

O/459/19

TRADE MARKS ACT 1994

**IN THE MATTER OF THE REQUEST FOR PROTECTION IN THE UK OF
INTERNATIONAL REGISTRATION NO. 1356045
BY INDIGO BLOG MAGDALENA MALACZYŃSKA FOR THE TRADE MARK**



IN CLASSES 3, 35 AND 41

AND

THE OPPOSITION THERETO UNDER NUMBER 411510

BY

O2 WORLDWIDE LIMITED

Background

1. On 18 August 2016, a request was made for protection in the UK for international trade mark registration (“IR”) number 1356045, for the mark shown on the cover page of this decision, in respect of the following goods services:

Class 3: False nails; nail tips; adhesives and other preparations for affixing false nails; glue for strengthening nails; nail revitalising preparations; nail lengthening preparations; nail care products; nail polish; gels for nails.

Class 35: Wholesale services, retail services or online sale services connected with the sale of cosmetics, false nails, adhesives and other preparations for affixing false nails, adhesives for strengthening nails, nail conditioners, nail extension preparations, nail care preparations, nail varnish, nail gels.

Class 41: Education, providing of training, entertainment; arranging and conducting of training; organising of competitions; arranging and conducting of conferences, colloquiums, symposiums and seminars; publication of texts, other than publicity texts; arranging and conducting of training courses, lectures and symposiums in the fields of cosmetics, beauty and nail care.

2. The IR details state that the mark “contains the colours black and white”. The holder of the IR is Indigo Blog Magdalena Malaczyńska¹ (“the holder”). The request for protection was accepted and published² in the *Trade Marks Journal* for opposition purposes on 27 October 2017. O2 Worldwide Limited (“the opponent”) opposes the application under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”), relying upon some of the goods and services covered by the following three earlier trade mark registrations:

¹ The IR was originally filed by Lexari Dariusz Malaczyński and ownership transferred to the present holder on 24 March 2017.

² In accordance with the Trade Marks (International Registration) Order 2008 (SI 2008/2206 as amended).

(i) European Trade Mark (“EUTM”) 13031869

INDIGO

All goods and services covered by the registration in classes 9, 35, 38, 41 and 44.

Date of filing: 27 March 2014; completion of registration procedure: 24 September 2016.

(ii) EUTM 5914437

indigO₂

All services covered by the registration in Class 41.

Date of filing: 17 May 2007; completion of registration procedure: 29 March 2011.

(iii) UK trade mark 2455748A

indigO₂

indigO₂

(A series of two marks).

All services covered by the registration in Class 41.

Date of filing: 16 May 2007; completion of registration procedure: 27 March 2009.

3. The opponent claims that there is a likelihood of confusion under section 5(2)(b) of the Act. It also claims a reputation in class 41 and that use of the holder’s mark would take unfair advantage of the reputation of the earlier marks, and damage their reputation and distinctive character. The opponent claims that the marks have a “young, cool and high tech” image. Detriment would be caused by potentially poor

quality goods and services, and a reduction in the ability of the earlier marks to attract custom owing to the presence of the later mark on the market.

4. The holder filed a defence and counterstatement, denying both of the grounds. Its counterstatement said the following:

I hereby want the opponent to provide the proof of the use of trade marks which are the subject of his opposition dated on 29th of January 2018 – registration numbers: 005914437, 2455748A. The Opponent shall indicate the place, time, extent and nature of use of his trade mark for the goods and services which are relevant for the circumstances of the following case. Therefore, I require from the opponent to provide the proof of the use of indicated trademarks especially on the fields which the Opponent claims to be common with the goods and services of the my Principal – who is a holder of „Indigo Nails Lab“ (registration number: 1356035). Thus, the Opponent shall give the proof, that he uses his trademarks with reference to goods and services classified in classes 3, 35 and 41 of Nice Classification. This requirement is well-founded in the light of the fact, that the Opponent raised in his opposition that:

- all goods and services of the holder are identical or similar to those covered by the earlier trade mark (registration number: 005914437, page 56 of the Opposition),
- for all goods and services in the application of the applicant of contested trademark would take unfair advantage of or be detrimental to distinctive character or reputation of earlier trade mark of the Opponent (registration number: 005914437, page 58 of the Opposition) [CONTINUATION SHEET no.1]

5. Only two of the earlier marks completed their respective registration procedures more than five years prior to the publication of the IR. EUTM 13031869 is, therefore, not subject to proof of use. Under section 6A of the Act, EUTM 5914437 and UKTM 2455748A are subject to proof of use. The opponent has made a statement of use in relation to class 41.

6. The holder filed the first version of its defence and counterstatement on statutory form TM8 on 3 April 2018. This contained almost identical text to that shown in paragraph 4 above, save that it requested proof for all three earlier marks. The Intellectual Property Office (“IPO”) wrote to the holder’s representatives, on 23 April 2018, stating that there was a problem with admitting the defence and counterstatement because of the contents of Box 7 of the form, which is the section that refers to requests for proof of use. The form states that an applicant/holder must state which of the goods and services it requires proof of use of the earlier marks, and if there is more than one earlier mark, to state for which earlier marks it requests such proof. It also pointed out that EUTM 13031869 was not subject to proof of use.

7. The IPO said this:

PROOF OF USE

It is noted that, at question 7 of the Form TM8, you have requested the opponent provide 'proof of use' when filing evidence in these proceedings.

You have requested the opponent provide proof of use evidence in regard of all three of the earlier rights the opponent is relying upon, EUTM013031869, EUTM005914437 and UK0002455748A, also requesting the proof of use evidence should be filed in regard of the following goods/services:

- 1. False nails; nail tips; adhesives and other preparations for affixing false nails; glue for strengthening nails; nail revitalising preparations; nail lengthening preparations; nail care products; nail polish; gels for nails.*
- 2. Wholesale services, retail services or online sale services connected with the sale of cosmetics, false nails, adhesives and other preparations for affixing false nails, adhesives for strengthening nails, nail conditioners, nail extension preparations, nail care preparations, nail varnish, nail gels.*
- 3. Education, providing of training, entertainment; arranging and conducting of training; organising of competitions; arranging and conducting of conferences, colloquiums, symposiums and seminars; publication of texts, other than publicity texts; arranging and conducting of training courses, lectures and symposiums in the fields of cosmetics, beauty and nail care.*

Firstly, as EUTM013031869 has not been registered for more than 5 years, the opponent does not have to file proof of use in regard of that earlier right.

Secondly, any proof of use evidence filed on behalf of the opponent will need to be provided in regard of the goods and/or services contained in those earlier rights. The list of goods and services shown above are contained in the specification of your international registration, not contained in the earlier rights of the opponent.

8. I think it possible that the IPO misconstrued the contents of the original TM8, at Box 7. The lack of particularisation by the opponent in its statement of grounds appears to me to be the central issue; it seems that what the holder was saying in Box 7 was that it wanted the opponent to prove use of the earlier marks on goods and services which the opponent considered were similar to the holder's goods and services. Since the opponent had wholly failed to identify these in its statement of grounds, the holder did not understand what the complaint was. Unfortunately, the holder confused matters by requesting the opponent prove use of its marks in relation to classes 3, 35 and 41 (the holder's classes). The opponent's marks do not cover class 3 and a statement of use was only made in relation to class 41.

9. The IPO directed that the holder file an amended TM8 and counterstatement by 14 May 2018, failing which the IPO may strike out "any grounds which are not adequately particularised". The IPO letter did not mention that the opponent had

only made a statement of use in respect of class 41. This was addressed by the IPO in a further letter, dated 17 May 2018.

10. The holder filed an amended form TM8 and counterstatement on 8 May 2018. I have reproduced the 'new' Box 7 contents in paragraph 4 above. The new content removed the reference to EUTM 13031869, but the remainder was no different to the original and the 'defect' that the IPO had raised had not been addressed.

11. The amended defence and counterstatement was served upon the opponent under cover of a letter from the IPO, dated 31 August 2018. The letter from the IPO to the holder said:

Dear Sirs,

The Registry's letter dated 17 May 2018 advised you that, following the filing of the amended Form TM8 on 8 May 2018, the form required amendment before the proceedings could continue.

You were advised that your request for the opponent to provide proof of use in Classes 3, 35 and 41 of two of their earlier rights, EUTM005914437 and UKTM00002455748A, was not applicable. You were given a deadline of 31 May 2018 to provide an amended version of the Form TM8 in regard of your claim for proof of use.

I can confirm there has been no response to the Registry's letter, therefore, the above proceedings will now continue without the opponent being required to provide proof of use when filing their evidence.

12. The holder did file an amended version of the defence and counterstatement by the deadline; however, it did not address the problem of having requested proof of use in classes 3, 35 and 41. In fact, technically the problem was the request in classes 3 and 35. There was no expression in the letter of the holder's right to be heard under rule 63 of the Trade Marks Rules 2008 on the decision to strike out its request for proof of use.

13. I have considered whether these proceedings should be halted and that the above procedural conundrum be revisited as a possible irregularity in procedure. However, for reasons which will become apparent, it would make no difference to the

outcome of this case. Briefly, and I will explain in more detail below, the services covered by EUTM 13031869 include services which are identical and similar to the holder's goods and services. As this EUTM is not subject to proof of use, the opponent may rely upon all the goods and services covered by the EUTM. EUTM 13031869 is also the closest of the three earlier marks in terms of similarity with the holder's mark.

14. The opponent is professionally represented by Stobbs, whilst the applicant is professionally represented by Tomaz Wojdal at Kancelaria Radcy Prawnego, a firm of lawyers in Poland. Both sides filed evidence. Neither party chose to be heard, but the opponent filed written submissions in lieu of a hearing. I will treat the contents of the counterstatement as the holder's written submissions, in addition to those which it made within the body of its evidence.

Evidence

15. The opponent filed evidence from Peter Holmes, Intellectual Property Counsel for a subsidiary of the group of companies to which the opponent belongs. His witness statement is dated 29 October 2018. The applicant's evidence comes from its legal representative, Tomaz Wojdal. His witness statement is dated 23 January 2019. I do not propose to summarise the parties' evidence here, but I will refer to it where appropriate in this decision.

Section 5(2)(b) of the Act

16. 5(2)(b) of the Act states:

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

(a) ...

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

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

17. The following principles are gleaned from the decisions of the Court of Justice in the European Union (“CJEU”) 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.

The principles

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

18. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all

the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

19. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-325/06, the GC stated that “complementary” means:

“82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...”.

20. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

21. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

22. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the

way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

23. The statement of grounds gave no particulars as to why the opponent considered there was similarity between the parties' goods and services. EUTM 13031869 covers a wide list of goods and services, even in just the classes relied upon³. I will, in the first instance, approach the comparison of goods and services by considering those which I consider give the opponent its best case, in respect of its earlier EUTM 13031869 which is not subject to proof of use. I have set out the specifications of the other two earlier marks (only class 41 was relied upon) in the annex to this decision. The opponent was directed by the IPO, at the stage inviting written submissions in lieu of a hearing, to particularise which goods and services were similar to those of the IR. The opponent's submissions run to 25 pages, plus another 30 pages of what looks like evidence: copies of website pages. This was not adduced with the opponent's formal evidence and no application to file it as late evidence has been made. It will not be considered.

24. The goods and services to be compared are shown in the table below.

Earlier mark EUTM 13031869	IR
Class 44: <i>Manicuring; beauty salons.</i>	Class 3: <i>False nails; nail tips; adhesives and other preparations for affixing false nails; glue for strengthening nails; nail revitalising preparations; nail lengthening preparations; nail care products; nail polish; gels for nails.</i>

³ The EUTM covers goods and services in classes 9, 29, 30, 32, 33, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45.

Class 35: Advertising; business management; business administration; office functions; accounting; accounts (drawing up of statements of -); administrative processing of purchase orders; arranging newspaper subscriptions for others; arranging subscriptions to telecommunication services for others; auctioneering; auditing; bill-posting; business appraisals; business consultancy (professional -); business information; business inquiries; business investigations; business management and organization consultancy; business management assistance; business management consultancy; business management of performing artists; business management of sports people; business organization consultancy; business research; commercial administration of the licensing of the goods and services of others; commercial information agencies; commercial information and advice for consumers [consumer advice shop]; commercial or industrial management assistance; compilation of information into computer databases; compilation of statistics; cost price analysis; data search in computer files for others; economic forecasting; efficiency experts;

Class 35: Wholesale services, retail services or online sale services connected with the sale of cosmetics, false nails, adhesives and other preparations for affixing false nails, adhesives for strengthening nails, nail conditioners, nail extension preparations, nail care preparations, nail varnish, nail gels.

employment agencies; file management (computerized -); importexport agencies; invoicing; management (advisory services for business -); office machines and equipment rental; opinion polling; outsourcing services [business assistance]; payroll preparation; personnel management consultancy; personnel recruitment; photocopying services; price comparison services; procurement services for others [purchasing goods and services for other businesses]; psychological testing for the selection of personnel; public relations; relocation services for businesses; rental of advertising space; rental of advertising time on communication media; rental of photocopying machines; rental of vending machines; sales promotion for others; secretarial services; shop window dressing; shorthand; sponsorship search; systemization of information into computer databases; tax preparation; telephone answering for unavailable subscribers; transcription; typing; word processing; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching

apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, apps, computer software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective

helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, Paper, cardboard, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for packaging, printers' type, printing blocks, arts, crafts and modelling equipment, pictures, portraits, paintings, drawings, figurines of paper and cardboard, drawing instruments, drawing materials, modelling materials, packing bags of

paper, packaging material, packaging materials made of paper, packaging materials made of cardboard, packaging material made of card, wrapping materials made of card, wrapping materials made of cardboard, wrapping materials made of paper, wrapping materials made of plastics, plastics for modelling, correcting and erasing implements, educational equipment, printing equipment, photo albums, writing implements, writing instruments, writing materials, writing or drawing books, writing pads, writing paper, stamping implements, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, decalcomanias, diaries, gift cards, gift vouchers, labels, maps, printed publications, thesauri, dictionaries, personal organizers, postage stamps, postcards, posters, appointment books, industrial paper and cardboard, money clips of precious metals, disposable paper products, absorbent paper, bathroom tissue, bibs of paper, coasters of paper or cardboard, tissues of paper, towels of paper, hygienic paper, kitchen paper, napkins made of paper for household use, table cloths of paper, table mats of paper, table mats of cardboard, toilet paper,

toilet rolls, printed tariffs, credit cards without magnetic coding, cards for use in connection with sales and promotional incentive schemes and promotional services, printed forms, savings stamps, adhesive tapes for stationery or household purposes, gift boxes, gift bags, photographic printing paper, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to telecommunication shops, clothes shops, garden centres; retail services and online retail services relating to foodstuffs, white goods, electric and electronic goods; information and advisory services relating to the aforesaid services; information and advisory services relating to the

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

Class 41: Education; providing of training; entertainment; arranging and conducting of colloquiums; arranging and conducting of conferences; arranging and conducting of seminars; arranging and conducting of symposiums; arranging and conducting of workshops [training]; coaching [training]; organization of competitions [education or entertainment]; practical training [demonstration]; publication of texts, other than publicity texts; tuition; vocational guidance [education or training advice]; vocational retraining.

Class 41: Education, providing of training, entertainment; arranging and conducting of training; organising of competitions; arranging and conducting of conferences, colloquiums, symposiums and seminars; publication of texts, other than publicity texts; arranging and conducting of training courses, lectures and symposiums in the fields of cosmetics, beauty and nail care.

25. The following class 41 services of the IR are identical to the opponent's class 41 services because they are either identically (or near identically) worded to services in the opponent's class 41 specification: *Education, providing of training, entertainment; arranging and conducting of conferences, colloquiums, symposiums and seminars; organising of competitions; publication of texts, other than publicity texts.* Additionally, the law requires that goods/services be considered identical where one party's description of its goods/services encompasses the specific goods/services covered by the other party's description (and vice versa): see *Gérard Meric v OHIM*, Case T-33/05, GC. The opponent's services are not limited to any particular field and, therefore, cover all subjects. The IR's *arranging and conducting of training; arranging and conducting of training courses, lectures and symposiums in the fields of cosmetics, beauty and nail care* are identical to the opponent's *providing*

of training; arranging and conducting of symposiums; arranging and conducting of workshops [training]; coaching [training]; practical training [demonstration]; tuition; vocational guidance [education or training advice]; vocational retraining.

26. The holder's class 3 goods are all used in providing manicuring services. The opponent's earlier mark covers *manicuring* services in class 44. There is an element of competition as there is a choice as to whether to visit a manicurist or to buy the goods and perform one's own manicure. It is common in beauty salons to be able to buy cosmetics. There is therefore a degree of shared channels of trade. Manicuring could not be performed without nail care goods, nail polishes etc., so there is an element of complementarity, albeit one-way as it is unnecessary to obtain the services of a manicurist in order to apply nail polish or do one's own nails. The purpose of the goods and the services is the same: to achieve a manicure. The goods and services are similar to a good degree.

27. The opponent's class 35 specification does not cover the retail of goods which would fall within class 3. A comparison can be made between the retailing of goods such as jewellery, which is covered, and the holder's retailing services. This is not the same as a comparison between retailing and goods; it is between retailing and retailing (of different goods). In *Praktiker Bau v Heimwerkermärkte AG*, Case C-418/02, the CJEU stated that:

“...the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.”

28. A registration in class 35 covers retail services relating to the selection and marketing of goods rather than the goods themselves. There will usually be some similarities in the nature and purpose of retail services involving the selection of a

range of goods and marketing those goods to the public, either on physical premises or online. However, in the same case, the CJEU also stated:

“48. according to the Court’s case-law, the likelihood of confusion must be assessed globally, taking into account all the factors relevant to the circumstances of the case (see Case C-251/95 SABEL [1997] ECR I- 6191, paragraph 22, and Case C-39/97 Canon [1998] ECR I-5507, paragraph 16). In the context of that global assessment, it is possible to take into consideration, if need be, the particular features of the concept of ‘retail services’ that are connected with its wide scope, having due regard to the legitimate interests of all interested parties.

49. In those circumstances, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. To identify those services, it is sufficient to use general wording such as ‘bringing together of a variety of goods, enabling customers to conveniently view and purchase those goods’.

50. However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings..... .

51. Such details will make it easier to apply Articles 4(1) and 5(1) of the directive without appreciably limiting the protection afforded to the trade mark.”

29. The requirement to identify the goods to which the retail services relate is therefore an important aspect of defining the extent of the protection to which such trade marks are entitled. This means that retail services relating to goods X are not the same as retail services relating to goods Y. However, that does not mean that retail services cannot be similar if they relate to different categories of goods.

30. The holder's wholesale and retail services are similar to a low degree where the opponent has cover for the retailing of goods such as jewellery, sunglasses, clothing, footwear and headgear. This is because there is a certain degree of similarity between the nature, purpose and method of use of retail and wholesale services relating to most consumer goods. This does not apply to the retail services relating to the technical goods covered by the earlier mark which are far removed from the goods the subject of the holder's wholesale and retail services. In this case the differences between the nature, purpose and method of use of the respective retail services differs so substantially as to eliminate any meaningful similarity between the services.

31. For completeness, I will also compare the holder's class 35 services and the opponent's *manicuring* and *beauty salons*. I have already commented that one can buy cosmetics in beauty salons. The goods will be the subject of their retailing within a beauty salon. With the exception of wholesaling, the holder's class 35 services are similar to a low degree with the opponent's *manicuring* and *beauty salons* services in class 44. Wholesaling of cosmetics and manicure goods is not similar to *manicuring* and *beauty salons* because one would not go to a nail bar or beauty salon to obtain bulk purchases of such goods.

The average consumer and the purchasing process

32. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. The parties' goods and services are all aimed at the general public. Some will be inexpensive and frequently purchased (low-cost nail goods, for example). Organising and conducting symposiums, for example, will be subject to a reasonably high degree of attention. The purchase will be overwhelmingly visual for the goods, although I do not ignore the potential for an aural aspect to the purchasing process; for example, department stores commonly provide assistance when purchasing cosmetics and manicure items. There may also

be an aural aspect to the purchase of some of the services, which are widely phrased in both parties' specifications.

Comparison of marks

33. 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 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.”

34. 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.

35. The marks to be compared are:

Earlier mark	IR
INDIGO	 The logo for 'INDIGO NAILS LAB' features the word 'INDIGO' in a large, bold, sans-serif font. A vertical line separates 'IND' from 'IGO'. Below 'INDIGO', the words 'NAILS' and 'LAB' are written in a smaller, spaced-out font. A decorative, wavy line arches over the 'IGO' portion of the logo.

36. The overall impression of the earlier mark resides in the single element of which it is composed: INDIGO. The overall impression of the IR is dominated by the word INDIGO, which is by far the largest component of the mark. However, the stylised central I is far from negligible; nor can the words NAILS LAB be discounted in the overall impression. NAILS LAB carries little weight in the overall impression since it strongly alludes to goods and services relating to nails.

37. There is a high degree of visual similarity between the marks, despite the central stylised I, since the dominant part of both marks is the words INDIGO. If the words NAILS LAB would be spoken, there is a medium level of aural similarity between the marks. However, if NAILS LAB is not spoken, the marks are aurally identical.

38. As regards conceptual similarity, the central I does not appear to have a meaning. The words NAILS LAB convey the idea of a place where nail products are tested or invented. This meaning is absent from the earlier mark. However, both marks contain the word INDIGO, which is well-known to be a colour. The marks are conceptually similar to at least a good degree.

39. Overall, there is a high degree of similarity between the marks.

Distinctive character of the earlier mark

40. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*⁴ the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined

⁴ Case C-342/97

Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

41. In relation to the opponent's services which I have compared to the holder's goods and services, the earlier mark has a normal degree of distinctive character. It is an ordinary dictionary word. Although it is a colour, it does not describe or allude to any characteristic of the services.

42. One of the principles which must be taken into account in deciding whether there is a likelihood of confusion is that 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. There is no use shown in the evidence of the earlier mark in relation to manicuring or beauty salon services, or for retailing of goods. There is use, however, in relation to certain of the opponent's class 41 services. I summarise below the key points from the opponent's evidence.

43. INDIGO is the name of an entertainment venue attached to the opponent's O2 entertainment venue in London, formerly known as the Millennium Dome. Known as INDIGO2 between 2007 and 2014, the venue has been called INDIGO since 2014. It has hosted acts such as Jimmy Carr, Blondie, Black Eyed Peas, Grime Live III, Rita Ora and Squeeze, and hosts boxing matches. The INDIGO venue has a maximum capacity of 2,420. It appears from Mr Holmes' evidence that INDIGO is a venue within the complex of bars and restaurants co-located with the O2 venue. He

describes INDIGO as a live music club, an 1800 seated theatre, an exhibition space, and a cinema, containing restaurants, cafés and bars. Around £930,000 was spent on promoting INDIGO/INDIGO2 between 2007 and 2014. Annual attendance at events in the five years to the relevant date ranged from about 162,000 to 185,000.

44. I find that the opponent's earlier mark enjoys an enhanced level of distinctive character in relation to live entertainment, elevating its level of distinctiveness to above normal, but the use is not of such a level as to elevate its distinctiveness to a high degree.

Likelihood of confusion

45. The holder refers erroneously to a mark owned by the opponent ("Indigo Blue") which is not relied upon in these proceedings. Its evidence refers to an EUTM (which covers the UK) owned by the holder, registered in 2013. This has no bearing on the assessment which must be made in relation to the IR. As Tribunal Practice Notice 4/2009 explains,

"Defences including a claim that the applicant for registration/registered proprietor has a registered trade mark that predates the trade mark upon which the attacker relies for grounds under sections 5(1) and 5(2) of the Act.

1. A number of counterstatements in opposition and invalidation actions have sought to introduce as a defence that the applicant for registration/registered proprietor has a registered trade mark (or trade mark application) for the same or a highly similar trade mark to that which is the subject of the proceedings that predates the earlier mark upon which the attacker relies.

2. Sections 5(1) and 5(2) of the Act turn upon whether the attacker has an earlier trade mark compared to the mark under attack, as defined by section 6 of the Act. Whether the applicant for registration/registered proprietor has another registered trade mark (or trade mark application) that predates the earlier mark upon which the attacker relies cannot affect the outcome of the case in relation to these grounds.

3. The position was explained by the Court of First Instance in *PepsiCo, Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) T-269/02*:

"24 Nor did the applicant claim, and even less prove, that it had used its earlier German mark to obtain cancellation of the intervener's mark before the competent national authorities, or even that it had commenced proceedings for that purpose.

25 In those circumstances, the Court notes that, quite irrespective of the question whether the applicant had adduced evidence of the existence of its earlier German mark before OHIM, the existence of that mark alone would not in any event have been sufficient reason for rejecting the opposition. The applicant would still have had to prove that it had been successful in having the intervener's mark cancelled by the competent national authorities.

26 The validity of a national trade mark, in this case the intervener's, may not be called in question in proceedings for registration of a Community trade mark, but only in cancellation proceedings brought in the Member State concerned (*Case T 6/01 Matratzen Concord v OHIM - Hukla Germany (MATRATZEN) [2002] ECR II 4335, paragraph 55*). Moreover, although it is for OHIM to ascertain, on the basis of evidence which it is up to the opponent to produce, the existence of the national mark relied on in support of the opposition, it is not for it to rule on a conflict between that mark and another mark at national level, such a conflict falling within the competence of the national authorities."

The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker's mark

4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker's mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark.

Reliance on the Absence of Confusion in the Marketplace

6. Parties are also reminded that claims as to a lack of confusion in the market place will seldom have an effect on the outcome of a case under section 5(2) of the Act.

7. In *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 Laddie J held:

"22. It is frequently said by trade mark lawyers that when the proprietor's mark and the defendant's sign have been used in the market place but no confusion has been caused, then there cannot exist a likelihood of confusion under Article 9.1(b) or the equivalent provision in the Trade Marks Act 1994 ("the 1994 Act"), that is to say s. 10(2). So, no confusion in the market place means no infringement of the registered trade mark. This is, however, no more than a rule of thumb. It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also. In the former situation, the court must consider

notional use extended to the full width of the classification of goods or services. In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place."

8. (In *Rousselon Freres et Cie v Horwood Homewares Limited* [2008] EWHC 881 (Ch) Warren J commented:

"99. There is a dispute between Mr Arnold and Mr Vanhegan whether the question of a likelihood of confusion is an abstract question rather than whether anyone has been confused in practice. Mr Vanhegan relies on what was said by Laddie J in *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at paragraphs 22 to 26, especially paragraph 23. Mr Arnold says that that cannot any longer be regarded as a correct statement of the law in the light of *O2 Holdings Ltd v Hutchison 3G Ltd* [2007] RPC 16. For my part, I do not see any reason to doubt what Laddie J says...")

9. In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett LJ stated:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

46. The holder has also filed evidence giving details of its use of the IR in the UK since 2014. This does not assist in showing that there is no likelihood of confusion for the following reasons. The opponent has not shown use of its mark in relation to any of the earlier goods or services apart from live entertainment. The holder has not shown any use in relation to live entertainment. Therefore, there are no goods or services coexisting on the UK market whereby it can be shown that the average consumer in the UK has become accustomed to differentiating between the parties' marks. The opponent's mark was less than five years old when the contested mark was published, which means that it did not have to show that it had used its mark. Therefore, the assessment as to whether there is a likelihood of confusion must be made on the basis of notional and fair use of the earlier mark; in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06, the CJEU

stated at paragraph 66 of its judgment that when assessing the likelihood of confusion in the context of registering a new trade mark it is necessary to consider all the circumstances in which the mark applied for might be used if it were registered. Consequently, I must include consideration of the likelihood of confusion if both parties (and their successors in title to the marks) decide to target the same segment of the market. This is because the legal protection of the parties' marks is governed by the list of goods/services, not by their current intentions. Therefore, the fact that the parties are currently, or currently intend to, target different market segments is irrelevant where the goods/services at issue are fundamentally the same or similar. Either party could change its marketing plans tomorrow, or sell the mark to another trader with different plans.

47. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. I have found that all the class 41 services in the IR are identical to those of the opponent's class 41 services, that the class 3 goods in the IR are similar to a good degree to the opponent's manicuring services, and that the class 35 services of the IR are similar to a low degree with the opponent's class 35 and 44 services. The marks share the same distinctive and dominant component. That component is identical aurally and conceptually and, when considered as a whole, the IR is highly similar to the earlier mark. The earlier mark is also inherently distinctive to a normal degree, and has an enhanced degree of distinctiveness in relation to live entertainment services. I find that there is a likelihood of confusion in relation to all the goods and services of the IR, even allowing for a heightened level of attention during the purchase for some of the services. Even if the visual difference created by the central I is noticed, the average consumer will still consider that the similarities between the marks stems from them emanating from the same undertaking, as a brand-variant, or economically linked undertakings⁵.

⁵ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., sitting as the Appointed Person.

48. That being the case, the opponent has succeeded in full under its section 5(2)(b) ground. A likelihood of confusion, on a notional basis, is unavoidable, in my view, in relation to the IR's goods in class 3 and its services in class 41. In relation to its services in class 35, for which I found a low degree of similarity, I will look briefly at whether the opponent is in any stronger a position under the section 5(3) ground.

Section 5(3) of the Act

49. Section 5(3) states:

“(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 a Community trade mark or international trade mark (EC), 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.”

50. 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, *Adidas-Salomon*, [2004] ETMR 10 and Case 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*).

51. The opponent's section 5(3) case is pleaded on the basis of its reputation in class 41. As will be clear from the evidence summary above, I have found that the opponent has a reputation for live entertainment only in relation to its earlier marks. This is far removed in terms of similarity from the IR's class 35 services. I do not consider the strength of the opponent's reputation in its earlier marks to be of such a level as to cause its earlier marks to be brought to mind by the use of the IR in relation to the class 35 services. Without a link, there can be no damage caused to the earlier mark or unfair advantage for the IR. The section 5(3) ground fails insofar as I have considered it.

Outcome

52. The opposition succeeds in full under section 5(2)(b). The request for protection in the UK of the IR is refused.

Final Remarks

53. The other earlier marks, EUTM 5914437 and UKTM 2455748A, were only relied upon in respect of class 41. Even if the proof of use request had been pressed home, it would have made no difference to the outcome of this case since EUTM 13031869, which was not subject to proof of use, also covered class 41, and I found

all of the holder's class 41 services to be identical to those covered by EUTM 13031869.

Costs

54. The opponent has been successful and is entitled to a contribution towards the costs of the proceedings, based upon the scale of costs published in Tribunal Practice Notice 2/2016. The opponent's statement of grounds in relation to where it considered similarity to lie between the goods and services was unfocussed. This was unfair to the holder. The purpose of pleadings is to set out the party's legal case with sufficient clarity so that the other side can make an informed decision about whether to defend its trade mark, and in which respects. The nature of the pleadings would have caused extra work for the holder, and clearly contributed to the confusion in its proof of use request. It was not until the end of the proceedings that the opponent at last revealed what its section 5(2)(b) case was, at the behest of the IPO. It is the opponent's role to hone its pleadings to those where it can, at the very least, put forward an arguable case. If it cannot meet this very basic requirement then the goods and/or services should not be included in the pleading. In the circumstances, I make no award for the preparation of the notice of opposition. I will also only award the scale minimum for the lengthy submissions (which attached 'evidence', unannounced); partly because the particularisation of goods and services should have happened at pleadings stage, and partly because 25 pages of legal submissions in a case such as this is burdensome and unnecessary.

55. The breakdown of the cost award is as follows:

Statutory fee for the opposition	£200
Filing evidence and considering the holder's evidence	£600
Written submissions in lieu of a hearing	£300
Total	£1100

56. I order Indigo Blog Magdalena Malaczyńska to pay to O2 Worldwide Limited the sum of **£1100**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 08th day of August 2019

Judi Pike

For the Registrar,

the Comptroller-General

Annex

EUTM 5914437: Class 41 services relied upon

Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunications network provided by means of telecommunication networks; provision of news information; television production services, television programming services; television production and television programming services provided by means of internet protocol technology; provision of entertainment by means of television and internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; Booking of seats for shows; books (publication of-); calligraphy services; digital imaging services; diving equipment (rental of skin-); education information; electronic desktop publishing; entertainment information; information (education-); information (entertainment-); information (recreation-); interpretation (sign language-); layout services, other than for advertising purposes; microfilming; modelling for artists; movie projectors and accessories (rental of-); providing on-line electronic publications [not downloadable]; providing on-line electronic publications, not downloadable; publication of books; publication of electronic books and journals on-line; publication of texts [other than publicity texts]; publication of texts, other than publicity texts; radio and television sets (rental of-); recorders (rental of video cassette-); recreation information; rental of audio equipment; rental of camcorders; rental of lighting apparatus for theatrical sets or television studios; rental of movie projectors and accessories; rental of radio and television sets; rental of show scenery; rental of skin diving equipment; rental of sports equipment [except vehicles]; rental of sports equipment, except vehicles; rental of stage scenery; rental of video cameras; rental of video cassette recorders; show scenery (rental of-); sign language interpretation; sports equipment (rental of-) [except vehicles]; sports equipment (rental of-), except vehicles; sports events (timing of-); stage scenery (rental of-); television sets (rental of radio and-); texts (publication of-), other than publicity texts; ticket agency services [entertainment];

timing of sports events; translation; videotaping; information and advisory services relating to the aforesaid.

UKTM 2455748A: Class 41 services relied upon

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