

o/564/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003459433

BY BAZACHI LTD

TO REGISTER THE TRADE MARK:

bazachi

IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 420311

BY BAZARCHIC (SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE)

BACKGROUND AND PLEADINGS

1. On 20 January 2020, Bazachi Ltd applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on the 7 February 2020 and registration is sought for the services set out in the Annex to this decision.

2. The application was opposed by Bazarchic (Société par actions simplifiée) (“the opponent”) on 6 May 2020. The opposition is based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). Under both sections, the opponent relies on the following trade mark:

BAZARCHIC

EUTM registration no. 015857113¹

Filing date 26 September 2016; registration date 6 April 2017

3. Under section 5(2)(b), the opponent relies upon some of the services for which its mark is registered, as underlined in the Annex to this decision. The opponent claims that there is a likelihood of confusion because the marks are visually, phonetically, and conceptually similar to the opponent’s mark and the services are similar.

4. Under section 5(3), the opponent claims to have a reputation for all goods and services for which the mark is registered, as set out in the Annex to this decision. The opponent claims that use of the applicant’s mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or reputation of the earlier mark.

5. The applicant filed a counterstatement denying the claims made.

¹ Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

6. The opponent is represented by McCarthy Denning Limited and the applicant is unrepresented. Both parties filed evidence in chief. Neither party requested a hearing, but both parties filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

EVIDENCE AND SUBMISSIONS

8. The opponent's evidence consists of the witness statement of Elisabeth Magnet, which is dated 23 November 2020. Ms Magnet is the Director General of the opponent's company, a position that she has held since 2019. Ms Magnet's statement was accompanied by 4 exhibits.

9. The applicant's evidence consists of the witness statement of Aihaitijiang Abudukeyoumu, which is dated 31 January 2021. Mr Abudukeyoumu is the Director General of the applicant's company, a position he has held since January 2020. Mr Abudukeyoumu's statement was accompanied by 5 exhibits.

10. Whilst I do not propose to summarise it here, I have taken all of the evidence into consideration in reaching my decision and will refer to it where necessary below.

PRELIMINARY ISSUE

11. Both exhibits EM001 and EM002 have been filed in French without a certified translation.

12. On 6 July 2021, the Registry wrote to the opponent and stated:

“In preparing the case for consideration by a Hearing Officer, it has been noted that part of your evidence is filed in French. Consequently, the Hearing Officer will not be taking any of this evidence into consideration due to the fact that they were not filed with certified translations.

Please let us know in the next 7 days if you are not content to proceed on this basis, that is on or before **13th July 2021.**”

13. The tribunal did not receive any correspondence from the opponent. Consequently, I will determine these proceedings without consideration of the evidence filed in French.

DECISION

Section 5(2)(b)

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

“5(2) A trade mark shall not be registered if because –

(a)...

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

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

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

“6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of IR for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks

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

16. The trade mark upon which the opponent relies qualifies as an earlier trade mark because it was applied for at an earlier date than the applicant’s mark pursuant to section 6 of the Act. As the opponent’s mark had not completed its registration process more than 5 years before the filing date of the application in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services it has identified.

Section 5(2)(b) case law

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the

chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

Comparison of services

18. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

19. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors

20. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... 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.”

21. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

22. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as the then was) stated that:

“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.”

23. In *Kurt Hesse v OHIM*, Case C-50/15 P, the Court of Justice of the European Union (“CJEU”) stated that complementarity is an autonomous criterion 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:

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

24. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.” Whilst on the other hand: “... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

25. In making my assessment, I note that the Tribunal Manual states that specifications which include the wording 'namely' should be interpreted as covering only the named services within that specification. Therefore, the specification is limited to only those services.

26. "Advertising", "business management", "business administration", "office functions", "direct mail advertising", "arranging newspaper subscriptions (for others)", "accounting", "document reproduction", "employment agencies", "rental of advertising space", "dissemination of advertising matter" and "public relations services" appear identically in both specifications.

27. "Public relations" in the applicant's specification is self-evidently identical to "public relations services" in the opponent's specification.

28. "Online advertising on computer networks" in the applicant's specification is self-evidently identical to "on-line advertising on a computer network" in the opponent's specification.

29. "Renting out of advertising time in communication media" in the applicant's specification is self-evidently identical to "rental of advertising time on communication media" in the opponent's specification.

30. The parties did not submit what the intended scope for the term "office functions" would cover. However, I consider that it is a phrase which naturally includes any services which are core to the functions of an office. Therefore, I consider the following services in the applicant's specification to be identical on the principle outlined in *Merit* to the term "office functions" in the opponent's specification:

Typing; Shorthand; Transcription; Secretarial services; Word processing;
Business appraisals.

31. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

32. Advertising is “the promotion of goods or services for sale”.² Therefore, the following services in the applicant’s specification are all identical on the principle outlined in *Meric* to the broad category “advertising” in the opponent’s specification. This is because they all involve advertising, marketing, promoting and/or presenting goods in various manners:

Television advertising; radio advertising; outdoor advertising; advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; classified advertising services; retail advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; advertising services, namely, dissemination of advertising for others via an on-line electronic communications network and providing an on-line commercial information directory for electronic game enthusiasts; advertising services, namely, promoting the goods and services of others; online advertising on the Internet and other global computer network systems; organization of exhibitions for commercial or advertising purposes; updating of advertising material; publication of publicity texts; publicity texts (writing of -); publicity agencies; rental of publicity material; advertising by mail order; advertising management; organisation of trade fairs for commercial or advertising purposes; compilation of advertising information featuring the goods and services of other on-line vendors, into an on-line advertising guide; providing a searchable on-line advertising guide featuring the goods and services of other on-line vendors; dissemination of advertising for others via an on-line electronic communications network; providing a searchable on-line advertising guide featuring the goods and services of others; development of advertising articles; layout services for advertising purposes; sales promotion for others; sales promotion (for others); promoting the goods and services of others through limited availability discount offers via an on-line electronic communications network.

33. I consider that “customer loyalty program services featuring rewards in the form of discounted shipping services” and “retail services, namely, administration of a discount

² <https://www.collinsdictionary.com/dictionary/english/advertising> (British English)

program for enabling participants to obtain discounts on shipping services through use of a discount membership program and variable rate shipping program” in the applicant’s specification overlaps with “advertising” in the opponent’s specification. I consider that there is an overlap in user, nature, and purpose because the rewards act as a way of promoting and advertising the services, making them more enticing for the general public. I consider that they overlap in trade channels. They will not be complementary nor in competition. Taking the above into account, I consider they are similar to a high degree.

34. I consider that “product merchandising”, “demonstration of goods”, “distribution of samples” and “shopwindow dressing” in the applicant’s specification also overlaps with “advertising” in the opponent’s specification. I consider there to be an overlap in user, nature, and purpose because the applicant’s services are a way of promoting and advertising goods to make them more attractive to the general public. I therefore consider that there is an overlap in trade channels. They will not be complementary nor in competition. I consider they are similar to a high degree.

35. “Searching for data in computer files, for others”, “database management services”, “sorting and editing of information in computer databases”, “compilation and systemisation of data into computer databases”, “searching for data in computer databases, for others”, “compilation of computer databases for transmitting, displaying and storing transaction, identification and financial information” and “computerized database management services” in the applicant’s specification fall within the broader category of “computerised file management” in the opponent’s specification. I consider them identical on the principle outlined in *Meric*. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

36. “Computerised file management” in the opponent’s specification falls within the broader category of “computerised data management” in the applicant’s specification. I consider them identical on the principle outlined in *Meric*. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

37. “Business management assistance services”, “business assistance for artists and performers”, “professional business consultancy services”, “efficiency expert services”, “business management consultancy” and “business organisation consultancy” in the applicant’s specification fall within the broader category of “business management and organisation consultancy” in the opponent’s specification. I consider them identical on the principle outlined in *Meric*. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

38. “Invoicing services”, “preparation of tax returns”, “bookkeeping”, “drawing up of statements of account”, “cost analysis”, “compiling of cost analyses” and “preparation of payrolls” in the applicant’s specification fall within the broader category of “accounting” in the opponent’s specification. I consider them identical on the principle outlined in *Meric*.

39. “Photocopying” and “copying of documents” in the applicant’s specification fall within the broader category of “document reproduction” in the opponent’s specification. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

40. “Personnel recruitment”, “personnel recruitment consultancy” and “psychological tests in connection with selection of personnel” in the applicant’s specification fall within the broader category of “business administration” and/or “employment agencies” in the opponent’s specification. I consider them identical on the principle outlined in *Meric*. Even if I am wrong in this finding, the services will overlap in trade channels, users, method of use, nature, and purpose. I consider that they will be highly similar.

41. “Market research and information services”, “market research and business marketing information services, namely, facilitating person-to-person, person-to-business, business-to-person, and business-to-business sharing of relevant information about entertainment and the entertainment industry”, “market analysis”, “marketing research” and “opinion polling” in the applicant’s specification overlaps with the opponents “advertising” services. Advertising services promote businesses goods

and services and reinforce the client's position in the market. In order to facilitate this, these companies may specialise in both advertising and market research to help their client acquire a competitive advantage through publicity. Therefore, I consider there to be an overlap in trade channels, purpose, and user. I do not consider there to be an overlap in nature. The services are not in competition, nor are they complementary. Overall, I consider the services to be similar to a medium degree.

42. "Commercial management assistance", "industrial management assistance", "commercial information agency services" and "commercial administration of the licensing of the goods and services of others" in the applicant's specification all relate to helping management of commercial functions of an industrial or commercial enterprise. As established above, these services would overlap with the opponent's "business management and organisation consultancy" and/or "business administration" services. I consider there to be an overlap in purpose, users, and trade channels. However, they do not overlap in nature and method of use. I do not consider that they are complementary, however, they may be in competition with each other. Taking the above into account, I consider the services to be similar to a medium degree.

43. "Rental of copiers" in the applicant's specification overlaps with "document reproduction" in the opponent's specification. They overlap in purpose and user as both services could be used by businesses looking to copy/reproduce documents. However, they do not overlap in nature, trade channels and method of use. I do not consider that they are complementary, however, they may be in competition with each other. Taking the above into account, I consider the services to be similar to a medium degree.

44. The parties did not submit what the intended scope for the term "business investigations" would cover. However, I consider that it would accommodate the needs of the consumer seeking to engage a service provider to carry out an investigation of a third-party business. It could also accommodate a business owner who is seeking to explore a particular issue they have with their business, that needs to be investigated, reported, and advised upon. With the latter, there may be an overlap with "business management and organisation consultancy" in the opponent's specification.

The respective services would overlap in user and purpose and potentially overlap in trade channels. I do not consider them complementary, however, they could be in competition. I consider the services to be similar to a medium degree.

45. Business management services are intended to help companies manage their business and therefore will be involved in activities associated with the running of a business. I consider the following services in the applicant's specification are similar to a medium degree with the opponent's "business management", "business administration" and/or "business management and organisation consultancy" services:

Import and export agencies; Business inquiries; Business information services; Business intermediary services for the sale and purchase of goods and services; Assistance with the procurement of goods and services, for others; Assistance with purchasing goods and services, for others; Computerized processing of on-line purchase orders; Compilation of business information into a searchable databases available via a global computer network; Providing a searchable database in the field of business information available via a global computer network; Database services to enable others to conveniently view and select services from a website; Compiling statistics; Audit services; Economic forecasting; Compiling of information into computer databases; Relocation services for businesses; Telephone answering for unavailable subscribers; Administrative processing of purchase orders; Assistance with the management of hotels.

46. I consider that they overlap in user, purpose, and trade channels. They may also be in competition with each other. However, I do not consider that they overlap in method of use, nor are they complementary. Overall, I consider the services to be similar to a medium degree.

47. "Online business information services, namely analyzing an individual's preferences and providing product reviews and recommendations" and "providing consumer product information via the Internet or other communications networks" in the applicant's specification are services which are aimed at the individual rather than

businesses. Therefore, I consider they do not overlap with any of the opponent's services. They are fundamentally different in nature, method of use, user, and purpose. The trade channels will also, therefore, differ. The services are neither in competition nor complementary. I consider the services to be dissimilar.

48. "Modelling for advertising or sales promotion" in the applicant's specification is dissimilar to all of the opponent's services. Without any evidence or submissions before me from the parties, I consider that the applicant's service provides a model to be used for advertising purposes. The model itself does not promote the clients goods and services; it is simply used to facilitate an advertisement. Although the opponent's services include "advertising", this covers a broad range of services which are used to promote the goods and services themselves. I do not consider that the same company which provides advertising services would also provide the models used, these would be outsourced from a modelling or acting company. Therefore, the trade channels would not overlap. I also do not consider there to be an overlap in nature, method of use, and purpose. I recognise that there may be some overlap in user, but that is not enough on its own for a finding of similarity. I do not consider the services to be complementary nor in competition. Taking the above into account, I consider the services to be dissimilar.

49. I consider that "providing an on-line commercial information directory" in the applicant's specification is dissimilar to all of the opponent's services which are in the field of advertising, business management and administration. The applicant's service is aimed at the individual rather than businesses. Therefore, they are fundamentally different in nature, method of use, purpose, and user. The trade channels will also, therefore, differ. The services are neither in competition nor complementary. I consider that the services are dissimilar.

50. The following applicant's services are dissimilar to the opponent's class 35 services. The applicant's services are all retail services and online ordering, for a broad spectrum of goods, whereas the opponent's class 35 services are in the field of advertising, business management and administration. They are fundamentally different in nature, method of use, and purpose. The trade channels will also, therefore, differ. The services are neither in competition nor complementary. I

recognise that there may be some overlap in user, but that is not enough on its own for a finding of similarity. I consider the following services to be dissimilar to the opponent's specification:

Retail store services connected with the sale of electronic games, computer games, video games, electronic game software, computer game software, and video game software; Online retail store services connected with the sale of streamed and downloadable pre-recorded electronic games; Presentation of goods on communication media, for retail purposes; Information services, namely, providing information about retail products to customers, featuring the availability of specific products of interest to them; Online retail of music-related products, namely musical recordings, musical tapes, musical cassettes, musical composition software, laser discs, musical automata (coin operated) (juke boxes), musical CDs, musical DVDs, musical digital optical storage discs, musical 3D discs, musical audio recordings, musical audiovisual recordings, musical video recordings, musical dual discs, musical minidisks, musical SACDs, vinyl records, MP3 downloads, digital music recordings, digital audiovisual recording; computerized on-line searching and ordering service featuring movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, and other audiovisual works in the form of videocassettes, compact disks, DVDs, high density optical discs, digital downloads and direct digital transmission apparatus; Providing a searchable on-line commercial database featuring screenplays, music, movies, television shows, multimedia presentations, computer software, audio files, comic books, and publications; Department stores, online retail department stores and computerised online ordering services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking, 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, high density optical discs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers,

computer software, software, portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices, computer peripheral devices, monitors, displays, wires, cables, modems, printers, disk drives, adapters, adapter cards, cable connectors, plug-in connectors, electrical power connectors, docking stations, and drivers, battery chargers, battery packs, memory cards and memory card readers, speakers, microphones, and headsets, cases, covers, and stands for computers, cases, covers, and stands for portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, sound, audio, video and data, including via global computer networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices and devices for the display of electronically published materials, namely, books, journals, newspapers, magazines, multimedia presentations, remote controls for portable and handheld electronic devices and computers, power adapters, USB cables, electronic docking stations, battery chargers, electrical connectors, wires, cables, and adaptors, wireless remote controls for portable electronic devices, headphones and earphones, data synchronization programs, and application development tool programs for personal and handheld computers, computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications, downloadable pre-recorded audio and audiovisual content, information, and commentary, downloadable electronic books, magazines, periodicals, newsletters, newspapers, journals, and other publications, downloadable electronic publications in the nature of fiction, nonfiction, comics and screenplays via computer and communications networks, downloadable films and movies featuring fiction and non-fiction stories provided via computer and communications networks, downloadable templates for designing books, short stories, storyboards, screenplays, comics, audio and video files, computer

software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information, downloadable audiobooks and digital audio files, software in the field of text, image and sound transmission and display, database management software, character recognition software, voice recognition software, electronic mail and messaging software, computer software for accessing, browsing and searching online databases and electronic bulletin boards, data synchronization software, application development software, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction and non-fiction books, comic books, graphic novels, stories in illustrated form and comic book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products,

interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guide, computer instruction manuals, computer manuals, publications relating to technology, digital technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast,

baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages, telephones, mobile phones, videophones, cameras, monitors for television receiver, television receivers [TV sets] and television transmitters, remote controllers for television receiver [TV set], electronic notepads, magnetic data carriers, radio receivers, radio transmitters, video cameras, computer hardware and software, computer software and firmware, namely, operating system programs, data synchronization programs, in the nature of application development tool programs for personal and handheld computers and mobile digital electronic devices, telephony management software, mobile telephone, smartphone and tablet software, telephone-based information retrieval software and hardware, software for the redirection of messages, computer application software for mobile phones, smart phones and tablet devices featuring mobile phone functionality, computer application software and embedded computer application software for mobile phones, smart phones and tablet devices namely, software that enables photos and videos from cameras found on mobile phones, smart phones and tablet devices to be shared in social media for social networking purposes, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks, parts and accessories for handheld and mobile digital electronic devices, parts and accessories for mobile telephones, smartphones and tablets in the nature of covers, cases, cases made of leather or imitations of leather, covers made of cloth or textile materials, batteries, rechargeable batteries, chargers, chargers for electric batteries, data cables, power cables, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, headsets for wireless communication apparatus, personal stereo speaker apparatus, microphones, car audio apparatus, apparatus for connecting and charging portable and handheld digital electronic devices, user manuals in electronically readable, machine readable or computer readable form for use

with, and sold as a unit with, all the aforementioned goods, parts and fittings for all the aforesaid goods, downloadable software for accessing and managing of computer applications over a global computer network, character recognition software, electronic mail and messaging software, set-top boxes; Computerized on-line ordering services featuring bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, CDs, DVDs and high density optical discs, laptop computers, tablet computers, handheld electronic devices, personal digital assistants, digital music players, mobile telephone, smartphones, digital cameras and digital video cameras, ebook readers, wireless communications devices, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction

and non-fiction books, comic books, graphic novels, stories in illustrated form and comic book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products, interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guides, computer instruction manuals, computer manuals, publications relating to technology, digital technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and

sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages; Computerised online retail services, automated and computerized trading services, automated and computerized trading of goods for others provided over a global communication information network, on-line trading services, on-line retail and wholesale distributorship services, retail store services, mail order sales, retail sale services provided by means of a global computer network, retail online services, retail convenience stores, retail on-line convenience stores, retail department stores, online retail department stores, all in relation to paints, varnishes, lacquers, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring preparations, pharmaceutical and sanitary preparations, disinfectants, fungicides, herbicides, hand tool and implements, cutlery, razors, computers, DVDs and other blank digital recording media, pre-recorded DVDs and other digital prerecorded media, computer software, fireworks, jewellery, horological and chronometric instruments, musical instruments, books, printed matter, stationery, photographs, adhesives for stationery or household purposes, paint brushes, packaging materials, leather and imitations of leather and goods made of these materials, namely animal skins, hides, trunks, travelling bags, umbrellas and parasols, walking sticks, furniture, mirrors, picture frames, household and kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, glassware, porcelain and earthenware, pots and pans for

use in the kitchen, yarns and threads, textiles and textile goods, bed covers, table covers, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, carpet, rugs, mats and matting, linoleum, wall hangings, games and playthings, decorations for Christmas trees, candles, lights, bulbs, matches; Computerised online ordering of services for others of general goods and general consumer goods; On-line ordering services; Computerized on-line ordering of services featuring general merchandise and general consumer goods.

51. The following applicant's services are dissimilar to the opponent's class 35 services which are all in the field of advertising, business management and administration. They are fundamentally different in nature, method of use, and purpose. The trade channels will also, therefore, differ. The services are neither in competition nor complementary. I recognise that there may be some overlap in user, but that is not enough on its own for a finding of similarity. I consider the following services to be dissimilar to the opponent's specification:

Subscriptions to books, reviews, or comic books; Arranging telecommunications subscriptions, for others; Rental of vending machines; Research for sponsorship; Auctioning; Auctioneering services; Auction services; Comparison services (Price -); and price comparison.

The average consumer and the nature of the purchasing act

52. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the

relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

53. The average consumer for the services will be members of the general public or business users. The cost of the services in question is likely to vary. The majority of the services will be purchased relatively infrequently. The average consumer will take various factors into consideration such as the cost, type of services offered and the suitability of those services to the consumer’s needs. Therefore, the level of attention paid during the purchasing process will be medium. However, I recognise that the level of attention for some of the more expensive/technical services will be higher than medium.

54. The services are likely to be purchased from a specialist retailer or online equivalent. Visual considerations are, therefore, likely to dominate the selection process. I do not discount that there may also be an aural component to the purchase through word-of-mouth recommendations or advice sought from sales assistants. Especially for the services which involve an intermediary, such as import and export agencies, I consider that aural considerations will have a higher aural component to purchase.

Comparison of the trade marks


55. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. 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.”

56. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

57. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade marks
BAZARCHIC	

58. The opponent's mark consists of the word BAZARCHIC presented in upper-case. There are no other elements to contribute to the overall impression which lies in the word itself.

59. The applicant's mark consists of text intended to represent the word 'bazachi'. The 'z' device consists of the top 2 straight angular lines of a Z, however, the bottom line is curving upwards in red. The i's tittle is also in red. I consider the word 'bazachi' to play a greater role in the overall impression of the mark, with the stylisation playing a lesser role.

60. Visually, the marks coincide in the presence of the letters B, A, Z and A at the beginning of both marks. They also coincide in the presence of the letters C, H, and I

towards the end of the marks. I bear in mind that the beginnings of marks tend to make more of an impact than the ends. These all act as visual points of similarity. However, the opponent's mark has the letter R in the middle of the mark, and the letter C at the end of the mark. These act as visual points of difference. The applicant's mark is also stylised, however, as the opponent's mark is a word only mark, it could be used in any typeface. Consequently, I consider the marks are visually similar to between a medium and high degree.

61. Aurally, the opponent submits that the marks are virtually identical. However, I disagree. The opponent's mark is likely to be pronounced BAZ-ARE-SHEEK. The applicant's mark is likely to be pronounced as BAZ-AH-CHEE. They share the beginning syllable, and I consider that the other two syllables are similar in their pronunciation. Consequently, I consider the marks to be aurally similar to between a medium and high degree.

62. Conceptually, the opponent submits that the meaning of 'BAZAR' within their mark is a marketplace. The word bazar is a derivative from the Middle East and can be spelt in two different ways; bazar and bazaar.³ In my experience, it is the latter spelling that is more commonly used in the UK. In any event, even if the average consumer did know the word bazar and its meaning, I do not consider that the average consumer would separate the word BAZAR out from the rest of the mark, which is an invented word. Therefore, when viewing the mark as a whole, I consider that the opponent's mark is likely to be viewed as an invented word which would be attributed no particular meaning.

63. The opponent also submits that both marks have BAZAR as their dominant element. However, I disagree. The R has no counterpart in the applicant's mark. Consequently, I consider that the applicant's mark will also be viewed as an invented word which would be attributed no particular meaning, Taking the above into account, I consider the marks to be conceptually neutral.

³ <https://www.collinsdictionary.com/dictionary/english/bazaar> (British English)

Distinctive character of the earlier trade mark

64. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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 promotion of 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).”

65. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

66. The opponent has not pleaded that its mark has acquired enhanced distinctiveness. However, for the sake of completeness, I will make a finding as to whether I consider the evidence sufficient to demonstrate enhanced distinctiveness.

67. As highlighted above, EM001 and EM002 were filed in French without certified translations and, therefore, these exhibits will not be taken into account. In the witness statement, Ms Magnet highlighted that EM001 was a copy of the opponent's Articles of Association. The purpose of these documents is to set out how the company is owned, governed, and run. Therefore, regardless, this exhibit would have not provided me with any useful information to demonstrate enhanced distinctiveness of the mark. Ms Magnet also highlighted that EM002 are the opponent's accounts for the year 1 January to 31 December 2016. As submitted by the opponent, Bazarchic was formed in 2006. The applicant applied to register its mark on the 20 January 2020 (the relevant date). Therefore, the opponent had only provided accounts for one year of trading, 10 years after forming, and 4 years before opposition proceedings were commenced. There does not appear to be any information as to what services the figures contained within the accounts relate to or to what geographical area (i.e. what proportion of these relate to the UK market, if any).

68. EM003 is the only evidence of trade in the UK. The first screenshot is of UK Trust Pilot providing reviews of Bazarchic. This shows 1,565 reviews, resulting in an average 3.5 star rating. None of the actual written reviews were provided in the exhibit. The second screenshot is from the opponent's website. This shows eight 5 star reviews, and two 4 star reviews, with an overall average of 4.3 out of 5 stars. This exhibit was difficult to read and therefore I was unable to read the reviews. Both screenshots in this exhibit are dated 23 November 2020 which is after the relevant date.

69. Lastly, EM004 is an exhibit bundle which shows screenshots from the opponent's website showing the products and brands that they sell. These, again, are all dated 23 November 2020 which is after the relevant date.

70. In the witness statement, the opponent provides the overall sales and advertising figures for 2015 to 2019. However, these are also not broken down by region and they do not explain what services these figures specifically relate to. As highlighted above, without a breakdown, I am unable to establish the intensity of the use within the UK.

71. Taking all of the above into consideration, I do not consider the evidence sufficient to establish enhanced distinctiveness.

72. I now turn to the inherent distinctiveness of the opponent's mark. I consider that the word BAZARCHIC will be viewed as an invented word which is neither allusive nor descriptive in relation to the services for which the mark is registered. Therefore, I consider the opponent's mark to be inherently distinctive to a high degree.

Likelihood of confusion

73. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

74. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar between a medium and high degree.
- I have found the marks to be aurally similar between a medium and high degree.
- I have found the marks to be conceptually neutral.
- I have found the earlier mark to be inherently distinctive to a high degree.

- I have identified the average consumer to be members of the general public or business users, who will select the services primarily by visual means, although I do not discount an aural component, especially for those services that involve an intermediary.
- I have concluded that a medium degree of attention will be paid during the purchasing process. However, I recognise that for more expensive/technical services, the level of attention will be higher than medium.
- I have found the parties' services to vary from being dissimilar to identical.

75. Taking all of the factors listed in paragraph 74 into account, bearing in mind the principle of imperfect recollection, I consider that the marks are likely to be mistakenly recalled or misremembered as each other on services that are similar to at least a medium degree. This is particularly the case given the relatively high visual similarity between the marks and the predominantly visual purchasing process. Even where aural considerations play a greater role, the relatively high aural similarity between the marks will have the same result. The beginnings of marks tend to make more of an impact than the ends. Therefore, I consider that because the marks share the same beginnings, with the differences between the marks in the letter's R and C, which are in the middle and end of the mark, these will be easily overlooked by the average consumer. I also consider that, in the absence of a conceptual hook, the average consumer will not have a strong conceptual message to assist them in differentiating between the marks. Taking all of this into account, for those services, I consider there to be a likelihood of direct confusion.

76. For those services that I have found to be dissimilar, there can be no likelihood of confusion.⁴ Further, where the services are similar to only a very low degree, I consider that this will offset the similarity between the marks in accordance with the interdependency principle and will prevent there from being a likelihood of confusion.

77. The opposition based upon s5(2)(b) has succeeded in relation to the following services:

⁴ eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA

Class 35 Advertising; business management; business administration; office functions; computerised data management; administrative processing of purchase orders; updating of advertising material; compiling of cost analyses; direct mail advertising; advertising by mail order; employment agencies; direct mail advertising; business management assistance services; industrial management assistance; commercial management assistance; assistance with purchasing goods and services, for others; assistance with the management of hotels; bookkeeping; searching for data in computer files, for others; shopwindow dressing; demonstration of goods; distribution of samples; invoicing services; television advertising; business assistance for artists and performers; commercial information agency services; business investigations; photocopying; import and export agencies; business inquiries; assistance with the procurement of goods and services, for others; business information services; commercial administration of the licensing of the goods and services of others; compiling statistics; Compilation and systemisation of data into computer databases; copying of documents; layout services for advertising purposes; online advertising on the Internet and other global computer network systems; market analysis; marketing research; typing; cost analysis; relocation services for businesses; online advertising on computer networks; opinion polling; organization of exhibitions for commercial or advertising purposes; organisation of trade fairs for commercial or advertising purposes; personnel recruitment; professional business consultancy services; public relations services; psychological tests in connection with selection of personnel; public relations; publication of publicity texts; radio advertising; efficiency expert services; accounting; publicity agencies; dissemination of advertising matter; advertising management; personnel recruitment consultancy; transcription; document reproduction; audit services; business management consultancy; business organisation consultancy; sales promotion for others; sales promotion (for others); secretarial services; publicity texts (writing of -); sorting and editing of information in computer databases; shorthand; searching for data in computer databases, for others; arranging newspaper subscriptions (for others); word

processing; telephone answering for unavailable subscribers; transcription; television advertising; drawing up of statements of account; preparation of payrolls; development of advertising articles; distribution of samples; outdoor advertising; preparation of tax returns; rental of copiers; rental of publicity material; rental of advertising space; renting out of advertising time in communication media; business appraisals; economic forecasting; advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; retail advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; market research and information services; compiling of information into computer databases; market research and business marketing information services, namely, facilitating person-to-person, person-to-business, business-to-person, and business-tobusiness sharing of relevant information about entertainment and the entertainment industry; computerized processing of on-line purchase orders; compilation of business information into a searchable databases available via a global computer network; compilation of advertising information featuring the goods and services of other on-line vendors, into an on-line advertising guide; computerized database management services; customer loyalty program services featuring rewards in the form of discounted shipping services; retail services, namely, administration of a discount program for enabling participants to obtain discounts on shipping services through use of a discount membership program and variable rate shipping program; Business intermediary services for the sale and purchase of goods and services; Classified advertising services; database services to enable others to conveniently view and select services from a website; Compilation of computer databases for transmitting, displaying and storing transaction, identification and financial information; computerized processing of on-line purchase orders; Advertising services, namely, dissemination of advertising for others via an on-line electronic communications network and providing an on-line commercial information directory for electronic game enthusiasts; providing a searchable database in the field of

business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of other on-line vendors; dissemination of advertising for others via an on-line electronic communications network; product merchandising; promoting the goods and services of others through limited availability discount offers via an on-line electronic communications network; advertising services, namely, promoting the goods and services of others; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of others; database management services.

Section 5(3)

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

“5(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

79. As noted above, the mark relied upon qualifies as an earlier mark pursuant to section 6 of the Act. I note that all of the goods and services under the earlier mark are being relied upon for the opposition under section 5(3) of the Act.

80. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*

and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

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

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

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas 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* and *Environmental Manufacturing, paragraph 34*.

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the 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*).

81. The conditions of section 5(3) are cumulative. Firstly, the opponent's and applicant's marks must be identical or similar. Secondly, the opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must have established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the latter mark. Fourthly, assuming that the first, second and third conditions have been met, section 5(3) requires that one or more types of damage claimed will occur and/or that the contested mark will, without due case, take unfair advantage of the reputation and/or distinctive character of the reputed mark. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one

of the factors which must be assessed in deciding whether the public will make a link between the marks.

82. The relevant date for the assessment under section 5(3) is the date of application i.e. 20 January 2020.

83. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

84. In determining whether the opponent has demonstrated a reputation for the goods and services in issue, it is necessary for me to consider whether its mark will be known by a significant part of the public concerned with the goods and services. In reaching this decision, I must take all of the evidence into account including “the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertakings in promoting it.”

85. As the earlier mark is an EUTM, the mark must have a reputation in a substantial part of the EU. However, although Ms Magnet provides total sales for the years 2015 to 2019, these are not broken down into region/territory, nor does it explain what goods and services these figures relate to. Consequently, the opponent's evidence does not demonstrate a reputation in the EU or UK, nor does it demonstrate a reputation in relation to their specific goods and services.

86. Even if I am wrong in this finding, I bear in mind the decision in *China Construction Bank Corporation v Groupement Des Cartes Bancaires*, (Case BL O/281/14), in which Mr Purvis Q.C., sitting as the Appointed Person, stated:

“40. ... I believe that the ultimate decision under s5(3) was nonetheless correct. In order to succeed under s5(3), the opponent has to show either that the distinctive character or repute of its earlier mark would be damaged by reasonable and fair use of the mark applied for, or that such reasonable and fair use would take unfair advantage of the reputation of its earlier mark. The reasonable and fair use of the mark applied for can only be use in the United Kingdom, since this is the entire territorial scope of the application.

41. If the reputation of the earlier mark does not extend to the United Kingdom, it is difficult to see how (at least in the usual case) it could be damaged by use of a mark in the United Kingdom, or that such use could be said to take unfair advantage of the earlier mark. For one thing, the necessary 'link' between the marks in the mind of the average consumer which must be established in any case which relies on the extended protection (see *Adidas-Saloman v Fitnessworld* [2004] ETMR 10) would not exist. There is certainly no evidence in the present case which explains how any 'link' could be made in the UK absent of a reputation here.” (my emphasis)

87. There is very little evidence of use or promotional activities in the UK. The opponent has failed to explain, or adequately explain, how any link could be made in the mind of UK consumers absent a reputation here. Consequently, the objection under section 5(3) would fail in any event.

88. The opposition under section 5(3) fails.

CONCLUSION

89. The opposition is partially successful in respect of the following services, for which the application is refused:

Class 35 Advertising; business management; business administration; office functions; computerised data management; administrative processing of purchase orders; updating of advertising material; compiling of cost analyses; direct mail advertising; advertising by mail order; employment agencies; direct mail advertising; business management assistance services; industrial management assistance; commercial management assistance; assistance with purchasing goods and services, for others; assistance with the management of hotels; bookkeeping; searching for data in computer files, for others; shopwindow dressing; demonstration of goods; distribution of samples; invoicing services; television advertising; business assistance for artists and performers; commercial information agency services; business investigations; photocopying; import and export agencies; business inquiries; assistance with the procurement of goods and services, for others; business information services; commercial administration of the licensing of the goods and services of others; compiling statistics; Compilation and systemisation of data into computer databases; copying of documents; layout services for advertising purposes; online advertising on the Internet and other global computer network systems; market analysis; marketing research; typing; cost analysis; relocation services for businesses; online advertising on computer networks; opinion polling; organization of exhibitions for commercial or advertising purposes; organisation of trade fairs for commercial or advertising purposes; personnel recruitment; professional business consultancy services; public relations services; psychological tests in connection with selection of personnel; public relations; publication of publicity texts; radio advertising; efficiency expert services; accounting; publicity agencies; dissemination of advertising matter;

advertising management; personnel recruitment consultancy; transcription; document reproduction; audit services; business management consultancy; business organisation consultancy; sales promotion for others; sales promotion (for others); secretarial services; publicity texts (writing of -); sorting and editing of information in computer databases; shorthand; searching for data in computer databases, for others; arranging newspaper subscriptions (for others); word processing; telephone answering for unavailable subscribers; transcription; television advertising; drawing up of statements of account; preparation of payrolls; development of advertising articles; distribution of samples; outdoor advertising; preparation of tax returns; rental of copiers; rental of publicity material; rental of advertising space; renting out of advertising time in communication media; business appraisals; economic forecasting; advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; retail advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; market research and information services; compiling of information into computer databases; market research and business marketing information services, namely, facilitating person-to-person, person-to-business, business-to-person, and business-tobusiness sharing of relevant information about entertainment and the entertainment industry; computerized processing of on-line purchase orders; compilation of business information into a searchable databases available via a global computer network; compilation of advertising information featuring the goods and services of other on-line vendors, into an on-line advertising guide; computerized database management services; customer loyalty program services featuring rewards in the form of discounted shipping services; retail services, namely, administration of a discount program for enabling participants to obtain discounts on shipping services through use of a discount membership program and variable rate shipping program; Business intermediary services for the sale and purchase of goods and services; Classified advertising services; database services to enable others to conveniently

view and select services from a website; Compilation of computer databases for transmitting, displaying and storing transaction, identification and financial information; computerized processing of on-line purchase orders; Advertising services, namely, dissemination of advertising for others via an on-line electronic communications network and providing an on-line commercial information directory for electronic game enthusiasts; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of other on-line vendors; dissemination of advertising for others via an on-line electronic communications network; product merchandising; promoting the goods and services of others through limited availability discount offers via an on-line electronic communications network; advertising services, namely, promoting the goods and services of others; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of others; database management services.

90. The application can proceed to registration in respect of the following services for which the opposition has been unsuccessful:

Class 35 Auctioning; auctioneering services; modelling for advertising or sales promotion; Comparison services (Price -); presentation of goods on communication media, for retail purposes; price comparison; research for sponsorship; arranging telecommunications subscriptions, for others; rental of vending machines; online retail of music-related products, namely musical recordings, musical tapes, musical cassettes, musical composition software, laser discs, musical automata (coin operated) (jukes boxes), musical CDs, musical DVDs, musical digital optical storage discs, musical 3D discs, musical audio recordings, musical audiovisual recordings, musical video recordings, musical dual discs, musical minidisks, musical SACDs, vinyl records, MP3 downloads, digital music recordings, digital audiovisual recording; providing a

searchable on-line commercial database featuring screenplays, music, movies, television shows, multimedia presentations, computer software, audio files, comic books, and publications; computerised online retail services, automated and computerized trading services, automated and computerized trading of goods for others provided over a global communication information network, on-line trading services, on-line retail and wholesale distributorship services, retail store services, mail order sales, retail sale services provided by means of a global computer network, retail online services, retail convenience stores, retail on-line convenience stores, retail department stores, online retail department stores, all in relation to paints, varnishes, lacquers, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring preparations, pharmaceutical and sanitary preparations, disinfectants, fungicides, herbicides, hand tool and implements, cutlery, razors, computers, DVDs and other blank digital recording media, pre-recorded DVDs and other digital prerecorded media, computer software, fireworks, jewellery, horological and chronometric instruments, musical instruments, books, printed matter, stationery, photographs, adhesives for stationery or household purposes, paint brushes, packaging materials, leather and imitations of leather and goods made of these materials, namely animal skins, hides, trunks, travelling bags, umbrellas and parasols, walking sticks, furniture, mirrors, picture frames, household and kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, glassware, porcelain and earthenware, pots and pans for use in the kitchen, yarns and threads, textiles and textile goods, bed covers, table covers, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, carpet, rugs, mats and matting, linoleum, wall hangings, games and playthings, decorations for Christmas trees, candles, lights, bulbs, matches; computerised online ordering of services for others of general goods and general consumer goods; retail store services connected with the sale of electronic games, computer games, video games, electronic game software, computer game software, and video game software; Online retail store services connected with the

sale of streamed and downloadable pre-recorded electronic games; providing an on-line commercial information directory; on-line ordering services; Auction services; Computerized on-line ordering of services featuring general merchandise and general consumer goods; Providing an on-line commercial information directory; Information services, namely, providing information about retail products to customers, featuring the availability of specific products of interest to them; Online business information services, namely analyzing an individual's preferences and providing product reviews and recommendations; providing an on-line commercial information directory; department stores, online retail department stores and computerised online ordering services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking, 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, high density optical discs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, software, portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices, computer peripheral devices, monitors, displays, wires, cables, modems, printers, disk drives, adapters, adapter cards, cable connectors, plug-in connectors, electrical power connectors, docking stations, and drivers, battery chargers, battery packs, memory cards and memory card readers, speakers, microphones, and headsets, cases, covers, and stands for computers, cases, covers, and stands for portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text,

images, sound, audio, video and data, including via global computer networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices and devices for the display of electronically published materials, namely, books, journals, newspapers, magazines, multimedia presentations, remote controls for portable and handheld electronic devices and computers, power adapters, USB cables, electronic docking stations, battery chargers, electrical connectors, wires, cables, and adaptors, wireless remote controls for portable electronic devices, headphones and earphones, data synchronization programs, and application development tool programs for personal and handheld computers, computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications, downloadable pre-recorded audio and audiovisual content, information, and commentary, downloadable electronic books, magazines, periodicals, newsletters, newspapers, journals, and other publications, downloadable electronic publications in the nature of fiction, nonfiction, comics and screenplays via computer and communications networks, downloadable films and movies featuring fiction and non-fiction stories provided via computer and communications networks, downloadable templates for designing books, short stories, storyboards, screenplays, comics, audio and video files, computer software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information, downloadable audiobooks and digital audio files, software in the field of text, image and sound transmission and display, database management software, character recognition software, voice recognition software, electronic mail and messaging software, computer software for accessing, browsing and searching online databases and electronic bulletin boards, data synchronization software, application development software, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices,

pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction and non-fiction books, comic books, graphic novels, stories in illustrated form and comic book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products, interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guide, computer instruction manuals, computer manuals, publications relating to technology, digital

technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-

alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages, telephones, mobile phones, videophones, cameras, monitors for television receiver, television receivers [TV sets] and television transmitters, remote controllers for television receiver [TV set], electronic notepads, magnetic data carriers, radio receivers, radio transmitters, video cameras, computer hardware and software, computer software and firmware, namely, operating system programs, data synchronization programs, in the nature of application development tool programs for personal and handheld computers and mobile digital electronic devices, telephony management software, mobile telephone, smartphone and tablet software, telephone-based information retrieval software and hardware, software for the redirection of messages, computer application software for mobile phones, smart phones and tablet devices featuring mobile phone functionality, computer application software and embedded computer application software for mobile phones, smart phones and tablet devices namely, software that enables photos and videos from cameras found on mobile phones, smart phones and tablet devices to be shared in social media for social networking purposes, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks, parts and accessories for handheld and mobile digital electronic devices, parts and accessories for mobile telephones, smartphones and tablets in the nature of covers, cases, cases made of leather or imitations of leather, covers made of cloth or textile materials, batteries, rechargeable batteries, chargers, chargers for electric batteries, data cables, power cables, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, headsets for wireless communication apparatus, personal stereo speaker apparatus, microphones, car audio apparatus, apparatus for connecting and charging portable and handheld digital electronic devices, user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the

aforementioned goods, parts and fittings for all the aforesaid goods, downloadable software for accessing and managing of computer applications over a global computer network, character recognition software, electronic mail and messaging software, set-top boxes; providing consumer product information via the Internet or other communications networks; computerized on-line ordering services featuring bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, CDs, DVDs and high density optical discs, laptop computers, tablet computers, handheld electronic devices, personal digital assistants, digital music players, mobile telephone, smartphones, digital cameras and digital video cameras, ebook readers, wireless communications devices, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam

generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction and non-fiction books, comic books, graphic novels, stories in illustrated form and comic book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products, interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guides, computer instruction manuals, computer manuals, publications relating to technology, digital technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and

travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish, poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages; subscriptions to books, reviews, or comic books; computerized on-line searching and ordering service featuring movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, and other audiovisual works in the form of videocassettes, compact disks, DVDs, high density optical discs, digital downloads and direct digital transmission apparatus.

COSTS

91. As both parties have achieved what I regard as a roughly equal measure of success, I direct that both parties should bear their own costs.

Dated this 27th day of July 2021

L FAYTER

For the Registrar

ANNEX

Applicant's Mark

Class 35

Advertising; business management; business administration; office functions; computerised data management; administrative processing of purchase orders; updating of advertising material; compiling of cost analyses; direct mail advertising; advertising by mail order; employment agencies; auctioning; auctioneering services; direct mail advertising; business management assistance services; industrial management assistance; commercial management assistance; assistance with purchasing goods and services, for others, assistance with the management of hotels; bookkeeping; searching for data in computer files, for others; shopwindow dressing; demonstration of goods; distribution of samples; invoicing services; television advertising; business assistance for artists and performers; commercial information agency services; business investigations; photocopying; import and export agencies; business inquiries; assistance with the procurement of goods and services, for others; business information services; commercial administration of the licensing of the goods and services of others; compiling statistics; Compilation and systemisation of data into computer databases; copying of documents; layout services for advertising purposes; online advertising on the Internet and other global computer network systems; market analysis; marketing research; typing; modelling for advertising or sales promotion; cost analysis; relocation services for businesses; online advertising on computer networks; opinion polling; organization of exhibitions for commercial or advertising purposes; organisation of trade fairs for commercial or advertising purposes; personnel recruitment; Comparison services (Price -); professional business consultancy services; public relations services; presentation of goods on communication media, for retail purposes; psychological tests in connection with selection of personnel; public relations; publication of publicity texts; radio advertising; efficiency expert services; accounting; publicity agencies; dissemination of advertising matter; advertising management; personnel recruitment consultancy; transcription; document reproduction; audit services; business management consultancy; business organisation consultancy; sales promotion for others; sales promotion (for others); price comparison; secretarial services; publicity texts (writing of -); sorting and editing of information in computer databases; shorthand; research for sponsorship; searching

for data in computer databases, for others; arranging newspaper subscriptions (for others); arranging telecommunications subscriptions, for others; word processing; telephone answering for unavailable subscribers; transcription; television advertising; drawing up of statements of account; preparation of payrolls; development of advertising articles; distribution of samples; outdoor advertising; preparation of tax returns; rental of copiers; rental of publicity material; rental of advertising space; renting out of advertising time in communication media; rental of vending machines; business appraisals; economic forecasting; online retail of music-related products, namely musical recordings, musical tapes, musical cassettes, musical composition software, laser discs, musical automata (coin operated) (jukes boxes), musical CDs, musical DVDs, musical digital optical storage discs, musical 3D discs, musical audio recordings, musical audiovisual recordings, musical video recordings, musical dual discs, musical minidisks, musical SACDs, vinyl records, MP3 downloads, digital music recordings, digital audiovisual recording; advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; retail advertising services, namely the dissemination of advertising matter for others via an online electronic communications network; providing a searchable on-line commercial database featuring screenplays, music, movies, television shows, multimedia presentations, computer software, audio files, comic books, and publications; market research and information services; compiling of information into computer databases; market research and business marketing information services, namely, facilitating person-to-person, person-to-business, business-to-person, and business-to-business sharing of relevant information about entertainment and the entertainment industry; computerised online retail services, automated and computerized trading services, automated and computerized trading of goods for others provided over a global communication information network, on-line trading services, on-line retail and wholesale distributorship services, retail store services, mail order sales, retail sale services provided by means of a global computer network, retail online services, retail convenience stores, retail on-line convenience stores, retail department stores, online retail department stores, all in relation to paints, varnishes, lacquers, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring preparations, pharmaceutical and sanitary preparations, disinfectants, fungicides, herbicides, hand tool and implements, cutlery, razors, computers, DVDs and other blank digital recording media, pre-recorded DVDs and

other digital prerecorded media, computer software, fireworks, jewellery, horological and chronometric instruments, musical instruments, books, printed matter, stationery, photographs, adhesives for stationery or household purposes, paint brushes, packaging materials, leather and imitations of leather and goods made of these materials, namely animal skins, hides, trunks, travelling bags, umbrellas and parasols, walking sticks, furniture, mirrors, picture frames, household and kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, glassware, porcelain and earthenware, pots and pans for use in the kitchen, yarns and threads, textiles and textile goods, bed covers, table covers, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, carpet, rugs, mats and matting, linoleum, wall hangings, games and playthings, decorations for Christmas trees, candles, lights, bulbs, matches; computerised online ordering of services for others of general goods and general consumer goods; retail store services connected with the sale of electronic games, computer games, video games, electronic game software, computer game software, and video game software; Online retail store services connected with the sale of streamed and downloadable pre-recorded electronic games; computerized processing of on-line purchase orders; compilation of business information into a searchable databases available via a global computer network; compilation of advertising information featuring the goods and services of other on-line vendors, into an on-line advertising guide; providing an on-line commercial information directory; computerized database management services; on-line ordering services; customer loyalty program services featuring rewards in the form of discounted shipping services; retail services, namely, administration of a discount program for enabling participants to obtain discounts on shipping services through use of a discount membership program and variable rate shipping program; Business intermediary services for the sale and purchase of goods and services; Auction services; Classified advertising services; Computerized on-line ordering of services featuring general merchandise and general consumer goods; Providing an on-line commercial information directory; database services to enable others to conveniently view and select services from a website; Compilation of computer databases for transmitting, displaying and storing transaction, identification and financial information; Information services, namely, providing information about retail products to customers, featuring the availability of specific products of interest to them; Online business information services, namely analyzing an individual's preferences

and providing product reviews and recommendations; computerized processing of on-line purchase orders; providing an on-line commercial information directory; Advertising services, namely, dissemination of advertising for others via an on-line electronic communications network and providing an on-line commercial information directory for electronic game enthusiasts; department stores, online retail department stores and computerised online ordering services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking, 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, high density optical discs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, software, portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices, computer peripheral devices, monitors, displays, wires, cables, modems, printers, disk drives, adapters, adapter cards, cable connectors, plug-in connectors, electrical power connectors, docking stations, and drivers, battery chargers, battery packs, memory cards and memory card readers, speakers, microphones, and headsets, cases, covers, and stands for computers, cases, covers, and stands for portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, sound, audio, video and data, including via global computer networks, tablet computers, electronic book readers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices and devices for the display of electronically published materials, namely, books, journals, newspapers, magazines, multimedia presentations, remote controls for portable and handheld electronic devices and computers, power adapters, USB cables, electronic docking stations, battery chargers, electrical connectors, wires, cables, and adaptors, wireless remote controls for portable electronic devices, headphones and earphones, data synchronization programs, and application development tool programs for personal and handheld

computers, computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications, downloadable pre-recorded audio and audiovisual content, information, and commentary, downloadable electronic books, magazines, periodicals, newsletters, newspapers, journals, and other publications, downloadable electronic publications in the nature of fiction, nonfiction, comics and screenplays via computer and communications networks, downloadable films and movies featuring fiction and non-fiction stories provided via computer and communications networks, downloadable templates for designing books, short stories, storyboards, screenplays, comics, audio and video files, computer software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information, downloadable audiobooks and digital audio files, software in the field of text, image and sound transmission and display, database management software, character recognition software, voice recognition software, electronic mail and messaging software, computer software for accessing, browsing and searching online databases and electronic bulletin boards, data synchronization software, application development software, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction and non-fiction books, comic books, graphic novels, stories in illustrated form and comic

book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products, interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guide, computer instruction manuals, computer manuals, publications relating to technology, digital technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish,

poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages, telephones, mobile phones, videophones, cameras, monitors for television receiver, television receivers [TV sets] and television transmitters, remote controllers for television receiver [TV set], electronic notepads, magnetic data carriers, radio receivers, radio transmitters, video cameras, computer hardware and software, computer software and firmware, namely, operating system programs, data synchronization programs, in the nature of application development tool programs for personal and handheld computers and mobile digital electronic devices, telephony management software, mobile telephone, smartphone and tablet software, telephone-based information retrieval software and hardware, software for the redirection of messages, computer application software for mobile phones, smart phones and tablet devices featuring mobile phone functionality, computer application software and embedded computer application software for mobile phones, smart phones and tablet devices namely, software that enables photos and videos from cameras found on mobile phones, smart phones and tablet devices to be shared in social media for social networking purposes, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks, parts and accessories for handheld and mobile digital electronic devices, parts and accessories for mobile telephones, smartphones and tablets in the nature of covers, cases, cases made of leather or imitations of leather, covers made of cloth or textile materials, batteries, rechargeable batteries, chargers, chargers for electric batteries, data cables, power cables, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers for home, headsets for wireless communication apparatus, personal stereo speaker apparatus, microphones, car audio apparatus, apparatus for connecting and charging portable and handheld digital electronic devices, user manuals in electronically readable,

machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods, parts and fittings for all the aforesaid goods, downloadable software for accessing and managing of computer applications over a global computer network, character recognition software, electronic mail and messaging software, set-top boxes; providing consumer product information via the Internet or other communications networks; computerized on-line ordering services featuring bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, goods of common metal, namely metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, CDs, DVDs and high density optical discs, laptop computers, tablet computers, handheld electronic devices, personal digital assistants, digital music players, mobile telephone, smartphones, digital cameras and digital video cameras, ebook readers, wireless communications devices, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopedic articles, suture materials, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, precious metals and their alloys, jewellery, precious stones, horological and chronometric instruments, musical instruments, fiction and non-fiction books on a variety of topics, series of fiction and non-fiction books, comic books, graphic novels, stories in illustrated form and

comic book stories, storyboards, and artwork, periodicals in the field of comic book stories, storyboards, and artwork, paper, cardboard, printed matter and books, bookbinding material, photographs, stationery, stickers and 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, printed matter in the field of computers, printed matter in the field of tablet computers, printed matter in the field of multi-media products, interactive products and online services, printed publications, books, magazines, newsletters, periodicals, brochures, booklets, pamphlets, manuals, journals, leaflets, greeting cards, advertising and promotional material, catalogues, catalogues relating to computer software, computer brochures, computer handbooks, computer hardware publications, computer hardware reference manuals, computer hardware users guides, computer instruction manuals, computer manuals, publications relating to technology, digital technology and gadgets, catalogues relating to musical apparatus and instruments, catalogues relating to telecommunications apparatus, mobile phones, handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, video, instant messaging, music, audiovisual and other multimedia works, and other digital data, music books, music instruction manuals, music magazines, desk accessories, telephone and address books, agendas, diaries, calendars, posters, mounted and unmounted photographs, printed patterns for T-shirts and sweatshirts, display materials, decals and bumper stickers, booklets for sale with audio tapes, parts and fittings for the aforesaid goods, leather and imitations of leather, and goods made of these materials, namely animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, goods of wood, cork, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely furniture, mirrors, picture frames, baskets, book rests, bottle racks, chopping blocks, coat hooks, containers for storage, cork for bottles, hampers, high chairs for babies, decorative mobiles, placards, trays, pillows, shower curtain hooks, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steelwool, unworked or semi-worked glass, glassware, porcelain and earthenware, textiles and textile goods, bed and table covers, clothing, footwear, headgear, games and playthings, gymnastic and sporting article, decorations for Christmas trees, meat, fish,

poultry and game, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages and alcoholic beverages; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of other on-line vendors; dissemination of advertising for others via an on-line electronic communications network; product merchandising; promoting the goods and services of others through limited availability discount offers via an on-line electronic communications network; subscriptions to books, reviews, or comic books; advertising services, namely, promoting the goods and services of others; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of others; database management services; computerized on-line searching and ordering service featuring movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, and other audiovisual works in the form of videocassettes, compact disks, DVDs, high density optical discs, digital downloads and direct digital transmission apparatus.

Opponent's Mark

Class 5

Napkins (babies') of textile.

Class 14

Jewelry; Jewellery; Precious stones; Horological and chronometric instruments; Alloys of precious metal; Coins; Works of art of precious metal; Jewellery cases or boxes of precious metals; Watch cases, watch straps, watch chains, watch springs or watch glasses; Key rings [trinkets or fobs]; Statues and figurines (statuettes) of precious metal; Cases for watches; Medals.

Class 18

Leather and imitation leather; Animal skins, hides; Trunks and travelling bags; Umbrellas; Parasols; Walking sticks; Whips, harness and saddlery; Wallets; Purses, not of precious metal; Handbags, rucksacks, wheeled shopping bags; Bags for climbers, bags for campers, travelling bags, beach bags, school bags; Vanity cases (not fitted); Collars and covers for animals; Net shopping bags and shopping bags; Bags (envelopes, pouches) of leather, for packaging.

Class 20

Furniture; Showcases (furniture); Frameworks; Works of art of wood, wax, plaster, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics; Clothes hangers and clothes hooks; Chests of drawers; Cushions; Racks; Packaging containers of plastic; Armchairs; Seats; Bedding (not including linen); Mattresses; Funerary urns; Plate racks; Wickerwork; Boxes of wood.

Class 21

Non electric utensils and containers for household purposes or kitchen (neither of precious metal, neither plated); Combs and sponges; Brushes (except paintbrushes); Brush-making materials; Cleaning instruments, hand-operated; Steelwool; Unworked or semi-worked glass (except glass used in building); China ware; Earthenware; Bottles; Works of art, of porcelain, terra-cotta or glass; Statues or figurines (statuettes) of porcelain, terracotta or glass; toiletry utensils or kits; Garbage pails; Glasses (receptacles); Tableware (other than cutlery) not of precious metals; Household or kitchen utensils, of precious metal; Tableware of precious metal.

Class 24

Woven fabrics; Bed and table covers; Fabrics for textile use; Elastic woven material; Velvet; Bed linen; Linens; Table linen, not of paper; Bath linen (except clothing).

Class 25

Clothing; Footwear; Headgear; Shirts; Clothing of leather with guards; Belts (clothing); Furs (clothing); Gloves [clothing]; Scarves; Neckties; Hosiery; Socks; Slippers; Beach shoes, skiing or sports shoes; Underwear.

Class 34

Cigar and cigarette cases of precious metal.

Class 35

Advertising; Business management; Business administration; Office functions; Direct mail advertising; Arranging newspaper subscriptions (for others); Business management and organization consultancy; Accounting; Document reproduction; Employment agencies; Computerised file management; Exhibitions for commercial or advertising purposes; On-line advertising on a computer network; Rental of advertising time on communication media; Publication of advertising copy; Rental of advertising space; Dissemination of advertising matter; Public relations services.

Class 38

Telecommunications; Information about telecommunication; Communications by computer terminals or by fibre optic networks; Radio or telephone communications; Communications by cellular phones; Providing user access to a global computer network (service providers); Electronic advertising services (telecommunications); Providing telecommunications connections to a global computer network; News agencies; Rental of telecommunications apparatus; Radio or television broadcasting; Teleconferencing services; Electronic messaging.