-line from a computer database or from the internet in relation to gaming, amusement and entertainment services”* in Class 41.
2. The application was accepted for registration and advertised accordingly under No. 242409 in Journal No. 2143 dated 3 February, 2010.
3. Notice of Opposition to the registration of the mark pursuant to Section 43 of the Act was filed on 18 February, 2010 by TBH Limited, of The Harbour Trust Co. Ltd, One Capital Place, George Town, Grand Cayman, Cayman Islands. The Applicant filed a counter-statement on 20 May, 2010 and evidence was, in due course, filed by the parties under Rules 20, 21 and 22 of the Trade Marks Rules, 1996 (“the Rules”).

4. Both parties filed written submissions in lieu of attending a hearing in the matter. The Applicant filed submissions in reply to the Opponent's written submissions. Acting for the Controller, I decided to dismiss the opposition and to allow the application to proceed to registration. The parties were informed of my decision by way of letter dated 4 April, 2013. I now state the grounds of my decision and the materials used in arriving thereat in response to a request by the Opponent in that regard pursuant to Rule 27(2) of the Trade Mark Rules 1996, filed on 7 May, 2013.

Grounds of the Opposition

5. In its Notice of Opposition the Opponent refers to its proprietorship of Community Trade Mark (CTM) Registration No. 004106233, BETDAQ, which is registered as of 14 December, 2000 in respect of the following goods and services:

Class 9: Gambling, gaming and betting computer software;

Class 36: Financial services involving credit and payment services designed to facilitate customers in their betting activity, provision of credit services;

Class 41: Gambling, wagering and gaming services; on-line and telephone gambling, wagering and gaming services; entertainment and sporting services provided on-line from a computer database or the Internet; sports book makers; lottery services;

and then raises objection to the present application under various Sections of the Act, which I shall summarise as follows:

- Section 8(1)(a) – *the mark does not fall within the definition of a trade mark;*
- Section 8(1)(b) – *mark devoid of any distinctive character;*
- Section 8(1)(c) – *mark consists exclusively of signs or indications which may designate characteristics of the goods,*
- Section 8(3)(b) – *mark of such a nature as to deceive,*
- Section 8(4)(a) – *use of mark prohibited by enactment or rule of law,*
- Section 10(2)(b) – *likelihood of confusion on the part of the public, and likelihood of association with BETDAQ*
- Section 10(3) – *use of mark would take unfair advantage of, or be detrimental to, distinctive character or reputation of the Opponent's mark,*

In its Notice of Opposition the Opponent also claims the mark applied for would obstruct or prejudice the legitimate conduct of the Opponent's business and should be refused as being contrary to the provisions of the Trade Marks Act 1996, in accordance with the judgement and/or discretion of the Controller. Finally, the Opponent claims the mark applied for is contrary to Council Directive No. 89/104 EEC to approximate the laws of the Member states relating to trade marks.

Counter-Statement

6. In its Counter-Statement the Applicant denies all the grounds of opposition and only admits that the Opponent is the registered proprietor of the CTM mentioned in the Opponent's Notice of Opposition.

Rule 20 Evidence

7. Evidence submitted by the Opponent under Rule 20 consists of a Statutory Declaration, dated 29 August, 2011, of Brian O'Sullivan, Chief Executive Officer of Global Betting Exchange, users of the BETDAQ trade mark under licence from TBH Limited, and 14 accompanying exhibits, marked "BOS1" to "BOS14". He states that his company's trade mark BETDAQ has been used extensively in Ireland in relation to all its products and services since the launch of the business in September, 2001. His company has increased its turnover every year from 2003 to 2009 and, in that time, has spent in excess of €10 million on advertising and publicising its services under the BETDAQ brand. In 2009, the year the Applicant applied for its mark, his company spent in excess of €1.3 million on marketing and other related commercial activities promoting the BETDAQ brand. He states, for reasons of confidentiality, he is not at liberty to provide annual turnover figures.
8. He estimates that 90% of his company's advertising is carried on Irish market-facing media, including daily newspapers circulated in Ireland, television channels received in betting shops and homes in Ireland and on websites such as www.racingpost.com and www.oddschecker.com. His company provides services over the Internet and by phone and therefore they are available anywhere in Ireland with a telecommunications network. Customers also have access to betting markets through an iPhone or Android device. He also states that his company has customers registered in more than 120 countries worldwide, being proof positive of the widespread knowledge and reputation of his company's brand.

9. Furthermore, his company heavily promotes its unique “Daqman” figure – a silhouette character used extensively in advertisements. Daqman is his company’s resident daily tipster on horseracing and has been used since his inception in 2005. Daqman is the most frequently read content on his company’s website and often features prominently in the company web banners and advertising. He notes the Applicant has adopted a similar silhouette character which it uses in the branding of its product.

10. The exhibits attached to his declaration contain the following:

BOS1: Extract from company website regarding the iPhone and Android facility;

BOS2: Extract from company website showing predominant use of the BETDAQ brand;

BOS3: Specimens of press advertisements showing the BETDAQ trade mark;

BOS4: Copies of inserts and advertisements for the Racing Post in 2008 and 2009;

BOS5: 126 articles recorded in Irish Independent Archive referring to BETDAQ;

BOS6: Printout showing 273 hits for BETDAQ in the Irish Times from 2001 to date;

BOS7: Details of races sponsored from 2008 and 2009;

BOS8: Examples of racecourse branding at Punchestown in 2006;

BOS9: Copy of BETDAQ Cheltenham review booklet from 2007;

BOS10: Copy of advert in Republic of Ireland football programme from 2005;

BOS11: Examples of the use of the Daqman figure and a printout of the Betpack website showing a similar figure;

BOS12: Extract from the Racing Post of August 6, 2010 showing advertisements for Betdaq and Betpack placed side-by-side;

BOS13: Copy of correspondence from a supplier who sent an invoice to Betpack rather than Betdaq due to confusion over the name;

BOS14: Copy of article wherein the author states that the BETPACK name “*sounds unaccountably like BETDAQ*”.

11. Brian O’Sullivan states that in view of the extensive reputation owned by his company in the BETDAQ brand, which has come about by the extensive use, advertising, and promotional activities, he believes the adoption and continued use of the phonetically and visually similar brand BETPACK by the Applicants has and will continue to cause confusion.

Rule 21 Evidence

12. Evidence submitted by the Applicant under Rule 21 consists of a Statutory Declaration dated 19 August, 2011 and seven exhibits marked “BP1” to “BP7”, of Becky McMillan, Director of Marketing and Sales, of Collegewood Street Limited. She states that the word BETPACK was devised in 2009 by a number of local independent bookmakers who joined forces to create an online gambling platform. The founding members consisted of many of the leading independent bookmakers in Ireland, namely Bambury Bookmakers, Hackett Bookmakers, John Mulholland Bookmakers, Terry Rogers Bookmakers, Pat Toolan Bookmakers and Tully Bookmakers, who between them had 180 shops nationwide, employing 500 staff. The concept was to increase online competition and to create a level playing field for independent traders to compete with the big international bookmaking firms.

13. The theme of the brand BETPACK is based upon the group of actors in the mid-1960s nicknamed “*The Rat Pack*”, which featured Frank Sinatra, Dean Martin, Sammy Davis Jnr, Peter Lawford and Joey Bishop. She attaches at Exhibit “BP1” an extract from Wikipedia concerning “*The Rat Pack*” as well as photographs from a blog downloaded from the Internet containing many pictures of “*The Rat Pack*”. Exhibited at “BP2” are copies of advertisements showing the company’s trade mark BETPACK, which Becky McMillan believes emphasise the “*RAT PACK*” theme. The “*BET PACK*” in the current proceedings is the group of traders who joined forces to create the new concept.

14. The trade mark BETPACK has been in use for well over a year and approximately €800,000 has been spent in promoting the brand. Exhibit “BP3” depicts advertisements showing use of the trade mark BETPACK. The company has established a substantial reputation under the name and the online gambling site currently has over 20,000 registered customers.

15. Becky McMillan assumes that the Opponent’s trade mark is derived from the American Stock Exchange, namely the NASDAQ and she believes that the use of the generic word BET with the suffix of the word NASDAQ is clearly a play on the name of the famous stock exchange and would be recognised as such. She attaches at Exhibit “BP4” information concerning the NASDAQ.

16. She states that the silhouette the Opponent uses is totally dissimilar to the one used by her company. The BETPACK silhouettes are evocative of “*The Rat Pack*” and always feature a white shirt usually with a dark suit, as distinct from that of the Opponent, which do not appear to have any such contrast and is all the same colour. As regards the Opponent’s Exhibit “BOS12”, she states that the respective marks are totally dissimilar on both advertisements. She claims the fact that the advertisements share the same dark background is a separate issue and since it is her company that usually uses a black background, she assumes that it is the Opponent who is copying her company’s advertisement, particularly since the Opponent’s advertisement also contains the colour orange, which is a feature of her company’s trade mark in use.
17. Becky McMillan responds to the Opponent’s claim that actual confusion has arisen by highlighting that the correspondent referred to in the Opponent’s Exhibit “BOS13” was not confused but merely assumed that, because she did “*a lot of work*” with a particular bookmaking firm, the same firm was involved. Bearing in mind that her company and the Opponent are engaged in the online gambling business, she attaches at Exhibit “BP5” downloads of the front page of her company’s website and that of the Opponent and claims there is no resemblance whatsoever.
18. She states that customers are well used to distinguishing between trade marks commencing with the word BET. Betfair is the world’s largest internet betting exchange (Exhibit “BP6” contains the front page of that company’s website) and there are also other brands containing the word BET (Exhibit “BP7” contains results of a Google search which names other companies whose name begins with the word BET, including BET365 and BETFRED). As customers have to go online and type in the word BETPACK in order to use the services of her company, she fails to see how the words could be confused in the course of trade.

Rule 22 Evidence

19. Evidence filed under Rule 22 consists of a second Statutory Declaration of Brian O’Sullivan and two accompanying exhibits “BOS15” and “BOS16”. In response to the Becky McMillan evidence he points out that his company’s “*Daqman*” character has been depicted in different colours, including white (he attached samples at Exhibit “BOS15”)

and he submits that the character is confusingly similar to those characters used by the Applicant.

20. In response to Becky McMillan's claim that Betdaq copied her company's colour scheme he exhibits, at "BOS16", colour photocopies of his company's advertising of race cards from Chester Racecourse for 2008, showing use of a black background and orange (or gold colour), which is before Betpack came into existence. He emphatically denies the assertion that Betdaq was copying Betpack and submits that the contrary position is in fact true.
21. As regards the instances of actual confusion, which was denied by the Applicant, Brian O'Sullivan states that the fact of the matter is that the correspondent (of the correspondence exhibited at "BOS13") clearly failed to make a distinction between Betdaq and the company she had worked with before (Betpack) because the names were confusingly similar. This happened despite it being clearly set out who the correspondent was dealing with.

Written submissions in lieu of attending at a hearing

22. In its written submission, filed in lieu of attending at a hearing, the Opponent confined its arguments to the grounds of opposition relating to Section 8 and Sections 10(2), 10(3) and 10(4).
23. However, the Opponent has not particularised or furnished any evidence in support of its opposition in respect of Section 8 and has limited its argument on that front to the following:

“The adoption of another party's Trade Mark and substituting some of the last letters with different letters with a similar pronunciation, is not the invention of a new word created by the Applicants to distinguish their services from those of other traders. There is a likelihood of confusion between the Marks BETPACK and BETDAQ and the registration of a confusingly similar mark is contrary to the provisions of Community Law prohibiting the registration of the Trade Mark in the State, particularly Council Regulations regarding the registration of trade marks.”
24. It appears to me that the Opponent's arguments on Section 8 are misguided. Section 8 is concerned with absolute grounds for refusal of an application and must be considered in isolation from any other mark. It does not concern itself with confusion because of the

existence of earlier marks, which is a relative ground for refusal and is provided for under Section 10 of the Act, which I will deal with later. I am satisfied, therefore, that the Applicant has no case to answer in respect of the grounds of opposition framed in terms of Section 8, and without further ado, I dismiss the opposition in respect of those grounds.

25. The Opponent did not provide any evidence or arguments in support of any other grounds of opposition mentioned in its Notice of Opposition other than those relating to the provisions of Section 10(2) of the Act. This was where the focus of the arguments made in the Opponent's submission were laid, which, while expanding upon evidence already filed, did not include any additional material of significance. Likewise, the Applicant's submission expanded upon evidence already filed, but did not add anything of material significance to that evidence.

26. The relevant part of Section 10(2) of the Act, insofar as the present application is concerned, reads as follows:

(2) A trade mark shall not be registered if because –

(a)

(b) it is similar to an earlier trade mark and would be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association of the later trade mark with the earlier trade mark.

This is the relevant provision on which I have decided this case.

27. As is evident from the wording of Section 10(2), the four basic requirements that must be met in order for an objection under it to succeed are that, (i) there must be “an earlier trade mark”, (ii) the goods of the application must be identical with or similar to those in respect of which the earlier trade mark is protected, (iii) the mark applied for must be similar to that earlier trade mark, and, (iv) there must be a resultant likelihood of confusion on the part of the public.

28. The first two of these conditions are clearly fulfilled in this case. The Opponent's trade mark Registration No. 004106233 was filed at the Office for Harmonisation in the Internal Market on 14 December, 2000 and by virtue of Section 11(1)(b) of the Act, it is an earlier trade mark as against the present application for the purposes of Section 10. The goods of the application for registration are identical with or similar to the goods for which the Opponent's earlier trade mark stands protected, as both specifications include services relating to bookmaking and online betting.

Comparison of the marks

29. I have compared the respective marks of the parties on the criteria of visual, aural and conceptual similarity and have attempted to make an overall assessment of the extent to which they should be regarded as similar or different. It is important to stress that this is an assessment of the overall impression the marks make on me, having put myself in the shoes of the average consumer of the goods for which the Applicant is seeking protection. Notwithstanding the detailed comparisons I make below I am mindful that the European Court of Justice has noted (*Sabel BV v Puma AG and Rudolf Dassler Sport Case C-251/95*) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. For this reason, the appreciation of the visual, aural and conceptual similarity of the marks must be based on the overall impressions given by them, rather than on specific points of detail that are likely to go unnoticed by the average consumer.

30. In assessing the degree of visual similarity I must make my judgement based solely on the construct and content of the words and ignore all other facts, such as the fact that each is an invented word with no direct meaning. That is a factor that is to be taken into account in assessing the conceptual qualities of the marks. BETDAQ contains 6 letters while BETPACK is one letter longer. Both begin with the letters "B-E-T" and both contain an "A" as the fifth letter. Clearly there is some level of visual similarity between the marks, but there are differences also. Overall I rate the marks as having a medium level of visual similarity.

31. Aurally each of the words BETDAQ and BETPACK contain two syllables, both beginning with the syllable "BET", which is a common dictionary word. They end in "DAQ" and "PACK" respectively, the former having no particular meaning, whereas the

latter is a common word. Both share the same start and both endings rhyme. I am satisfied that the words share a medium-high level of aural similarity.

32. As to their conceptual significance, each of the marks consists of an invented word with no direct meaning or definition and neither are misspellings of common words. However, I am satisfied that both marks would be broken down into their constituent syllable form by consumers who would view them as being BET-DAQ and BET-PACK respectively. The Applicant claimed that the Opponent's BETDAQ mark is based on the American NASDAQ stock exchange, though the Opponent has neither confirmed nor denied the claim. The Opponent's business is that of a betting exchange. I am satisfied that the Opponent created its mark by taking the descriptive word BET and combined it with the DAQ from NASDAQ. There is nothing wrong with that and the Opponent has, in my opinion, created a good trade mark for its betting exchange business. I am satisfied that users of the Opponent's betting exchange would understand the mark to be a play on the famous stock exchange NASDAQ.

33. The use by the Applicant of the descriptive word BET in combination with the word PACK evokes a group that have come together to bet. This is on all fours with the explanation provided by the Applicant as to the origins of the trade mark, to the effect that a group of independent bookmakers came together to form a syndicate to launch an online betting service. Conceptually the marks, while linked to betting, have clear differences. I would assess the level of conceptual similarity as medium.

34. It is well established that the start of a word mark is generally the most important in terms of its visual and aural identity and the opening syllables of these marks are the same. The Opponent drew my attention to a previous decision of this office regarding Trade Mark Application 234832 in respect of the word IMITAG and an opposition thereto based on the earlier registration IMIGRAN and argued that the circumstances of that case are almost identical to the present case (i.e. trade marks with identical prefixes combined with, on the one hand, a three letter suffix and on the other a four letter suffix, with both suffixes sharing the same vowel). In *IMITAG v. IMIGRAN*¹ the Hearing Officer took the view that the prefix "IM" was quite distinctive as it has no meaning in the context of the relevant goods and its use in both marks enhance the overall similarity between them.

¹ Pinewood Laboratories Limited v. Glaxo Group Limited Decision of 4 February 2009

However, in this case, the opening syllable is the word “BET” which is totally descriptive of the services offered by both parties and, therefore, it is neither the distinct nor the dominant element of the marks. As such the suffixes “DAQ” and “PACK” must be considered the distinctive and dominant elements and these serve to reduce the overall level of similarity in a trade mark sense. Having completed a global assessment I find that the two marks have a medium to medium-high level of overall similarity.

Likelihood of confusion

35. The case now rests on whether that similarity is sufficient to come within the meaning of Section 10(2)(b) of the Act. The criteria against which that assessment should be made have been enunciated in a number of decisions of the European Court of Justice² in this area and they include the following:

- i. a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa,
- ii. the more distinctive the earlier mark, the greater will be the likelihood of confusion,
- iii. in determining the distinctive character of the earlier mark, it is necessary to make an overall assessment of its capacity to identify the goods for which it is registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings,
- iv. in making that assessment, account should be taken of the inherent characteristics of the mark; the market share held by it; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested in its promotion; the proportion of the relevant public which, because of the mark, identifies the goods as originating from a particular undertaking; and statements from chambers of commerce and industry and other trade and professional associations,
- v. a global appreciation of the likelihood of confusion must, as regards the visual, aural and conceptual similarity of the marks in question, be based on the overall impression created by them, and the importance to be attached to each of those

² Sabel BV –v- Puma AG and Rudolph Dassler Sport (Case C-251/95) [1998] 1 CMLR 445; Canon Kabushiki Kaisha –v- Metro-Goldwyn-Mayer Inc. (Case C-39/97) [1999] 1 CMLR 77; Lloyd Schuhfabrik Meyer & Co. GmbH –v- Klijsen Handel BV (Case C-342/97) [1999] 2 CMLR 1343

elements must take account of the category of goods and the way in which they are marketed,

- vi. the assessment must be made from the perspective of the average consumer who is deemed to be reasonably well-informed, observant and circumspect but who rarely has the chance to make a direct comparison of the marks and must rely on the imperfect picture that he has of them in his mind,
- vii. the likelihood of confusion must be appreciated globally, taking into account all of the factors relevant to the circumstances of the case.

36. I have applied these criteria to the facts of the present case and in so doing I have placed particular emphasis on the average consumer of the services in question, the nature of the services at issue and the trade channels in which they are delivered. Betting is regulated and users of the Applicant's and Opponent's services in Ireland must be aged 18 or over. This must be taken to mean that the betting public are legally mature, make adult decisions and understand the activity in which they are engaged. Despite the facts that the services for which the Applicant has applied for the protection of its mark are identical to those of the Opponent, and that the earlier mark of the Opponent shares a medium to medium-high level of similarity, I have reached the conclusion that there is no likelihood of confusion.

37. The Opponent does not have betting shops on the high-street; it operates a betting exchange that is exclusively online-based. There is a fundamental difference between the business of a betting exchange and that of a traditional bookmaker. When a punter places a bet with a bookmaker he gets the odds the bookmakers is willing to lay on the particular horse, team or individual. The bookmaker will calculate odds based on the market and will win or lose depending on the volume of money staked and what they pay out on the winner of the event. Casual and occasional punters (those that may place a bet at weekends or once a year on the Grand National) use the services of their local bookie. Typically, in my opinion, they do not go online, open an account and provide personal details including credit or debit card information.

38. Operators of betting exchanges do not offer odds. They bring together one punter who wants to back a particular horse, team or individual and another punter who is prepared to wager that that particular horse, team or individual will not win. The "layer" sets the odds

he is prepared to lay. Betting exchanges make their money by taking a commission from whichever party wins the bet. Therefore, users of betting exchanges are punters with significant market knowledge and expertise.

39. In order to avail of the Opponent's service for the first time, a punter must enter the site by typing WWW.BETDAQ.COM and set up an account and secure it by a username and password of the punters choosing. The prospective punter is required to provide sensitive personal information, including financial details. Having established an account I cannot see how any punter would mistakenly enter the Applicant's site by typing WWW.BETPACK.COM when he intends to type WWW.BETDAQ.COM in order to return to the BETDAQ site. Also, users would typically create a favourite in their internet browser or download an "APP" that would give them access to their betting account in double-quick time, without ever having to type the internet address again. Even if (and I believe it is a very big if) a customer of the Opponent did mistakenly enter the Applicant's website and attempt to view his account or place a bet, the punter's site-specific username and password would not work. So there would not be any question of the Opponent losing custom because the punter placed a bet with the Applicant when it intended to place a bet with the Opponent. In general online betting is undertaken by serious punters who place bets frequently, often on a daily basis. In my opinion, these punters are aware of who is operating in the market, are discerning about whom they open accounts with and, while they may have more than one online account, they would never be confused regarding whom those accounts are with.

40. There are many betting exchanges in operation, and it is very common for these to have a name commencing with the word BET; for example as well as the Opponent's BETDAQ there is BETDASH, BETDIRECT, BETFAIR, BETFRED, BETCLIC, BETEX and BET365, to name just a few. Consumers are very familiar with the construct of these trade marks and can readily differentiate between the respective services by virtue of the different suffixes of the marks. In my opinion, the addition of BETPACK to the family will not result in any confusion with the Opponent's mark.

41. The Opponent provided evidence in support of its claim that confusion has already arisen, in that a supplier sent an invoice to the Applicant when in fact the invoice was proper to the Opponent. In my opinion, this was not confusion in trade, which Section 10(2) of the

Act seeks to avoid, but a mere administrative error caused by someone making an assumption and acting on that assumption. Importantly, the advertisement agency that issued the invoice was not a consumer of the Opponent's services, it was a supplier. No evidence has been advanced to suggest that any confusion has arisen between consumers of the Opponent's business and that of the Applicant's based on the similarity between their respective marks. Therefore, this single cited incident cannot form the basis on which to refuse the Applicant's mark.

42. The Opponent also argued that the Applicant's branding of its website contains elements similar to the Opponent's, in particular, the "Daqman" character. The Applicant's mark and branding is clearly based on the "Rat Pack" of Frank Sinatra, *et al*, and while both the Opponent's and Applicant's branding feature silhouettes of single or multiple males, these do not feature in their respective marks. I am happy that the use by the Applicant of its silhouette characters can be attributed to the genuine adoption of the "Rat Pack" concept and associated imagery. In my opinion, the use by parties of their respective silhouettes is merely coincidental. In any event the name "Daqman" bears no resemblance whatsoever to the Applicant's mark BETPACK, and no confusion could arise as a result of their respective uses.
43. The Opponent also claimed in its Notice of Opposition the application offends against Section 10(3) and Section 10(4) of the Act, though it failed to provide any evidence or arguments to substantiate either of these claims. Therefore I am satisfied that they may be disregarded.
44. For these reasons, I have decided that the prior registration and use of the trade mark BETDAQ does not constitute grounds for refusal, under Sections 8 and 10 of the Act, of the application to register BETPACK. Therefore, I have decided to dismiss the opposition and to allow the BETPACK mark to proceed to registration.

Dermot Doyle

Acting for the Controller

23 September, 2013