

O/0236/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 3709316

IN THE NAME OF

WISQ INC.

TO REGISTER THE FOLLOWING TRADE MARK:

WISQ

IN CLASSES 9, 35, 38, 42 AND 45

AND

OPPOSITION THERETO (UNDER NO. 433393)

BY

WILHELM SIHN JR. GMBH & CO. KG

BACKGROUND

1) On 12 October 2021, Wisq Inc. ('the applicant') applied to register the word, WISQ, as a trade mark in the UK. The application is made in respect of various goods and services in classes 9, 35, 38, 42 and 45.

2) The application was published in the Trade Marks Journal on 11 February 2022 and notice of opposition was later filed by Wilhelm Sihh jr. GmbH & Co. KG ('the opponent'). The opponent claims that the trade mark application offends under sections 5(2)(b) & 5(4)(a) of the Trade Marks Act 1994 ('the Act'). Both grounds are directed against all goods and services in classes 9, 38 & 42 only, as listed in the table at paragraph 37 of this decision.

3) In support of its grounds under sections 5(2)(b) of the Act, the opponent relies upon the following three trade mark registrations:

- **UKTM 810800000**



Registered for certain goods and services in classes 9, 38 & 42¹

Filing date: 10 January 2013

Date of entry in register: 28 February 2014

- **UKTM 901904796**

¹ As shown in the Annex to this decision.



Registered for certain goods and services in classes 9, 38 & 42²

Filing date: 28 September 2000

Date of entry in register: 16 December 2003

- **UKTM 901904747**

WISI

Registered for certain goods and services in classes 9, 38 & 42³

Filing date: 28 September 2000

Date of entry in register: 18 August 2003

4) It is claimed that the respective goods and services are either identical or highly similar and that the respective marks are similar, such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

5) The trade marks relied upon by the opponent are all 'comparable' marks which are earlier marks, in accordance with section 6 of the Act.⁴ As all of them completed their registration procedure more than five years prior to the application date of the

² As shown in the Annex to this decision.

³ As shown in the Annex to this decision.

⁴ Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs and IR (EU) TMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register and, as a consequence, have the same legal status as if they had been applied for and registered under UK law. A 'comparable trade mark (EU)/IR(EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM/EU(IR)TM from which it derives.

contested mark, they are subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use for all the goods and services covered by each earlier mark.

6) Under section 5(4)(a) of the Act, the opponent relies upon use of the word 'WISI' throughout the UK since 1960. I note that, in answer to Q2 on the relevant section of the Form TM7, which asks 'On which goods or services has the earlier right been used for?' the opponent refers to 'continuation sheet 1' which lists all the applicant's goods and services in classes 9, 38 & 42. This was highlighted by Mr Snell in his skeleton argument and at the main hearing. I will return to this point later in this decision when it becomes necessary to do so. It is claimed that the opponent has generated goodwill, of which the word 'WISI' is distinctive, and that use of the contested mark will result in a misrepresentation and damage to that goodwill.

7) The applicant filed a counterstatement denying the opponent's claims and requesting proof of use for each of the marks relied upon under section 5(2)(b) of the Act.

8) The opponent is represented by Maclachlan IP (formerly known as Ansons). The applicant is represented by Abion UK Limited. Only the opponent filed evidence. This consists of a witness statement from Peter Crust, dated 01 February 2024, with Exhibits EXH1-EXH4 thereto. Although the opponent filed written submissions in lieu of a hearing,⁵ it later opted to attend the hearing which had been requested by the applicant. The hearing took place before me on 12 November 2024. The opponent was represented by Ms Cherrie Stewart of Maclachlan IP; Mr Robert Snell, of Abion UK Limited, represented the applicant.

DECISION

9) The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained

⁵ Dated 22 May 2024

EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. Accordingly, I will refer, in this decision, to decisions of the EU courts which predate the UK's withdrawal from the EU.

Proof of use

10) Section 6A of the Act states:

“(1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) – (5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

11) Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Consequently, the burden lies with the opponent to prove it has made genuine use of its marks.

12) As the earlier marks are all either, comparable marks (EU) or comparable marks (IR(EU)), Schedules 2A and 2B of the Act are also relevant. The relevant part of Schedule 2A of the Act reads, as follows:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union.”

And the relevant part of Schedule 2B of the Act reads, as follows:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (IR), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the “five-year period”) has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding (IR); and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding (IR); and

(b) the references in section 6A to the United Kingdom include the European Union.”

13) In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use:

Ansul at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

14) In relation to framing a fair specification, in *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal stated, as follows:

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved,

are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

15) The relevant period in which genuine use must be established is the five-year period ending on the filing date of the contested mark. In the case before me, that period is **13 October 2016 to 12 October 2021**.

Mr Krust's evidence

16) Mr Krust explains that the WISl group has been active as a system provider for more than nine decades, particularly in the product areas of CATV (I understand this to be an abbreviation for 'Cable television') technology, receiving and distribution technology, mobile communication and high-frequency plug connectors.

17) In the years 2017 to 2021, the following annual net turnover was achieved with products sold in the EU and marked with the trade marks WISI (word) and WISI (figurative):⁶

2017 - in excess of 40.825.744,00 EUR
2018 - in excess of 42.870.017,00 EUR
2019 - in excess of 43.949.611,00 EUR
2020 - in excess of 40.558.361,00 EUR
2021 - in excess of 41.173.616,00 EUR

18) Of those totals, the following annual net turnover was achieved with products sold in the UK bearing the same marks:⁷

2017 - in excess of 411.743,00 EUR
2018 - in excess of 2.136.687,00 EUR
2019 - in excess of 671.608,00 EUR
2020 - in excess of 1.082.322,00 EUR
2021 – in excess of 620.504,00 EUR

19) The annual amounts spent on advertising under the trade marks WISI (word) and WISI (figurative) between 2017 and 2021 were as follows:⁸

2017 – in excess of 527.000,00 EUR
2018 – in excess of 459.000,00 EUR
2019 – in excess of 535.000,00 EUR
2020 – in excess of 165.143,00 EUR
2021 – in excess of 237.407,00 EUR

20) A list of trade shows, exhibitions and fairs in the EU is provided, at which it is said that products bearing the marks WISI (word) and WISI (figurative) have been exhibited in the relevant five-year period. I note that none of these took place in the UK; all but

⁶ Krust, [12]

⁷ Krust, [13]

⁸ Krust, [14]

one took place in Germany, the other is in the Netherlands. I also note that no details are provided about the goods or services that were promoted at these events. It is also not clear whether these events, which all took place outside of the UK, took place before or after IP Completion Day (31 December 2020).⁹

21) Exhibit 1 contains an extract from a WISI catalogue from 2017 in the English language which is said to have been available in the UK. The first page of the catalogue bears the earlier stylised mark. That mark is also present on goods in the catalogue. The word mark, WISI, is also used in relation to goods in the catalogue. The goods are described as headends, antennas, optical platforms, optical components, wall-outlet sockets, taps/splitters, coaxial cables, amplifiers and measuring receivers. Mr Krust also states that the exhibit contains a catalogue from 2019/2020. In fact, the exhibit shows a catalogue dated 2022/2023 which is outside of the relevant period. The latter catalogue is therefore irrelevant.

22) Exhibit 2 consists of extracts from the website www.wisigroup.com from June 2021, captured by the Wayback Machine. Mr Krust points out that the website is in English, and he states that it shows goods and services offered in the UK. There are no images of any goods in this exhibit and the precise nature of the goods and services being offered is somewhat unclear. There is reference to some services such as 'support services', 'consulting and design' and 'product and tech training'. There is a reference to WISI headends where it states "WISI offers two headend systems...", including a "software based headend system..."¹⁰. The latter also bears the mark 'Chameleon'.

23) Exhibit 3 consists of, what Mr Krust states, are advertisements from newspapers and periodicals circulating in the EU between 2017 and 2021. The exhibit contains two publications, both of which are dated 2017; both are also in German. The first publication shows goods bearing the earlier stylised mark which are described as a 'multiswitch'.¹¹ The second publication contains an advert showing the earlier stylised

⁹ Krust, [17]

¹⁰ Page 56

¹¹ Page 62

mark being used on, and in relation to, what appear to be, some kind of multi-switch systems¹² and an optical distribution unit.¹³

24) Exhibit 4 consists of, what Mr Krust states are, images of a limited sample of packaging and goods indicating typical use of the marks on goods and packaging. None of the images are dated. All the goods shown in the exhibit bear the earlier stylised mark or word-only mark. The nature of some of the goods is not entirely clear. However, some of them bear descriptions, including the following: line amplifier, fiber switch, high density optical platform, splitter, multiswitch, programmable filtering coverter. There are also antennas, headends and wall-outlet sockets.

Assessment of the evidence and findings on genuine use

25) I do not accept that the evidence is sufficient to establish genuine use for any of the services relied upon. Although there is some indication on the opponent's website that it offered services such as support services, consulting and design etc., in 2021,¹⁴ there is no other evidence before me showing the provision of any services. The turnover figures and advertising spend also do not assist the opponent on this matter because they are not broken down in any way.

26) Turning the goods relied on, firstly, I am not persuaded by Ms Stewart's submission at the hearing that the use of software within the WISl Chameleon headend system shown in evidence, is use in relation to software as such. The relevant headend system is clearly a piece of hardware; the fact that it uses software to function does not make it software per se.

27) Insofar as the other goods relied on class 9 are concerned, I accept that there is some evidence showing use of both earlier marks in relation to various items of hardware during the relevant period in the relevant territories. Those hardware items all appear to be for enabling the broadcast of cable television such as headends, antennas, wall-outlet sockets, multiswitches, taps/splitters, coaxial cables, amplifiers

¹²Page 64

¹³ Page 65

¹⁴ Exhibit 2

and measuring receivers. That said, the evidence is thin. Some of it is also undated.¹⁵ Therefore, I cannot tell if such evidence is representative of use during the relevant period. Furthermore, it is impossible to gauge the scale of use for any of those particular goods because the advertising and turnover figures are not broken down in any way to show what proportion of those figures relate to different kinds of goods.

28) A further problem for the opponent is that, as I noted above in the evidence summary, the precise dates on which the fairs, exhibitions and trade shows took place is not provided, other than a broad statement that they all took place in the relevant period. That being so, I do not know if they all took place before or after IP Completion Day (31 December 2020). This is relevant because, as none of them took place in the UK, they are not relevant to establishing genuine use if they all took place after IP Completion Day; only use in the UK after that date is relevant. In the absence of any clear explanation from Mr Krust as to precisely when in the relevant period these events took place, this evidence does not assist the opponent. Moreover, no information is given about what goods/services were promoted at those events.

29) As the case law above makes clear, genuine use requires that ‘the use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services’. In my view, the evidence before me is not sufficiently solid to establish that there has been genuine use for any of the goods or services relied upon. My primary finding is, therefore, that the opponent cannot rely upon any of its earlier marks under section 5(2)(b) for want of showing genuine use and the opposition must fail at this point. However, in case I am wrong, I will proceed on the basis that the opponent has shown genuine use for each earlier mark in relation to the following goods only, which constitutes a fair specification:

Class 09: Items of hardware for enabling the broadcast of cable television.

Section 5(2)(b)

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

¹⁵ Exhibit 4 (images of goods)

“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.

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

31) The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

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

Comparison of goods and services

32) All relevant factors relating to the goods and services should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU, Case C-39/97, stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

33) Guidance on this issue has also come from Jacob J, where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

(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.

34) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

“It is true that goods are complementary if 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 that the responsibility for those goods lies with the same undertaking..”

35) In *Sanco SA v OHIM* Case T-249/11, the General Court ('GC') found 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 was 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.”

36) I also bear in mind that in *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch) ('*YouView*'), 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."

37) The goods and services to be compared are, as follows:

Opponent's goods	Applicant's goods and services
<p>Class 09: Items of hardware for enabling the broadcast of cable television.</p>	<p>Class 09: Software; Enterprise software; Software for electronic communications, electronic transmission of multimedia content, forming virtual communities, and providing and receiving feedback from peers; Mobile applications for electronic communications, electronic transmission of multimedia content, forming virtual communities, and providing and receiving feedback from peers; Software for sending and receiving electronic messages; Enterprise communications software; HR software; Enterprise social networking software; Software for personnel and project management; Application software for database management in the field of employee, office, team, organization, and project profiles and information; Search engine software; Software for secure communication and transmission of</p>

	<p>data; Application programming interface (API) software for developing and customizing business computer software applications; Application programming interface (API) software for electronic communication, collaboration, and transmission of data; Software for information sharing; Software for uploading, downloading, and sharing files and content; Software for data analytics; Communications software for peer-to-peer communication and collaboration.</p> <p>Class 38: Telecommunications services; Electronic messaging services; Electronic, electric, and digital transmission of voice, data, images, signals, and messages; Transmission of messages; Transmission of data; Message sending, receiving and forwarding; Electronic mail services; Instant messaging services; Electronic communication and collaboration services; Providing private and secure electronic communication over a computer network; Voice over internet protocol services; Providing audio and video chat services; Providing online chat rooms and electronic bulletin boards for transmission of messages, announcements, events, and information</p>
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	<p>among users on a wide variety of general interest topics.</p> <p>Class 42: Providing temporary use of non-downloadable software; Platform as a service (PAAS); Software as a service (SAAS); Non-downloadable enterprise software; Providing temporary use of non-downloadable enterprise software for electronic communications, human resources, virtual communities, and information technology; On-line non-downloadable software for sending and receiving electronic messages; Platform as a service (PAAS) featuring computer software platforms for electronic communications, human resources, and information technology, electronic transmission of multimedia content, forming virtual communities, and providing and receiving feedback from peers; Platform as a service (PAAS) featuring computer software platforms for use in secure communication and collaboration; Software as a service (SAAS) services featuring software for electronic communications, human resources, and information technology, electronic transmission of multimedia content, forming virtual communities, and providing and receiving feedback from peers; Software as a service (SaaS) services featuring non-downloadable</p>
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	<p>software for database management in the field of employee, office, team, organization, and project profiles and information; Software as a service (SAAS) services featuring software for information sharing; Software as a service (SAAS) featuring software for uploading, downloading, and sharing files and content; Software as a Service (SaaS) featuring online non-downloadable computer search engine software; Software as a service (SAAS) featuring application programming interface (API) software for developing and customizing business computer software applications; File sharing services, namely, providing a website featuring technology enabling users to upload and download electronic files; Providing a website that features technology that enables users to securely exchange of information; Providing a website featuring technology that enables users to create profiles, join or create groups or subgroups, and upload, share, and discuss multimedia content; Computer services namely remote management of information technology (IT) systems of others comprised of software applications and platforms, enterprise software, and electronic messaging apparatus; Computer services, namely, creating an</p>
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	<p>on-line community for registered users to participate in discussions, form virtual communities, share multimedia content, and get feedback from their peers, and engage in social and business networking; Providing a website that gives users the ability to review various print, photographic, graphic image, and audio and video content and utilize a custom template to provide input, likes, dislikes, edits, changes, modifications, opinions, suggestions, and comments and engage in social, business and community networking; Data services; Data services in the nature of hosting of software as a service (SAAS); Design, development, implementation, customization, and configuration of computer software for others; Computer technical support services; Computer technology consultancy in the field of software application development, electronic communications, and business collaboration; Software as a service (SAAS) featuring software for data analytics.</p>
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38) For reasons which will become apparent, I will begin by considering the similarity between the opponent's goods and the applicant's 'software' in class 09 and 'telecommunications services' in class 38.

39) The applicant's 'software' is a broad term which includes telecommunications software. The respective goods are different in nature and purpose. However, the

users and trade channels may be the same and there may a complementary relationship in play as the applicant's software may be important for the use of the opponent's goods in such a way that the average consumer believes that they come from the same source. I find a medium degree of similarity between the opponent's goods and the applicant's 'software'.

40) Turning to the applicant's 'telecommunications services', these obviously differ in nature to the opponent's goods. Their methods of use and purpose are also not the same. However, users and trade channels may be the same or overlap. The goods and services are not in competition. There may, though, be some complementary in the sense described in the case law. I find a low degree of similarity between the opponent's goods and the applicant's 'telecommunications services'.

41) It is not obvious to me that there is any greater degree of similarity between the opponent's goods with any of the rest of the applicant's goods and services and there are no submissions or evidence before me to persuade me otherwise. It follows that, if the opponent fails against 'software' and 'telecommunications', it will also fail against all other goods and services. I proceed accordingly.

Average consumer and the purchasing process

42) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

43) In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

44) Neither party has made any submissions about the identity of the average consumer or the level of attention that is likely to be paid. In my view, the average consumer for the goods and services at issue includes businesses and the general public. The purchasing act will be primarily visual. That is not to say, though, that the aural aspect should be ignored because the goods and services may sometimes be the subject of discussions with sales representatives, for example. The average consumer may take in to account various factors when selecting the relevant goods/services. Generally speaking, I would expect the level of attention paid during the purchase to be medium, whether the consumer is a business or a member of the general public. For the avoidance of doubt, these findings apply to all the goods and

services at issue (i.e. the opponent's goods and all the contested goods and services in classes 09, 38 and 42).

Comparison of marks

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

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

46) I will first compare the contested mark with the earlier word-only mark. The marks are, as follows:

WISI v WISQ

47) Neither mark lends itself to deconstruction into separate elements; their respective overall impressions are based solely on the single word of which they are comprised.

48) Both marks consist of four letters, the first three of which are identical. However, the fourth letter in the earlier mark is 'l' and in the contested mark the fourth letter is 'Q'; those letters, of themselves, are very different to look at. Whilst I bear in mind the tendency for consumers to pay more attention to the beginning of marks, that is no more than a general rule of thumb; it is not an immutable rule. It is also the case that, where both marks are short words, a change of just a single letter can have a substantial impact on the overall visual similarity even when it is positioned at the end; I find that to be the case here. In my view, the difference in the fourth letters is striking on the eye, notwithstanding the first three letters being the same. There is no more than a medium degree of visual similarity between the marks.

49) Aurally, the contested mark is likely to be pronounced as 'WHISK'. The earlier mark could be pronounced in one of various ways. It could be pronounced as 'WHIZ-EE' or 'WHIS-EE' (both being where the 'l' is short, as in 'whisper') or it may be pronounced as 'WHY-SEE' or 'WHY-SIGH'. Whichever way the earlier mark is pronounced, it clearly has two syllables whereas the contested mark has only one syllable. Given the various ways in which the earlier mark could be vocalised, I will proceed on the basis most favourable to the opponent, which is that it's mark will be pronounced as 'WHIS-EE'. In those circumstances, the first syllable of the earlier mark is highly similar to the only syllable in the contested mark. However, the second syllable in the earlier mark has no counterpart in the contested mark. At the hearing, Ms Stewart submitted that consumers tend to slur the end of words. Even allowing for any potential slurring of either of the marks before me, I find that there is no more than a medium degree of aural similarity between them.

50) Both marks appear to be invented words with neither sending any immediately graspable conceptual message. The conceptual position is neutral.

51) I now turn to consider the similarity between the contested mark and the earlier stylised marks. As the opponent's stylised marks are identical save for one being in black and white and the other in colour, I will use the black and white mark for the purposes of the comparison as the coloured version clearly offers no stronger prospect of success. For the avoidance of doubt, all my findings from hereon in, as regards the earlier black and white mark, will apply equally to the earlier coloured mark.

52) The marks to be compared are:



v WISQ

53) As stated earlier, the overall impression of WISQ lies in the word itself. The overall impression of the earlier stylised mark is dominated by the word WISI with the circular device element on a square background playing a lesser role.

54) Visually, the similarity between the word itself in the earlier mark and the contested mark is the same as my finding above in paragraph 48 for the reasons given therein. There is also the additional difference here created by the circular device element on a square background which is not present in the contested mark. Overall, there is a below-medium degree of visual similarity between the marks.

55) Aurally and conceptually, the same findings apply here as for the earlier word mark given that the device element of the earlier stylised mark will not be vocalised and it does not evoke any clear concept. There is no more than a medium degree of aural similarity and the conceptual position is neutral.

Distinctive character of the earlier marks

56) The distinctive character of each earlier mark must be considered. The more distinctive each of them is, either by inherent nature or by use, the greater the likelihood of confusion between each of them and the contested mark (*Sabel BV v Puma AG*). 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 C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

57) Inherently, WISI appears to be an invented word. As such, it neither describes nor alludes to the relevant earlier goods in any way. I find that the earlier word mark has a high degree of inherent distinctiveness. The earlier stylised mark also contains the word WISI together with a circular device element on a square background. That mark is also inherently high in distinctiveness.

58) Bearing in mind my earlier observations on the opponent’s evidence, it falls far short of establishing enhanced distinctiveness through use.

Likelihood of confusion

59) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods and services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the

earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

60) I remind myself of my earlier findings which were, as follows:

- In respect of the earlier word mark, there is no more than a medium degree of visual and aural similarity and the conceptual position is neutral.
- In respect of the earlier stylised mark, the degree of visual similarity with the contested mark is below-medium, there is no more than a medium degree of aural similarity and the conceptual position is neutral.
- There is a medium degree of similarity between the opponent's goods and the applicant's 'software' and a low degree of similarity with 'telecommunications services'.
- The average consumer includes both businesses and the general public. Both types of consumer are likely to pay a medium degree of attention during a mainly visual purchase, although the aural aspect is borne in mind.
- Both earlier marks have a high degree of inherent distinctiveness which has not been enhanced through use.

Weighing all these factors, and while I give due regard to the potential for imperfect recollection, I do not consider either of the earlier marks to be similar enough to the contested mark to be mistaken for each other. There is no likelihood of direct confusion. I would have reached the same conclusion even if I had found a high degree of similarity between any of the respective goods and services.

61) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it

is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

62) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Furthermore, it is not sufficient that a mark merely calls to mind

another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

63) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

64) I can see no proper basis for concluding that the consumer is likely to believe that the goods or services covered by the contested mark come from the same/linked undertaking(s) as the goods covered by either earlier mark. The contested mark does not appear to be an entirely logical brand extension of either earlier mark. Nor does the contested mark simply add a non-distinctive element(s) to either earlier mark. Furthermore, this is not a case where the contested mark shares a common element with either earlier mark which is 'so strikingly distinctive'. I also cannot see any other basis for concluding that the average consumer is likely to be indirectly confused. Again, I would have reached the same conclusion even if I had found a high degree of similarity between any of the respective goods and services.

65) Bearing in mind my earlier comments at paragraph 41, there is no likelihood confusion with any of the contested goods and services. **The opposition under section 5(2)(b) of the Act fails.**

Section 5(4)(a)

66) Section 5(4)(a) states:

"A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

67) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

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

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Goodwill

68) The opponent must show that it had the necessary goodwill in the UK at the filing date of the contested mark, being 12 October 2021. Bearing in mind my earlier observations on the opponent’s evidence, I come to the view that the opponent has not established the requisite goodwill in the UK. However, in case I am wrong about that, and the requisite goodwill did exist in the opponent’s business associated with the sign ‘WISI’ at the relevant date, I will continue on the basis that such goodwill was in relation to items of hardware for enabling the transmission of cable television only.

69) At this point, it is necessary to return to the point I made earlier, when setting out the pleadings in this case. It will be recalled that the list of goods and services provided by the opponent under this section of the Act, for which the earlier right is said to have been used for, are the same as those covered by the applicant’s mark. None of those

listed goods cover items of hardware for enabling the transmission of cable television. Mr Snell pointed this out at the hearing and submitted that the opponent's case of passing off must therefore fail at the first hurdle because the pleaded case does not cover the goods for which any goodwill has been shown. I am inclined to agree with Mr Snell that the opponent's case under section 5(4)(a) must fail for that reason alone, particularly since Ms Stewart had the opportunity to respond to this point at the hearing and did not do so. However, in case I am wrong, I will go on to assess misrepresentation on the basis that this should be viewed as an obvious oversight by the opponent and that it did in fact mean to list the same goods and services as those covered by its own earlier registered marks.

Misrepresentation

70) I recognise that the test for misrepresentation is different to that for a likelihood of confusion because misrepresentation requires "*a substantial number of members of the public are deceived*" rather than considering whether the "*average consumer is confused*". However, as recognised by Lewinson L.J. in *Marks and Spencer PLC v Interflora*, [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. I believe that to be the case here. I find that the opponent is in no stronger position under section 5(4)(a) than it was under section 5(2)(b). This is because, even accepting that: i) the opponent had the requisite goodwill at the relevant date in a business providing items of hardware for enabling the transmission of cable television, ii) the sign relied upon was distinctive of that goodwill, and iii) the parties are in a similar field of activity, the earlier sign is simply not similar enough to the contested mark to result in a likelihood of a substantial number of the opponent's customers/potential customers being deceived into purchasing any of the applicant's goods or services in the belief that they are the responsibility of the opponent. Misrepresentation is not made out. Without misrepresentation, there can be no damage. **The opposition under section 5(4)(a) of the Act fails.**

OVERALL OUTCOME

71) **The opposition fails.**

COSTS

72) The applicant has been successful and is entitled to an award of costs. These proceedings were launched in 2022. Therefore, the relevant guidance is provided in Tribunal Practice Notice 2/2016. I award the applicant costs on the following basis:

Preparing a statement and considering the other side's statement	£300
Preparing for and attending the hearing	£600
Total:	£900

73) I order Wilhelm Sihh jr. GmbH & Co. KG to pay Wisq Inc. the sum of **£900**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 19th day of March 2026

**Beverley Hedley,
For the Registrar**

ANNEX

Goods and services covered by earlier mark 901904747:

Class 09: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; electric, electrotechnical and electronic equipment, apparatus, instruments and components, included in class 9; equipment, apparatus, instruments and components for message sending and telecommunications technology; transmitting and receiving apparatus and equipment, including the aforesaid goods for satellite communications; radio-link apparatus; aerials of all kinds, in particular terrestrial aerials, aerials for satellite communications, ultrashort-wave aerials, radio and television aerials, car aerials, aerials for portable radio equipment and receivers, GPS aerials, mobile radiotelecommunication aerials, common aerials; leads for aerials; feeder devices for aerials; aerial measuring apparatus, aerial masts; amplifiers, in particular aerial amplifiers, circuit amplifiers, multirange amplifiers, split-band amplifiers and distributing amplifiers; frequency converters; relays; mains apparatus; electric commutators and apparatus for commutation, cycle control timer switches; devices for conducting electric current, electric cables, in particular coaxial cables; wave guides; balancing networks, electric distributors, attenuators, switches and filters, branch boxes and junction boxes, electric sockets, bushes, couplings and connectors, in particular high frequency sockets and connectors for coaxial cables; cable connectors; shielding and protective devices for electric and electronic purposes, in particular weatherproof housings and lightning protection apparatus; video communications systems, in particular mobile video communications systems; radio-relay systems, in particular audio/video radio-relay systems; apparatus and devices for optical transmission technology, in particular transmitters, receivers, cables, filters, distributors, couplers and frequency generators; equipment for network management and network monitoring, in particular in CATV installations; apparatus for recording, transmission and reproduction of sound and/or images and/or data, data carriers, data processing equipment and computers, programs for data processing equipment and computers, in particular planning software; aerial installations manufactured using the aforesaid

goods, in particular common aerial installations; auxiliary materials for installing, fastening, adjusting and positioning the aforesaid goods; parts and fittings for the aforesaid goods, included in class 9.

Class 38: Telecommunications; Rental of message sending apparatus; Information about telecommunication; Rental of message sending apparatus; Rental of telecommunications equipment and apparatus.

Class 42: Computer programming, in particular in the field of communications technology, telecommunications, aerial erection, amplifier technology, satellite receiver and transmitter installations, radio installations, in particular mobile video-radio installations; technical consultancy, for others; design, planning and development of installations and devices in the field of communications technology, telecommunications, electrical engineering and electronics.

Goods and services covered by earlier mark 901904796:

Class 09: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; electric, electrotechnical and electronic equipment, apparatus, instruments and components, included in class 9; equipment, apparatus, instruments and components for message sending and telecommunications technology; transmitting and receiving apparatus and equipment, including the aforesaid goods for satellite communications; radio-link apparatus; aerials of all kinds, in particular terrestrial aerials, aerials for satellite communications, ultrashort-wave aerials, radio and television aerials, car aerials, aerials for portable radio equipment and receivers, GPS aerials, mobile radiotelecommunication aerials, common aerials; leads for aerials; feeder devices for aerials; aerial measuring apparatus, aerial masts; amplifiers, in particular aerial amplifiers, circuit amplifiers, multirange amplifiers, split-band amplifiers and distributing amplifiers; frequency converters; relays; mains apparatus; electric commutators and apparatus for commutation, cycle control timer switches; devices for conducting electric current, electric cables, in particular coaxial cables; wave guides; balancing networks, electric distributors, attenuators, switches and filters, branch boxes and junction boxes, electric sockets, bushes, couplings and connectors, in particular high frequency

sockets and connectors for coaxial cables; cable connectors; shielding and protective devices for electric and electronic purposes, in particular weatherproof housings and lightning protection apparatus; video communications systems, in particular mobile video communications systems; radio-relay systems, in particular audio/video radio-relay systems; apparatus and devices for optical transmission technology, in particular transmitters, receivers, cables, filters, distributors, couplers and frequency generators; equipment for network management and network monitoring, in particular in CATV installations; apparatus for recording, transmission and reproduction of sound and/or images and/or data, data carriers, data processing equipment and computers, programs for data processing equipment and computers, in particular planning software; aerial installations manufactured using the aforesaid goods, in particular common aerial installations; auxiliary materials for installing, fastening, adjusting and positioning the aforesaid goods; parts and accessories for the aforesaid goods, included in class 9.

Class 38: Telecommunications; Information about telecommunication; Rental of message sending apparatus; Rental of message sending apparatus; Rental of telecommunications equipment and apparatus.

Class 42: Computer programming in particular in the field of communications technology, telecommunications, masts, amplifier technology, satellite receiver and transmitter installations, radio receiver and transmitter installations, in particular video communications system receivers and transmitters, optical message transmission technology; technical consultancy, for others; design, planning and development of installations and devices in the field of communications technology, telecommunications, electrical engineering and electronics.

Goods and services covered by earlier mark 810800000:

Class 09: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; electrical, electrotechnical and electronic devices, apparatus, instruments and components, as far as included in this class; devices, apparatus, instruments and components for telecommunication technologies, broadcasting, transmitting of messages and information; electrical and electronic

devices, apparatus, instruments and components for the transmission of information and messages and for telecommunication; transmitters and receivers and installations and equipment comprising such items, including those for satellite transmission; radio link devices, apparatus, instruments, components, and installations and equipment comprising such items; antennas of all kinds, terrestrial antennas, antennas for satellite transmission, ultra-short wave antennas, radio broadcast and television antennas, antennas for cars, antennas for portable radio transmitters and receivers, GPS-antennas, antennas for mobile communication, communal antennas; down-leads and lead-ins for antennas; electrical and electronic feeding devices, instruments, apparatus and components and installations and equipment comprising such items for antennas; antenna meters, antenna masts; amplifiers, antenna amplifiers, line amplifiers, multiband amplifiers, split-band amplifiers and distribution amplifiers; frequency converters; relays; power supplies; electrical switches and switching devices and equipment, programmed switching devices; devices for the conduction of electricity, electrical cables, especially co-axial cables; wave guides; transformers, electrical distributors, attenuators, dividers and filters, connectors, distribution sockets and connection sockets, electrical plugs, female plugs, coupler plugs and connections, especially radio frequency plugs and connections for co-axial cables; cable connectors; shielding and protection devices and installations and equipment comprising such devices for electrical and electrotechnical purposes, weather proof housings and lighting protecting devices; video and television transmission systems, mobile radio and television transmission devices; radio link devices, apparatus, instruments, and systems and equipment comprising such items, especially audio/video-radio link systems; devices, apparatus, instruments, components, and installations and equipment comprising such items for optical transmission technology; transmitters, receivers, cables, filters, distributors, couplers and frequency generators for optical transmission technology; devices, apparatus, instruments, and components as well as systems and equipment comprising such items, for network management and network monitoring; devices for CATV-systems; apparatus and devices for recording, transmission and reproduction of sound and/or image and/or data; data carriers, data processing equipment and computers, programmes for data processing equipment and computers; software for designing telecommunication devices and systems; antenna systems and equipment employing the afore-mentioned goods,

especially communal antenna systems and equipment; parts and components of the aforementioned goods, as far as included in this class.

Class 38: Telecommunications.

Class 42: Conception, design and realization of programmes for data processing and information processing, especially in the fields of communication engineering, of telecommunications, of the production of antennas, of amplifier technology, of satellite receivers and transmitters, of radio transmission systems, of mobile television transmission systems, of optical transmission technology; technical consultancy of a third party; conception, design, planning and development of systems and equipment in the field of communication engineering, of telecommunications, of electrical engineering and of electronics.