

O/0317/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. UK00003908739
IN THE NAME OF TADO GMBH FOR THE TRADE MARK:**

tado

IN CLASSES 9, 37 & 39

AND AN OPPOSITION THERETO UNDER NO. 441998

AND

**IN THE MATTER OF TRADE MARK REGISTRATION NO. UK00911184991
IN THE NAME OF TADO GMBH FOR THE TRADE MARK:**

tado

IN CLASSES 9, 35 & 42

**AND AN APPLICATION FOR REVOCATION ON THE GROUNDS
OF NON-USE UNDER NO. 506317**

**BOTH BY
TP-LINK CORPORATION LIMITED**

BACKGROUND AND PLEADINGS

1. This decision covers an opposition and an application for revocation brought by TP-LINK CORPORATION LIMITED (“TP-Link”) against a trade mark application and a trade mark registration in the name tado GmbH (“tado”). I will summarise the proceedings separately below.

The opposition

2. On 6 May 2023, tado applied for the first trade mark shown on the cover of this decision (“the opposed mark”) for the goods and services set out in **Annex 1** of this decision.
3. The opposed mark was published for opposition purposes on 19 May 2023 and was subsequently opposed by TP-Link. The opposition is based on sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) and is reliant upon the following trade marks:

Tapo

UK registration no. 918108026¹

Filing date 14 August 2019; registration date 11 February 2020

Relying on all goods and services, namely those set out in **Annex 2** of this decision: (“TP-Link’s first mark”); and

Tapo

UK registration no. 3799475

¹TP-Link’s first mark is a comparable mark based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

Filing date 15 June 2022; registration date 16 September 2022

Relying on all goods and services, namely those set out in **Annex 3** of this decision: (“TP-Link’s second mark”).

4. By virtue of relying on the section 5(2)(b) ground, TP-Link claims that the marks at issue are similar and that the goods and services at issue are identical and/or similar, leading to a likelihood of confusion.
5. Under the section 5(3) ground, TP-Link initially claimed to enjoy a reputation in all of the goods and services for which its marks are registered. However, in its skeleton argument, it referred only to a subset of reputed goods and services. It is noted that notice of opposition covering this ground is bare and no reasons are given as to why there is a risk that any of the three heads of damage would occur as a result of the opposed mark being used. This is a potential issue for TP-Link in the event that I conclude that its marks enjoy a reputation and that there exists a link between the marks, a point I will discuss further on in my decision.
6. Tado filed a counterstatement wherein it denied the claims against it.

The revocation application

7. Tado is the registered proprietor of the UK trade mark numbered 911184991, which is the second mark shown on the cover page of this decision (“the contested mark”).² The contested mark was applied for on 13 September 2012 and was registered on 12 April 2013. It stands registration for the goods and services set out in **Annex 4** of this decision.
8. On 18 July 2023, the contested mark was subject to an application for revocation on grounds of non-use brought by TP-Link, which is brought under sections 46(1)(a) and 46(1)(b) of the Act. TP-Link is seeking to revoke the contested mark on the basis that it has not been used over two five year periods. The five year

² The contested mark, like TP-Link’s first mark, is a comparable mark based on an earlier EUTM owned by tado. Therefore, the comments made at footnote one are applicable here.

period for which non-use is claimed under the section 46(1)(a) ground is 13 April 2013 to 12 April 2018, with an effective revocation date of 13 April 2018. The five year period for which non-use is claimed under the section 46(1)(b) ground is 18 July 2018 to 17 July 2023, with an effective revocation date of 18 July 2023.

9. Tado filed a counterstatement wherein it claimed to have genuinely used its mark in respect of only some of the goods and services for which it is registered. I will set these out in further detail below.
10. Upon the filing of the counterstatements in the opposition and revocation application, the Tribunal consolidated the proceedings in accordance with the powers vested in it by Rule 62 of the Trade Marks Rules 2008. This was communicated to the parties on 3 November 2023.
11. Both parties filed evidence in chief with tado also filing submissions alongside its evidence. Tado also elected to file submissions in reply. A hearing took place before me on 24 February 2026, by video conference. TP-Link was represented by Ms Becky Knott of Hogarth Chambers, as instructed by Barker Bretell LLP, who have represented TP-Link throughout these proceedings. Tado was represented by Mr Andrew Marsden of Wilson Gunn, who have represented tado throughout these proceedings.
12. 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

13. TP-Link's evidence came in the form of the witness statement of Jun Hou dated 2 January 2024. Jun Hou is the Finance Manager of TP-Link, a position they have

held since 9 January 2025. Jun Hou's witness statement is accompanied by seven exhibits, being MH1 to MH7, and was adduced in order to demonstrate that TP-Link enjoys a reputation in the marks relied upon.

14. Tado's evidence came in the form of the witness statement of Mr Andrew Marsden dated 7 February 2024. Mr Marsden is, as above, tado's representative and is, therefore, duly authorised to file evidence on its behalf. His statement is accompanied by 10 exhibits, labelled AM1 to AM10, and was adduced in order to demonstrate that tado has used its mark during the relevant periods.

15. I will refer to points from the evidence or submissions where necessary.

DECISION

My approach

16. Neither set of proceedings impact upon the other and, as such, it does not matter which I begin with. Given how I have set out the respective proceedings above, I will begin with the opposition.

THE OPPOSITION

Section 5(2)(b): legislation and case law

17. Section 5(2)(b) of the Act reads as follows:

“(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 or association with the earlier trade mark.”

18. Section 5A of the Act states as follows:

“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.”

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

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

(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.”

20. Given their filing dates, TP-Link's marks qualify as earlier trade marks in accordance with section 6 of the Act. Neither of these marks completed their registration process more than five years prior to the filing date of the opposed mark, meaning that the use provisions as set out in section 6A of the Act do not apply. The consequence of this is that TP-Link may rely on all of the goods and services identified in its notice of opposition.

21. 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 Pairs 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

22. The goods and services at issue under the present ground are set out in annexes 1 to 3.

23. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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”.

24. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (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.

25. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court 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 für 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.”

26. In her skeleton argument filed prior to hearing, Ms Knott included an annex setting out, side-by-side, tado’s goods and services alongside which of its own goods and services it considered to represent its best case. This document was a considerable point of focus for both parties at the hearing and given the size and nature of the specifications at issue, I am grateful to Ms Knott for providing it.

27. In respect of tado’s position with regard to the goods and services comparison, it is noted that Mr Marsden made some concessions as to identity and similarity on tado’s behalf. I will deal with these where necessary below.

Class 9

*Wall box for electric vehicles; Electronic control devices for charging an electric vehicle; Electronic devices for charging an electric vehicle using a photovoltaic system.*³

28. TP-Link’s position regarding the above goods is that they are highly similar to a range of its own class 9 goods in its first mark’s specification. Having considered the various goods highlighted, it is my view that TP-Link’s best case lies in the term “electrical plug device enabling connection and disconnection of power and/or control cables”. I say this because TP-Link’s term is sufficiently broad enough to cover devices (be they powered by the electrical grid or electricity from a photovoltaic system) such as those affixed to the side of a home that a resident will plug one end of a charge cable into, with the other end placed into the vehicle. Such a term can also be defined as a wall box for electric vehicle or an electronic control device for charging an electric vehicle. Despite the fact TP-Link’s term covers the above, I remind myself that TP-Link’s position is that they are only similar to a high degree and I shall proceed on that basis.

³ The latter term was subject to a concession at the hearing that it is similar to a low degree with TP-Link’s “solar charging panel”. While noted, I consider that the more appropriate comparator lies here.

Charging stations for electric vehicles.

29. TP-Link's position in respect of the above term is the same as it was for those terms discussed immediately above. While noted, this term cannot be said to cover the same type of goods, hence the separate comparison. This is because this term is a large charger station as opposed to a simple plug device. That being said, I consider that TP-Link's term of "electrical plug device enabling connection and disconnection of power and/or control cables" in its first mark is the best comparator. While these goods are not the same, they do share nature (being electrical devices), method of use (both will ultimately involve the connection of cables to a vehicle) and purpose (to charge a vehicle). Further, I consider that there is an overlap in trade channels as a provider of a charging box for personal use at home (as covered by TP-Link's term) will also provide larger charging stations. Lastly, the goods overlap in user as someone looking to charge their car will likely do so both at home and at charging stations. As such, I find that these goods are highly similar.

Home energy stores for charging an electric vehicle, for self-use and/or feeding into the grid.

30. TP-Link claims that the above term is highly similar to the same range of terms that it does for the other goods discussed in the preceding paragraph. It is my view that the best comparator of these goods is "electricity router for managing and optimizing energy loads within a building" in its first mark's specification. Home energy stores will, as far as I am aware, be large batteries placed in users' homes in order to collect electricity (be that from the grid during off-peak hours or from solar panels), store it and then dispense it to charge a vehicle. I do not consider that TP-Link's term covers the same good as it is used to manage and optimise energy as opposed to storing it. As such, the natures, methods of use and purpose differ. However, there is an overlap in trade channels and users as someone with a home energy storage unit is likely to also have a router for managing and optimising said energy and both of these goods are likely to be sought from the

same undertaking. Further, the goods are complementary as I consider that the router is important to the home energy storage as it will safely direct the energy to where it is required and this relationship is such that will lead consumers to believe they originate from the same undertaking.⁴ Overall, I consider that these goods are similar to a medium degree.

Control devices and systems for charging an energy store using a photovoltaic system and for removing energy from the energy store for charging an electric vehicle.

31. Much like the term I highlighted at footnote 3 above, this was subject to a concession of low similarity with “solar charging panel” in TP-Link’s second mark’s specification. However, I consider that the above term is better suited to a comparison with “electricity router for managing and optimizing energy loads within a building” in TP-Link’s specification, which TP-Link claims is highly similar to the above. The above term covers devices (that could be electric routers) that are used to control an energy storage system that is powered by solar panels. The control aspect of this product is, in my view, the same as its management and optimisation on the basis that the user will control the system in order to manage and optimise it. As a result, despite being worded differently, I consider that these goods are identical because TP-Link’s term falls within tado’s. However, given that TP-Link’s position is that the goods are highly similar, I will proceed on that basis.

Photovoltaic installations and systems, in particular for roof installation; Electricity generation systems and installations using renewable energy sources.

32. TP-Link’s position is that the above terms are identical to the term of “solar charging panels” in its second mark’s specification. At the hearing, tado suggested that there was a slight overlap between such goods (in making this concession, it referred broadly to ‘some of the photovoltaic installations’) but only to a low degree. I disagree because I consider that solar charging panels are photovoltaic electricity generation installations that use renewable energy. As such, I find that the above

⁴ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

goods of tado encompass TP-Link's goods meaning that they are identical under the principle outlined in *Meric*.

Inverters for photovoltaic installations; Feed-in systems for photovoltaic installations;

33. TP-Link claims that these goods are highly similar to the term of "solar charging panels" in its second mark's specification. While tado made a concession as to slight similarity between some of the photovoltaic installations and TP-Link's solar panels, I do not consider that it applies to these terms as the above goods are merely parts of installations as opposed to being installations themselves. That being said, I still consider that there is a degree of similarity between these goods. This is because while their natures and methods of use differ, there is an overlap in purpose on the basis that the above terms aim to provide for the operation of a photovoltaic system and the same can be said for solar charging panels. The trade channels overlap too because a provider of the above terms is also likely to provide the panels themselves. Further, the user will be the same, i.e. someone looking to install a photovoltaic system. Lastly, in terms of complementarity, I accept that both parties' goods are important to photovoltaic systems. However, I am not convinced that they are important to each other. Overall, I find that these goods are similar to a medium degree.

Energy storage devices for storing electrical or thermal energy.

34. At the hearing, Mr Marsden stated that there was, arguably, an overlap between the solar panel goods of TP-Link and tado's goods that are energy storage devices for storing electrical or thermal energy. It was submitted that, for those goods, perhaps tado may not succeed. To me, these comments can be said to be a concession that the goods discussed (which, in my view, cover the above term) are identical under the principle outlined in *Meric*. I will proceed on this basis but, even if this is not to be taken as a concession of identity, the goods are still similar to at least a medium degree on the basis that there is an overlap in trade channels and user and because they are complementary to one another.

Home energy management systems that are device-based, cloud-based and/or based on downloadable smartphone software; downloadable smartphone software and/or server/computer applications for controlling electric vehicle charging stations, electric vehicle charging controllers, energy storage devices, home energy storage devices, energy storage charging controllers, photovoltaic systems, electricity generation systems and/or home energy management systems.

35. TP-Link argues that the above goods are identical to a range of its own software products, including (but not limited to) “computer application software for mobile phones, tablets”. As TP-Link’s term is broad enough to cover software for the same purposes as covered by tado’s goods, I agree. As such, I find that the above terms of tado fall within TP-Link’s goods meaning that they are identical under the principle outlined in *Meric*.

Class 37

Rental, installation, sale and/or maintenance of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, [...] electricity generation systems, home energy management systems; charging electric vehicles.

36. In discussing the above terms, TP-Link claims that they are similar to a medium degree with a range of its own class 9 goods. Those terms include “electrical plug device enabling connection and disconnection of power and/or control cables” and “electricity router for managing and optimizing energy loads within a building” in TP-Link’s first mark. As discussed above, these can cover electric charging plug points as well as parts of home energy storage systems. While the nature, method of use and purpose of these goods and services differ, I consider that there is an overlap in trade channels and user. I say this because the provider of TP-Link’s goods is likely to offer the rental, installation, sale and/or maintenance of the same. Further, those seeking the goods are likely to seek the above services in respect of the same. The goods and services are clearly not competitive but I do appreciate that there is a degree of complementarity between them. I say this because the

goods are important to the overall systems being rented, installed, sold or maintained. This relationship is such that consumers will believe they originate from the same undertaking. Taking all of this into account, I find that these goods and services are similar to a medium degree.

Rental, installation, sale and/or maintenance of [...] photovoltaic installations.

37. TP-Link claims that the above term is similar to a medium degree with its own “solar charging panels” in its second mark’s specification. These goods and services, whilst differing in nature, method of use and purpose, overlap in trade channels. I say this because a solar charging panel provider is likely to offer the rental, installation, sale and/or maintenance of the overall photovoltaic system being installed. Further, the goods and services will be sought by the same user. Lastly, solar charging panels are important to the installation services for photovoltaic installations on the basis that they are an integral part of the set up. Such a relationship is sufficient to lead consumers to believe that the goods and services originate from the same undertaking. As such, I agree with TP-Link in that these goods and services are similar to a medium degree.

Class 39

Supply of electricity and/or gas, in particular supply of electricity and/or gas to private households, companies or other facilities; offering electricity and gas tariffs for providing electricity and heating energy; Remote control for the sale of electrical energy or for the delivery of electrical energy from an energy store or a power generation plant to an external power supply network.

38. TP-Link claims that the above services are similar to a low degree with a range of class 9 goods in its first mark’s specification or that they are similar to a medium degree with a range of software goods in that same mark’s specification, including “computer application software for mobile phones, tablets”. In addition, TP-Link claims that the above are similar to the terms of “power supplies and battery back-

ups for power supplies, and computer software to assist in preparing specification for architect” in its second mark’s specification.

39. I am of the view that TP-Link’s best case lies with the claim that the above services are similar to the computer software goods in its first mark’s specification. This is because TP-Link’s term can cover a wide range of mobile phone apps for differing purposes, including those that relate to a user’s power supply. For example, it is common in the trade for energy providers to offer downloadable apps so users can view their accounts and review their energy uses. Clearly, the goods and services differ in nature and method of use. In terms of purpose, the app may be used to access the user’s energy account but it does not control the actual provision of the same, meaning that the purposes differ. In terms of trade channels, I consider it is common in the trade for energy supplies to provide downloadable apps and, clearly, those apps will be used by the same user as those seeking tado’s services. Having said that, I consider that the findings of Mr Iain Purvis K.C., sitting as a deputy High Court judge, at paragraph 24 of *Unicorn Studio Inc v Veronese* [2024] EWHC 1098 (Ch) are applicable here. In that case, Mr Purvis K.C. set out that the comparison of goods and services is not merely a tick-box exercise and that a Hearing Officer should take a step back and apply common sense to the overall question of a comparison of the goods and services at issue. Applying that approach here, I am of the view that if the aforementioned overlaps were sufficient to give rise to a meaningful degree of similarity, it would offer far too broad a scope of protection for downloadable apps. This is because a wide range of service providers offer downloadable apps and to find similarity on that basis is, in my view, not justified. As a result, I consider these goods and services to be dissimilar.

40. While I consider that the term assessed above represents TP-Link’s best case, I will discuss the other goods mentioned by TP-Link for the sake of completeness. At the hearing, similarity was claimed on the basis that there are related users and a broadly related purpose and nature. While I accept that the user of the above will also use the goods of TP-Link, this is a fleeting overlap due to the fact that all goods and services will be sought by members of the general public at large. As for nature and purpose, I see no reason to find that they are related to any degree. I say this

because, firstly, the above terms are for the supply of energy via a service whereas TP-Link's goods are physical devices or items of architect software so, clearly, differ in nature. Secondly, while both the goods and services relate to energy, the above services are for the actual supply of energy to the home by energy providers whereas TP-Link's goods are merely conduit devices that pass the energy onwards or software used by architects. In terms of trade channels, I have nothing before me to suggest that it is common in the trade for energy suppliers to provide the other goods of TP-Link. Without such, I am not willing to find that they overlap. Lastly, I do not consider that the goods and services are complementary or competitive in nature. As a result, I find that these goods and services are dissimilar.

Home energy management; Controller for feeding electrical energy from the battery of an electric vehicle into an external power grid; controller for transferring electrical energy from an electric vehicle battery to an electric vehicle home charging station; management of energy generation and consumption.

41. On the basis that the above terms are all services, I consider that they cover the provision of services that manage home energy or the control of electricity. While the service may offer to control the energy of the user's behalf, I consider that the above terms are broad enough to provide the service whilst allowing the user to manage the energy itself. I say this because, as far as I am aware, it is common in the trade for energy providers to put the control of energy in their customers' hands to allow them to ensure that they are running an efficient home, for example.

42. I note that TP-Link claims that the above services are similar to a medium degree with "electricity router for managing and optimizing energy loads within a building" and "computer application software for mobile phones, tablets" in its first mark's specification. The latter term is broad enough to cover mobile phone apps used to manage or control energy at home. Before getting into the comparison, I consider it necessary to distinguish the present comparison from the one made in the preceding assessment of services. While I accepted that an energy provider may offer a downloadable mobile app, I was not willing to accept that this app had any

control over the actual provision of the energy (which was the purpose of the services in question) but was merely something used to allow a user to access their account or view their usage. This is not the case here as the present assessment is made in the context of a downloadable app that has the ability to control the flow of energy and to direct it accordingly. For example, the app can be used to set schedules for heating or to direct the charging of an electric vehicle during off-peak hours. Such an app is entirely different from the app discussed in the preceding assessment which merely allows access to an energy account and its billing.

43. Turning to the actual comparison, I find that the natures and methods of use for these goods and services clearly differ. In terms of purpose, I consider that both the goods and services aim to manage the energy of a home meaning that there is some overlap here. Further, the goods and services are likely to share trade channels because the provider of the services is likely to also provide the goods used in order to manage the energy, as well as the downloadable app to allow the user to control it easily. The users are the same and, in my view, there is a degree of complementarity on the basis that the goods, when used to control energy, are important to the services to the point that consumers would believe them to originate from the same undertaking. Overall, I agree with TP-Link in that the goods/services are similar to a medium degree.

Remote monitoring, remote control and operation of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, photovoltaic systems, electricity generation systems and/or home energy management systems, using internet-based data communication.

44. In the event that a service gives the user the ability to monitor, control or operate charging stations, energy storage management systems and solar panels remotely, this will likely be assisted by a downloadable mobile app. As such, I consider that the above services are similar to TP-Link's term of "computer application software for mobile phones, tablets". This term is sufficiently broad

enough to cover an app for the aforementioned purposes. Therefore, while the goods and services differ in nature and method of use, there can be said to be some overlap in purpose as the app, in this context, can be used for the same purposes as the services. Further, the app is likely to be provided by the supplier of the service and the user will also be the same. In my view, the way such services are provided currently means that their control, monitoring or operation via an app is such that the app is important to those services. This relationship is sufficient to lead consumers to believing that the goods and services originate from the same undertaking. There is, therefore, a degree of complementarity. Overall, I agree with TP-Link's position that these goods and services are similar to a medium degree.

Conclusion of the goods and services comparison

45. Under the present ground, a likelihood of confusion can only exist where there is at least some similarity between goods and services.⁵ This means that as a result of my findings above, the present ground fails against the following services:

Class 39: Supply of electricity and/or gas, in particular supply of electricity and/or gas to private households, companies or other facilities; offering electricity and gas tariffs for providing electricity and heating energy; Remote control for the sale of electrical energy or for the delivery of electrical energy from an energy store or a power generation plant to an external power supply network.

The average consumer and the nature of the purchasing act

46. 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.

⁵ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

47. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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.

48. TP-Link's position is that the average consumer will be a member of the general public or a member of the professional public with specific professional knowledge and expertise depending on the relevant class of goods and services. It is claimed that the selection process will be predominantly visual, though aural considerations cannot be ignored. In terms of the level of attention paid, this was submitted as being to between a low and medium degree. Tado made no submissions in this regard.

49. Given the nature of the goods and services at issue, I am, for the most part, in agreement with TP-Link. For example, I agree that someone who is downloading a mobile app is likely to pay a lesser degree of attention but someone looking to install a wall box to charge an electric vehicle is likely to pay a medium degree of attention. That being said, I do consider that some goods and services will attract a higher degree of attention as professional users looking to install and run larger electric vehicle charging stations, for example, will likely pay more attention to the goods as they are important selections to the operation of their business. For the avoidance of doubt, I do not consider that this extends to an outright high degree.

Comparison of the marks

50. It is clear from *Sabel 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.

51. 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.”

52. 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.

53. The respective trade marks are shown below:

TP-Link's marks	Tado's mark
<p data-bbox="411 920 703 1048">Tapo</p> <p data-bbox="411 1072 727 1111">("TP-Link's first mark")</p> <p data-bbox="400 1196 715 1332">Tapo</p> <p data-bbox="384 1357 751 1395">("TP-Link's second mark")</p>	<p data-bbox="1086 1111 1150 1142">tado</p> <p data-bbox="970 1167 1270 1205">("the opposed mark")</p>

54. At the hearing, tado set out that, overall, it would be fair to say that there was similarity between the marks. While tado did not indicate the level of similarity, it did confirm its position that the marks were not very highly similar. As for TP-Link, it argued at the hearing that tado had implicitly accepted that the marks were highly similar on the basis that its only denial in the counterstatement was that the marks were not identical. It was submitted that in the event that tado was not deemed to have admitted to a high degree of similarity, TP-Link's position was that the marks were still highly similar from a visual and aural perspective but conceptually neutral due to the lack of meaning associated with the words.

55. In respect of the present comparison, I am of the view that tado's comments (or lack thereof) regarding the similarity of the marks can be read as a concession that the marks at issue are visually and aurally similar to a high degree. While I consider that it would be appropriate for me to proceed on that basis, I will, for the avoidance of doubt, continue to conduct my comparisons in the ordinary way.

Overall impression

56. The opposed mark is a word only mark consisting solely of 'tado'. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself. As for TP-Link's marks, they are both figurative marks that consist solely of the word 'Tapo' in a standard black typeface on a white background. The overall impression of these marks lies in the word 'Tapo', with any stylisation and use of colour having a negligible impact. Given the identity of these marks, I will proceed in considering just one of them, which I will refer to simply as 'TP-Link's mark' for the remainder of the present comparison.

Visual comparison

57. The opposed mark is capable of use in any standard typeface and in any colour, meaning that the negligible stylisation and use of colour in TP's mark is not a point of visual distinction between the marks. Visually, the marks share their first two and last letters, being 'T-a' and 'o'. The marks differ in their third letter, being 'd' in the opposed mark and 'p' in TP-Link's mark. The point of difference is subsumed into the body of the marks and while the letters 'd' and 'p' are clearly not the same, they are similar to a degree. I make the latter point because the letters are identical in shape but merely differ in their orientation. Taking all of this into account, I am of the view that the marks at issue, in sharing three of their four letters, are visually similar to a high degree.

Aural comparison

58. Aurally, I consider that TP-Link's mark consists of two syllables which will be pronounced as either 'TAH-POE' or 'TAY-POE'. The opposed mark also consists of two syllables that may be pronounced in a number of different ways. This can include 'TAH-DOE', 'TAY-DOE', 'TAH-DOO' or 'TAY-DOO'. Clearly, the first two pronunciations represent TP-Link's best case and, in my view, both will be spoken by at least a significant proportion of consumers so it is upon these that I will focus. Regardless of which method of pronunciation the consumer adopts for one mark, they are likely to pronounce the other mark in the same pattern (if the opposed mark is pronounced 'TAH-DOE', TP-Link's mark will be pronounced 'TAH-POE', for example).

59. The marks are of the same length. Further, their first syllables are identical. Their second syllables are not the same due to the presence of the letter 'd' in tado's mark and 'p' in TP-Link's. That being said, they are still similar to a degree as they both end in the same way (with the 'OE' sound). Overall, I consider that despite the point of difference in the marks' second syllables, I find that they are aurally similar to a high degree.

Conceptual comparison

60. As set out above, TP-Link's position is that the marks are conceptually neutral. I agree because I do not consider that either mark has any obvious meaning to the average consumer in the UK. As such, they are not capable of a conceptual comparison.

Distinctive character of TP-Link's mark

61. 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).”

62. 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 goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use, and I note that TP-Link claims that its evidence of use is sufficient to enhance the distinctive character of its mark. While I will consider this claim below, I will consider the inherent position first.

63. TP-Link’s marks are identical figurative marks that are dominated by the word ‘Tapo’, with the stylisation and colour used playing a negligible role. Given their negligible roles, the stylisation and colour used will not contribute to the distinctiveness of the mark. As such, the inherent distinctiveness of TP-Link’s mark

lies in the word 'Tapo'. Above, I set out that 'Tapo' will not be attributed any meaning by the UK consumer. It will, instead, be viewed as a made-up word with no obvious connection to the goods and services at issue. Therefore, I find that it attracts a high degree of inherent distinctive character and, for the reasons set out above, this will be the inherent level that vests in the marks as wholes.

64. Having considered the evidence filed by TP-Link, I am not convinced that it furthers its case under the present ground. I say this because the evidence points to use of 'Tapo' on goods relating to home security cameras, three-pin smart plugs for use in the home, lights, robot vacuum cleaners and hubs, switches and sensors for the same. Any enhanced distinctiveness that resides in the marks due to the use of such goods vests only in those goods. As those goods do not form the basis of the present ground, they are not relevant to the issue of enhanced distinctiveness. As a result, I will proceed in reliance upon the inherent position, which is already at a high level.

Likelihood of confusion

65. 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 the goods 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 goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and 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 they have retained in their mind.

66. I have found the goods and services at issue to be identical or similar to varying degrees, being no lower than medium. The average consumer base is formed of members of the general public and professional users who will select the goods and services via primarily visual means (though not discounting an aural component) whilst paying either a low or medium degree of attention. That being said, I remind myself that for some goods and services selected by the professional user, a higher (but not outright high) degree of attention may be paid. I have found the marks to be visually and aurally similar to a high degree and conceptually neutral. Lastly, I found TP-Link's mark to be distinctive to a high degree.

67. Taking all of the above into account, and bearing in mind the principle of imperfect recollection, I am of the view that average consumers will mistake the marks for one another. I reach this finding on the basis that the marks at issue share a high degree of visual and aural similarity. Further, the marks have identical beginnings (being where consumers tend to focus)⁶ and ends,⁷ with the single point of difference between them being just one letter that is subsumed into the body of each mark. In my view, this is an additional factor in favour of the marks being misremembered for one another. Lastly, I appreciate that the marks are conceptually neutral to one another but as neither party's marks are capable of carrying any meaning, there is no conceptual hook for consumers to affix their recollection of the marks on. Consequently, I find that there exists a likelihood of confusion between the marks regardless of whether they are viewed on goods and services that are identical or similar to a medium degree. Further, given the higher degree of overall similarity between the marks, I consider that this finding applies even in circumstances where the consumer pays a higher degree of attention.

68. The present ground succeeds against all terms in the opposed mark's specification, save for "supply of electricity and/or gas, in particular supply of electricity and/or gas to private households, companies or other facilities", "offering

⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

⁷ While just one identical letter sits at the ends of the marks, I also bear in mind that common elements at the ends of marks may also be sufficient to create a likelihood of confusion. See *Bristol Global Co Ltd v EUIPO*, T-194/14

electricity and gas tariffs for providing electricity and heating energy”, “remote control for the sale of electrical energy or for the delivery of electrical energy from an energy store or a power generation plant to an external power supply network”.

69. I will now proceed to consider the section 5(3) ground of the opposition.

Section 5(3)

70. As set out at paragraph 5 above, TP-Link’s pleaded case under the present ground is entirely bare. No information is given as to which heads of damage would apply, or why. In my view, such an issue would ordinarily render the present ground inadmissible. However, I consider that this is something that should have been picked up on by the Tribunal upon the filing of the notice of opposition, with TP-Link being given an opportunity to provide the relevant information. While this was not done in the present case, it is of no real consequence to these proceedings. The reasons for this will become obvious below.

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

“5(3) A trade mark which –

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.”

72. 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*, Case C-323/09, *Marks and Spencer v Interflora*,

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 Salomon*, 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 holder 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*).

73. The conditions of section 5(3) are cumulative. Firstly, TP-Link must show that the marks at issue are similar. Secondly, TP-Link must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the pleaded types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods or 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.

74. TP-Link relies on the same marks here as it did under the section 5(2)(b) ground. However, the reputed goods and services claimed are limited and are set out in **Annex 5** of this decision. Under the present ground, I remind myself that TP-Link's first mark is a comparable mark meaning that use in the EU prior to 31 December 2020 (IP Completion Day) is relevant. This is of no real issue here as the evidence filed has a significant focus on the UK.

Reputation

75. As discussed above, the evidence primarily focuses on goods such as security cameras, smart plugs, smart lights, robot vacuums and hubs, switches and sensors in respect of the same. TP-Link has provided approximate figures of how many 'Tapo' branded goods it sold in the UK since the launch of that brand in 2019. Those figures are as follows:

Year	Quantity of products sold
2019	14,000
2020	460,000
2021	940,000
2022	1,050,000
2023	1,270,000
Total	3,734,000

76. It is noted that the relevant date for the present assessment sits in May 2023 meaning that a significant portion of the 2023 figures are likely to have come after that. I have no way to break this down but it is a point I will bear in mind going forward.

77. While TP-Link has not provided a breakdown of the above figures, it has provided a breakdown as to how many 'Tapo' devices were activated in the UK as at 31 December 2023. This is as follows:

Product	Activated devices
Camera	1,213,030
Plug	1,616,386
Lighting	625,634
Hub	25,005
Switch	6,486
Sensor	29,690
Robot Vacuum	1,857
Total	3,518,088

78. As was the case with the figures above, I am mindful of the fact that the figures cover up to 31 December 2023, being some eight months after the relevant date.

79. No information is provided as to how much turnover accrued from the sale of these products. Further, while some screenshots of TP-Link's social media accounts are shown in evidence,⁸ there is no evidence is provided as to how much TP-Link spent advertising the 'Tapo' brand between 2019 and 2023. All I have on this point is vague claim that TP-Link spent a considerable amount on advertising in the UK.

80. At the hearing, tado argued that it could be the case that any reputation vests in TP-Link and not Tapo. Firstly, this point was raised for the first time at the hearing, meaning that TP-Link had no means to respond via evidence in reply. In any event, I see no merit in such an argument. This is because TP-Link's evidence expressly confirms the above sales as being 'Tapo' branded goods. Further, TP-Link has provided a range of invoices covering sales in the UK from prior to the relevant date.⁹ While not every product is branded 'Tapo', some of them are. In addition,

⁸ MH6

⁹ MH5

the evidence shows a range of goods that are branded as 'Tapo'.¹⁰ While said evidence is undated, the social media evidence shows similarly branded products via a post from prior to the relevant date. Lastly, there is a review from 20 February 2020 provided that refers to a product as 'TP-Link Tapo P100 Mini Smart Wi-Fi Socket' which includes a photo of the product itself clearly branded as 'tapo'.¹¹ As such, I have no reason to doubt that the relevant public would associate the 'Tapo' brand with the sales discussed above.

81. Taking all of the evidence into account, I note that TP-Link has not provided any evidence of turnover or advertising spend. Further, the evidence does not necessarily point to any widespread attempt at marketing the 'Tapo' brand. That being said, I consider that TP-Link's best case lies in the fact that prior to 31 December 2023, it sold 1.6 million smart plugs, 1.2 million cameras, 625,000 lights, 29,000 sensors and 25,000 hubs in the UK since 2019. On the face of it, these figures seem considerable.¹² However, I have nothing before me to suggest the size of the relevant UK markets for such goods meaning that I have no way to determine how significant these figures are in the relevant context. In my view, these figures do not necessarily support an assertion that TP-Link's 'Tapo' business operation is particularly large. While that may be the case, I remind myself of the case of *Enterprise Holdings Inc v Europcar Group UK Ltd* [2017] E.C.C. 11, which was helpfully referred to by Ms Knott at the hearing. In that case Arnold J (as he then was) set out that establishing a reputation is not a particularly onerous requirement. Balancing that principle against the evidence filed, I accept that TP-Link's evidence suitably demonstrates that its marks benefit from a reputation in the UK, albeit only to a moderate degree. Given the nature of the goods shown in the evidence, I find that this reputation is limited to the following goods only:

¹⁰ MH4

¹¹ MH7

¹² I say this whilst taking into account that the relevant date is in May 2023.

TP-Link's first mark

Class 9: Remote video surveillance cameras;¹³ electric smart plugs;¹⁴ remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location; computer network hubs and routers, for remote cameras, smart plugs and smart lights.¹⁵

Class 11: Smart LED light bulbs;¹⁶ Smart electric light bulbs.¹⁷

TP-Link's second mark

Class 9: Remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location.

Class 11: Smart Light Strip.¹⁸

82. In respect of the range of software goods relied upon, there is limited reference to an app in TP-Link's evidence and while I appreciate that TP-Link's goods are all smart devices, I consider it reasonable to suggest that if it wished to demonstrate a reputation in such goods, TP-Link should have provided information as to UK specific download figures for the same (or EU download figures, for that matter). As a result, I am not willing to conclude that its reputation vests in any types of software goods relied upon.

¹³ Being a suitable sub-category of the term "cameras"

¹⁴ Being a suitable sub-category of the term "electric plugs"

¹⁵ Being a suitable sub-category of the term "computer network hubs and routers"

¹⁶ Being a suitable sub-category of the term "LED light bulbs"

¹⁷ Being a suitable sub-category of the term "electric light bulbs"

¹⁸ Being a suitable sub-category of the term "light strip"

Link

83. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

84. I have found the marks at issue to be visually and aurally similar to a high degree and conceptually neutral.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

85. The reputed goods of TP-Link were not subject to the assessment I conducted under the section 5(2)(b) ground above. Rather than conducting a complete comparison, I consider it reasonable to simply reach a conclusion that all of the goods and services at issue are dissimilar. In short, tado's goods relate to charging electric vehicles, energy storage management and its services relate to (1) the rental, installation, sale and maintenance of the same and (2) the provision of energy itself, whereas TP-Link's reputed goods are all in-home goods such as plugs, lighting or remote cameras, all operable wirelessly. I see no obvious reason why these goods and services would overlap to any material degree in nature, method of use, purpose or trade channels. I appreciate that there may be an overlap in user but this is fleeting giving then size of the consumer base for both parties' goods and services.

The strength of the earlier mark's reputation

86. TP-Link's marks enjoy a moderate reputation.

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

87. Inherently, TP-Link's marks enjoy a high degree of distinctive character. I appreciate the evidence filed is relevant under the present ground (which was not the case under section 5(2)(b) above). However, I do not consider it sufficient to increase the distinctive character of the marks. While the evidence filed is sufficient to find a reputation and this usually also leads to an enhancing of the distinctive character, the inherent position is already high and the evidence file is not compelling enough to warrant an increase beyond this level.

Whether there is a likelihood of confusion

88. I found there to be a likelihood of direct confusion under the section 5(2)(b) ground. This finding is not directly applicable here because it was made on the basis of identical and/or similar goods and services. That being said, the provisions of the present ground offer additional protection which takes into account the repute of the earlier marks when considering if there is confusion or not. This is because some marks are so distinctive and well-known that there is likely to be some confusion irrespective of the goods or services on which other similar marks are used. An oft cited example is use of the sign 'MICROSOFT' on a table lamp being something that would likely cause consumers to believe that there was a connection with the software developer.

89. In the present case, notwithstanding the higher level of visual and aural similarity between the marks, I do not consider that the repute of TP-Link's marks is at a strong enough level of warrant the existence of confusion between entirely dissimilar goods and services. As a result, I do not consider that there exists a likelihood of confusion under the present ground.

Conclusion on link

90. As set out above, the goods and services at issue under the present ground are dissimilar. This is not fatal to TP-Link's case because similarity of goods and services is not a requirement under section 5(3) grounds. For example, where there is an overlap in the relevant public that selects the goods or services at issue, a link may still be found. In the present case, I appreciate that there is an overlap between the relevant public that will select a majority of tado's goods and services and the reputed goods of TP-Link, being the general public at large. In considering this point, I remind myself of the comments of Professor Philip Johnson in *EONX* (BL O/0433/24), at paragraph 45, that:

“[I]t is also clear that overlapping publics do not automatically lead to there being a link for the purposes of section 5(3): see, for example: T-62/16 Puma v EUIPO, EU:T:2018:604, [45]; T-71/14 Swatch v OHIM, EU:T:2015:293, [32]. The overlapping public is just one factor to be weighed into the mix.”

91. As a result, it is not simply the case that because the relevant public overlaps, there must be a link between the marks at issue. Considering all of the above factors together, I appreciate that TP-Link's marks enjoy a high degree of distinctive character and that the marks at issue share a high degree of visual and aural similarity. However, the distance between the goods and services remains a significant issue for TP-Link to overcome. In order to overcome such a hurdle in the present case, I consider it necessary for there to be a strong reputation in TP-Link's marks. This is not the case here and notwithstanding the other factors in favour of TP-Link, the moderate strength of the reputation is simply not at a level that would lead the relevant public into being caused to wonder whether the goods and services at issue are linked. As a result, I find that there exists no link between the marks at issue.

92. For the avoidance of doubt, even if there were to be a link between the marks at issue, it would only be fleeting and would not be strong enough to cause any damage.

Conclusion of the opposition

93. TP-Link's opposition has been successful against a majority of the goods and services in the opposed mark's specification. I will provide a full summary of the opposition at the conclusion of my decision.

THE APPLICATION FOR REVOCATION

Section 46(1)

94. Section 46 of the Act states:

"46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not 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, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) [...]

(d) [...]

(2) For the purpose of subsection (1) 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 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.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date".

95. Given that the contested mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

“8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 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 sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union”.

96. 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.”

97. 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].”

98. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark”¹⁹ is not, therefore, genuine use.

99. I remind myself that the relevant periods for the present application are 13 April 2013 to 12 April 2018 and 18 July 2018 to 17 July 2023. I also remind myself that in its counterstatement, tado only sought to partially defend its mark. The defended goods and services are set out in **Annex 6** of this decision.

100. At the hearing, tado set out that there may be some items within the specification in class 35 that it may be prepared to concede such as some of the retail services for goods like construction articles and metal goods. I will bear this point in mind going forward.

¹⁹ *Jumpman*, Case BL O/222/16

Evidence of use

101. Tado's evidence came via its attorney Mr Marsden. In its skeleton argument prior to the hearing, TP-Link argued that as an attorney for tado, Mr Marsden cannot have any personal knowledge of tado's activities. As such, it is claimed that Mr Marsden's evidence is hearsay and should be given limited weight, if any. While these comments are noted, I will say that the approach of attorney's filing evidence of use on their client's behalf is not uncommon in proceedings before the Tribunal and often goes without issue. On this point, I note that Mr Marsden does not attempt to give any evidence of his own but his statement acts merely a vehicle for introducing documents into these proceedings. The evidence confirms that the documents are either in the public domain or that he received them from tado or its German representative. TP-Link offers a criticism that Mr Marsden does not distinguish between what he obtained from the public domain and what was provided to him by tado. While this is correct, I consider it reasonable to infer that evidence such as screenshots from the internet were obtained by Mr Marsden himself and documents such as invoices were provided to him. Such an issue is, in my view, not fatal to the veracity of Mr Marsden's evidence. As such, I have no reason to doubt the accuracy of said evidence or to attribute lesser weight to the same simply because it came from an attorney. In any event, I note that if TP-Link wished to oppose the veracity of tado's evidence in this way, it should have raised the point during the evidence rounds, not via its skeleton arguments just days before the hearing.

102. Firstly, Mr Marsden encloses a range of printouts taken from tado's online shop that shows goods for sale in British pounds.²⁰ The printouts are undated but show both wired and wireless smart thermostats as well as control units for the same, and radiator thermostats to allow for the control of individual radiators. The printouts also include a stand and a trim plate for the thermostat.

²⁰ AM1

103. In respect of the above goods, there is a range of printouts taken from the internet archive facility, the Wayback Machine, that show how the website appeared between 19 November 2017 and 24 October 2021.²¹ Some of the pages are UK websites whilst others are from tado's German website (all of which are from prior to IP Completion Day). The English language pages show the range of goods that tado offers. On this point, I note that there is the offer of a 'starter kit' which includes what is referred to as a bridge, which attaches to the user's home internet router and communicates with the wireless sensor and thermostat to allow for their 'smart' control. The German pages show what appears to be an image of a smartphone with a downloadable app on it.²² However, these pages have not been translated so I am unable to determine what they say about the app. In addition, it is noted that this same exhibit shows tado's products for sale on Amazon.²³ However, these printouts appear in the German language and are from after IP Completion Day meaning that they are of no assistance here.

104. Further printouts taken from the Wayback Machine for dates in 2020 and 2021 of tado's UK website are provided.²⁴ These show the listing for sale of three products, being an extension kit, a temperature sensor and a smart AC control.

105. A range of invoices are provided that are purported to show the 'tado 360' services offered by tado.²⁵ The invoices are sales to customers in Germany in 2019 and 2020 and show the description of something called 'Tado 360 Monitoring'. The evidence includes what appear to be brochures regarding this offering.²⁶ It appears to me that 'Tado 360 Monitoring' is some way in which a user's boiler can be monitored with any malfunctions being automatically detected and diagnosed remotely, allowing for quicker repair of the same. The brochure indicates that this service appears to be one that is obtained via subscriptions.

²¹ AM2

²² See pages 53 and 55 to 57 of AM2

²³ See pages 51 and 52 of AM2

²⁴ AM3

²⁵ See pages 76 to 87 of AM4

²⁶ See pages 88 to 106 of AM4

106. An article from tado's website is provided that discusses 'Tado 360' as a software as a service that remotely monitors the health of a home heating system and collects diagnostics that can be used for faster and more efficient repairs and maintenance.²⁷
107. The evidence makes reference to a tado app for use by professionals called 'tado professional'. This comes via two screenshots taken from Apple's App Store in Germany.²⁸ The first screenshot that is provided is dated 11 June 2019 and shows the 'tado professional' app. However, the second printout is dated 31 January 2022, being after IP Completion Day. As the screenshots are in German, it is not clear what the features of this app are.
108. Evidence on how a customer of tado may book a repair is provided. This comes via a screenshot of tado's website dated 4 December 2020 and appears to be something that can be done via tado's website or its app.²⁹ This screenshot comes from tado's '.com all English' website as opposed to its British website so it is, therefore, unclear whether this option is available in the UK or in any non-English language speaking countries in the EU. In any event, repair services are not at issue in the present proceedings so I am unsure as to how such evidence is relevant, beyond the existence of a 'tado' app.
109. Another screenshot, dated 26 January 2022, is provided relating to something call 'aWATTar by tado'.³⁰ The narrative evidence of Mr Marsden sets out that this shows that tado provides renewable energy supplies. While noted, I am not convinced that this is what it shows. I say this because whilst there is some text highlighted that refers to a clean and renewable energy supply, the printout itself appears to refer to the user controlling the climate in their home via a smart thermostat. Further, Mr Marsden is the legal representative of tado so is not, in my view, placed to make the statement that this suggests the provision of an electricity supply by tado. In any event, there is nothing pertaining to any actual use of such

²⁷ See pages 107 to 109 at AM4

²⁸ AM5

²⁹ See page 116 at AM6

³⁰ See page 117 at AM6

a service. Lastly, as was the case in the preceding paragraph, the supply of energy is not a service at issue here.

110. An 'Energy IQ' feature was seemingly introduced to tado's app in December 2021. Confirmation of this comes via an article from 'pocket-lint.com' dated 7 December 2021.³¹ This website specifically refers to the UK energy market and discusses this new feature by explaining that it incorporates the user's energy meter readings and provides advice on how to control consumption. This feature is further discussed in an article of the same date via Trusted Reviews.³² The article, much like the one from Pocket Lint, discusses the UK energy market.

111. The evidence includes approximately 115 pages of invoices showing sales for the years 2015, 2021 and 2022 to retailers in the UK.³³ The invoices are not broken down in any way and, given the number of invoices provided, it is not appropriate for me to simply conduct a detailed calculation of the invoices to break down these invoices on tado's behalf. On this point, if tado wished for me to consider total overall sales or turnover figures, or even point me directly to specific goods or services covered by the invoices, then it was for tado to do so. That being said, having gone through the invoices provided, I do note that the overwhelming majority of the invoices show a high number of sales of smart thermostats (including starter kits), radio thermostats, extension kits, temperature sensors, smart AC control units, wireless receivers and internet bridges.

112. Tado has also provided around 115 pages of invoices to retailers in Germany.³⁴ I echo the same points here as I have when discussing the UK invoices in that I am not willing to break down the invoices on tado's behalf. That being said, despite being in German, I can determine that they cover a range of the same goods discussed in the preceding paragraph.

³¹ See pages 118 and 119 at AM6

³² See pages 120 and 121 at AM6

³³ AM7

³⁴ AM8

113. Turning to tado's app, the evidence includes a range of screenshots from 2017 to 2022 from the Google Play Store, the Apple App Store, the Microsoft Store and tado's own website.³⁵ The screenshots are not region specific so the reference to '500,000 plus' downloads on a screenshot dated 4 June 2022 is of no assistance because I am unable to determine how much of this came from the relevant territory (being the UK or the EU prior to IP Completion Day). That being said, the evidence does provide specific download figures on a month by month basis for May 2015 to July 2019.³⁶ This is broken down by Android and Apple downloads and shows, in total, that the app was downloaded 126,658 times in Germany, 134,625 times in the UK and 62,802 times in the Netherlands. Figures for Italy, Spain, Belgium, France, Denmark and Austria are provided but I see no need to provide them here, save to say that they show thousands of downloads each during this period.

114. Lastly, tado has provided printouts showing various sales made in various jurisdictions and the revenue it has made via its app between 30 September 2018 and 2 February 2019.³⁷ This appears to mostly come from subscriptions to the auto-assist monthly or yearly plan offered through the app. As was the case with the invoices above, tado has merely placed the information before me without any attempt to break it down to demonstrate how it applies to the present case. It is noted that there are figures provided for 'extended partner share' over what appears to be 23 different jurisdictions but I have nothing to suggest what this means. I do not consider it appropriate for me to formulate tado's case on its behalf in this regard so I will simply treat this evidence as showing that tado appeared to have sold active subscriptions via its app between September 2018 and February 2019.

Assessment of the evidence

115. TP-Link has criticised tado's evidence for a number of reasons. It is argued that there is no evidence showing the turnover or advertising expenditure and neither

³⁵ AM9

³⁶ See pages 373 to 376 at AM10

³⁷ See pages 377 to 384 at AM10

is there any evidence as to market share. Further, it is claimed that much of tado's evidence lacks specificity. I echo these criticisms on the basis that tado has failed to provide breakdowns pertaining to its actual use. Instead, tado has merely relied on providing invoices in bulk. To me, this is a risky approach as both legislation (section 100 of the Act, reproduced above) and case law sets out that the burden of providing genuine use sits purely on the shoulders of the party seeking to prove use. Further, I remind myself of the case of *Awareness Limited v Plymouth City Council*, Case BL O/236/13, which sets out clearly that evidence of genuine use needs to be sufficiently solid in order for it to be deemed genuine. In the present case, the lack of any breakdown whatsoever renders the assessment of genuine use somewhat difficult. That being said, I also remind myself that use need not be quantitatively significant in order for it to be deemed genuine so if I am able to reasonably draw an inference from the invoices that tado made genuine attempts to create or preserve a market share for certain goods or services, then that may be sufficient.

116. From reviewing the invoices provided, it is clear that tado has sold a sufficient amount of goods such as smart thermostats, AC control units, and ancillary goods such as bridges (which are included within the 'starter kits' shown in evidence). As above, I set out that I would not formulate tado's case on its behalf but by simply looking through the invoices, I note by way of a brief example that there is an invoice showing the total sale of 554 smart thermostats (be they wireless or as part of starter kits) to Exertis (UK) in Lancashire on 15 August 2021.³⁸ Further, there are two invoices of sales to Amazon UK (one dated 19 November 2021 and the other dated 25 October 2022)³⁹ that cover 2,160 wireless temperature sensors, 960 smart radiator thermostats and 192 radiator thermostat starter kits. These types of invoices are consistent throughout the evidence. In addition, the figures concerning tado's downloadable app are also at a reasonable level, with download figures for the UK and Germany being well over 100,000 each.

³⁸ See page 161 at AM7

³⁹ See page 210 and 179 at AM7, respectively

117. Therefore, taking all of the evidence into account, I am content to conclude that despite the failure to provide any specific breakdown of the goods and services, tado has genuinely used its mark during the relevant periods. I say relevant periods at large because while the evidence is mainly focused on the lattermost relevant period, there is sufficient evidence of tado using its mark in 2015 and 2017. For example, tado has provided invoices from 2015 and the download figures for its app that I have discussed above begin in that year also.⁴⁰

118. The above being said, my finding only relates to some goods and services in the contested mark's specification. In order to determine what goods and services survive the present revocation action, I will now proceed to consider what represents a fair specification.

Fair specification

119. In considering a fair specification of the goods and services at issue, I remind myself of the case of *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834, wherein the Court of Appeal set out the following guidance when approaching partial revocation:

“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.

⁴⁰ Even if no use for the earlier relevant period was provided, the provisions of section 46(3) of the Act mean that the mark would have survived the revocation on the basis of the later use.

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.”

120. This approach was approved by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, subject to the proviso that it must be seen in light of more recent guidance by the CJEU that that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paragraphs 36-53).

121. While there are a range of goods and services that warrant more detailed consideration in line with the case law cited above, I am of the view that I can swiftly deal with a number of the goods and services at issue. I say this because it is clear from the evidence that tado's contested mark has been genuinely used (and, therefore, may remain registered) for the following goods and services:

Class 9

Thermostats; Thermostats for heating systems; Thermostats for air conditioning systems; Monitoring and control of air conditioning in living environments.

Class 42

Remote monitoring and remote control of heating systems via the Internet; Remote monitoring and remote control of air-conditioning systems via the Internet

122. However, the following goods and services are not sufficiently covered by the evidence. Further, given the vague and imprecise nature of the evidence at large, I consider it reasonable to suggest that if there were specific points of the evidence that accurately demonstrated use for such goods or services, it was for tado to direct me to them either expressly in its own evidence or at the hearing. As such, I hereby find that tado's contested mark is to be revoked for the following goods and services:

Class 9

Telemetry systems; Interfaces for computers; Systems and software for displays; Control systems and software for battery-charging equipment; Systems and software for switching and regulating technical systems; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy consumers; Systems and software for switching and regulating electricity consumers; Systems and software for switching and regulating energy generators; Systems and software for remote maintenance of power supply devices; Systems and software for remote monitoring of power supply devices; Systems and software for remote control of power supply devices.

Class 35

Arranging of commercial and business contacts; Arranging commercial transactions, for others; Arranging of contracts, for others, included in class 35; Arranging of contracts, for others, for the providing of services; Arranging of contracts with electricity suppliers; Arranging contracts with energy suppliers; Updating and maintenance of data in computer databases; Cost price analysis.

Class 42

Consultancy in the field of energy-saving; Computer system analysis; Electronic data storage services; Remote monitoring and remote control of computer systems; Remote monitoring and remote control of electricity consumers via the Internet; Remote monitoring and remote control of energy storage devices via the Internet; Remote monitoring and remote control of power generators via the Internet; Remote monitoring and remote control of energy generators via the Internet.

123. I will now move to the remaining and defended goods and services, being those that, in my view, warrant a further discussion in line with the guidance in *Merck*. I will deal with these goods and services in turn below.

Class 9

*Heating control systems; Climate control systems;*⁴¹ *Remote control systems.*

124. In my view, the former two terms listed above cover the entirety of a heating or a climate control system. The latter term is sufficiently broad enough to cover both, albeit one that is controlled remotely. I have nothing before me to describe precisely what goods these terms cover but I consider it reasonable to suggest that they include a very broad range of different goods that cover each and every part of a remote heating and climate control system. This can include parts such as

⁴¹ The latter term appears three times in the contested specification. I will deal with it just once.

thermostats and the other devices that assist the systems' operation. In the context of smart heating and climate systems, this can include bridges and temperature sensors.

125. In considering the case law set out in *Merck*, I remind myself that it is my task to arrive at a fair specification for goods or services, having regard to the use which has been made of the mark whilst being mindful not to unduly strip tado of its rightful protection. Having given due consideration to this point, I am of the view that these terms can be limited to cover the actual goods shown in evidence (being suitable sub-categories that are capable of being viewed independently) which I categorise as follows:

Bridges and sensors for use in heating and air conditioning systems.⁴²

Air conditioning systems and Ventilation equipment.

126. I consider that a fair specification for the above term would be control units, thermostats, hubs and sensors for air conditioning systems. Given what I have already set throughout the present assessment, such goods are already included in the contested mark's specification and I see no need for a duplication of the same.

Computer programs; computer software.

127. While I am satisfied that tado has used its mark for a type of computer software, the above term is very broad and, while I am mindful not to strip tado of its due protection, these terms can be limited to suitable sub-categories of goods. Exhibit AM9 helpfully shows the features of tado's software, which is to monitor and control a user's heating or air conditioning system. This software also offers information relating to the user's energy usage. In considering the use of software, I note

⁴² While I note that this does not include thermostats, I have already set out above that such a term is to remain in the contested mark. To include it again here would be unnecessary as it would be a duplication of identical terms.

reference to the 'Tado 360 Monitoring' software at Exhibit AM4 which shows that the app detects and automatically diagnoses boiler faults.

128. Again considering the principles set out in *Merck*, I must have regard to the perception of the average consumer and the purpose and intended use of tado's software. In doing so, I am of the view that a reasonable outcome in the present case is to limit the terms so that specifically relate to heating systems and air conditioning systems, generally, as opposed to seeking to list only those specific functions of the app (i.e. an app for the control of heating or air conditioning, for example). As such, I find that the following terms represent a fair specification for tado's software goods:

Computer programs for use in relation to heating systems and air conditioning systems; computer software for use in relation to heating systems and air conditioning systems.

Systems and software for remote maintenance of technical systems; Systems and software for remote monitoring of technical systems; Systems and software for remote control of technical systems.

129. In the event that 'technical systems' could cover heating or air conditioning systems, then I consider that goods that falls within the sub-categories of 'systems' and 'software' for the remote maintenance, monitoring and control of the same are already duly covered in the terms I have found to fall within a fair specification above. I see no merit in duplicating said terms so will proceed to revoke the contested mark insofar as it covers the above goods.

Class 35

Retailing via the Internet of heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances,

Remote maintenance systems, remote control systems, energy-generating systems; Wholesaling via the Internet of heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances, Remote maintenance systems, remote control systems, energygenerating systems.

130. In considering the above, I remind myself of the case of *Apple Inc. v Deutsches Patent- und Markenamt*, Case C-421/13, wherein the CJEU ruled that a trade mark used in retail services may be protected for services intended to induce the consumer to purchase the goods provided that those services do not form an integral part of the offer for sale of the goods. The court stated:

“26.it must be held that, if none of the grounds for refusing registration set out in Directive 2008/95 preclude it, a sign depicting the layout of the flagship stores of a goods manufacturer may legitimately be registered not only for the goods themselves but also for services falling within one of the classes under the Nice Agreement concerning services, where those services do not form an integral part of the offer for sale of those goods. Certain services, such as those referred to in Apple’s application and clarified by Apple during the hearing, which consist of carrying out, in such stores, demonstrations by means of seminars of the products that are displayed there, can themselves constitute remunerated services falling within the concept of ‘service’.”

131. It follows that merely selling goods is not a service for which a trade mark may be protected in class 35. In the present case, tado’s evidence does not make any attempt to explain that it offers any additional services in connection with retail (such as services similar to those described in the *Apple* case) that can constitute remunerated services falling within the concept of a ‘service’. All I have before me is printouts from tado’s website showing its goods listed for sale. As above, merely selling goods is not a service that may be protected in class 35 and, as such, I find that tado has not provided genuine use for the above services. Therefore, they are to be revoked.

Class 42

Remote monitoring and remote control of technical systems via the Internet; Remote monitoring and remote control of ventilation systems via the Internet.

132. At paragraph 121 above, I found there to be use for the terms “remote monitoring and remote control of heating systems via the Internet” and “remote monitoring and remote control of air-conditioning systems via the Internet”. Following similar approaches to that I have made at paragraphs 126 and 129 above, I find that the actual use before me in respect of the above terms is already duly covered by the terms for which use has been found. Therefore, I see no merit in duplicating said terms by limiting them. As a result, the above services will be revoked.

Conclusion of the revocation action

133. The contested mark is permitted to remain registered for the goods and services for which genuine use has been demonstrated. However, it is to be revoked with effect from the earliest date sought, being 13 April 2018, for the remaining goods and services.

CONCLUSION

134. The opposition succeeded against a majority of the opposed goods and services. Therefore, the opposed mark is refused for the following goods and services:

Class 9

Charging stations for electric vehicles; wall box for electric vehicles; Electronic control devices for charging an electric vehicle; Electronic devices for charging an electric vehicle using a photovoltaic system; Energy storage devices for storing electrical or thermal energy; Home energy stores for charging an electric

vehicle, for self-use and/or feeding into the grid; Control devices and systems for charging an energy store using a photovoltaic system and for removing energy from the energy store for charging an electric vehicle; Photovoltaic installations and systems, in particular for roof installation; Electricity generation systems and installations using renewable energy sources; home energy management systems that are device-based, cloud-based and/or based on downloadable smartphone software; Inverters for photovoltaic installations; Feed-in systems for photovoltaic installations; downloadable smartphone software and/or server/computer applications for controlling electric vehicle charging stations, electric vehicle charging controllers, energy storage devices, home energy storage devices, energy storage charging controllers, photovoltaic systems, electricity generation systems and/or home energy management systems.

Class 37

Rental, installation, sale and/or maintenance of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, photovoltaic installations, electricity generation systems, home energy management systems; charging electric vehicles.

Class 39

Home energy management; Controller for feeding electrical energy from the battery of an electric vehicle into an external power grid; controller for transferring electrical energy from an electric vehicle battery to an electric vehicle home charging station; management of energy generation and consumption; Remote monitoring, remote control and operation of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, photovoltaic systems, electricity generation systems and/or home energy management systems, using internet-based data communication.

135. However, the opposed mark may proceed to registration for the following services, being the terms that survived the opposition:

Class 39

Supply of electricity and/or gas, in particular supply of electricity and/or gas to private households, companies or other facilities; offering electricity and gas tariffs for providing electricity and heating energy; Remote control for the sale of electrical energy or for the delivery of electrical energy from an energy store or a power generation plant to an external power supply network.

136. As for the revocation action, this was partially successful. The contested mark may remain registered for all of the following goods and services, being those for which I have found there to be genuine use:

Class 9

Thermostats; thermostats for heating systems; thermostats for air conditioning systems; monitoring and control of air conditioning in living environments; bridges, hubs and sensors for use in heating and air conditioning systems; computer programs for use in relation to heating systems and air conditioning systems; computer software for use in relation to heating systems and air conditioning systems.

Class 42

Remote monitoring and remote control of heating systems via the Internet; remote monitoring and remote control of air-conditioning systems via the internet.

137. The remaining goods and services in the contested mark were either not proven to have been genuinely used or were not defended by tado. As such, the contested mark covering the remainder of tado's specification is revoked with effect from 13 April 2018 for the following goods and services.

138. For the avoidance of doubt, each outcome discussed above is subject to any successful appeal against my decision.

COSTS

139. As TP-Link has enjoyed the greater degree of success in these proceedings, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, albeit at a reduced rate to reflect tado's partial success. In the circumstances, I award TP-Link the sum of £2,100 as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition and considering a counterstatement:	£250
Preparing an application for revocation and considering the counterstatement:	£250
Preparing and considering evidence:	£800
Preparing for and attending a hearing:	£800
<u>Sub-total:</u>	<u>£2,100</u>
<i>Reduction:</i>	<i>-£400</i>
Official fees for the opposition (not subject to reduction):	£200
Official fees for the revocation (not subject to reduction):	£200
Total:	£2,100

140. I hereby order tado GmbH to pay TP-LINK CORPORATION LIMITED the sum of £2,100. The above sum should be paid within 21 days of the expiry of the appeal

period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 14th day of April 2026

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For the Registrar

ANNEX 1

Class 9

Charging stations for electric vehicles; wall box for electric vehicles; Electronic control devices for charging an electric vehicle; Electronic devices for charging an electric vehicle using a photovoltaic system; Energy storage devices for storing electrical or thermal energy; Home energy stores for charging an electric vehicle, for self-use and/or feeding into the grid; Control devices and systems for charging an energy store using a photovoltaic system and for removing energy from the energy store for charging an electric vehicle; Photovoltaic installations and systems, in particular for roof installation; Electricity generation systems and installations using renewable energy sources; home energy management systems that are device-based, cloud-based and/or based on downloadable smartphone software; Inverters for photovoltaic installations; Feed-in systems for photovoltaic installations; downloadable smartphone software and/or server/computer applications for controlling electric vehicle charging stations, electric vehicle charging controllers, energy storage devices, home energy storage devices, energy storage charging controllers, photovoltaic systems, electricity generation systems and/or home energy management systems.

Class 37

Rental, installation, sale and/or maintenance of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, photovoltaic installations, electricity generation systems, home energy management systems; charging electric vehicles.

Class 39

Supply of electricity and/or gas, in particular supply of electricity and/or gas to private households, companies or other facilities; offering electricity and gas tariffs for providing electricity and heating energy; home energy management; Remote control for the sale of electrical energy or for the delivery of electrical energy from an energy store or a power generation plant to an external power supply network; Controller for feeding electrical energy from the battery of an electric vehicle into an external power

grid; controller for transferring electrical energy from an electric vehicle battery to an electric vehicle home charging station; management of energy generation and consumption; Remote monitoring, remote control and operation of charging stations for electric vehicles, control devices for charging electric vehicles, energy storage devices, home energy storage devices, control devices for charging an energy storage device, photovoltaic systems, electricity generation systems and/or home energy management systems, using internet-based data communication.

ANNEX 2

Class 9

Computer application software for mobile phones, tablets; desktop computers that controls and automates smart home sensors and devices; cameras; adapter plugs; computer network adapters, switches, routers and hubs; computer network hubs, switches and routers; day and night vision systems primarily comprising day and night sensors; day and night cameras, power sources, communication means, monitors and operating software; electric plugs; electrical outlets; electrical plug device enabling connection and disconnection of power and/or control cables; electrical plugs and sockets; electricity router for managing and optimizing energy loads within a building; gateway routers in the nature of computer control hardware; network routers; remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location; telecommunications equipment, namely, fiber-optic transceivers, fiber optic repeaters, converters and optimizers, wave division multiplexers, free-space optics transmission systems, switches including ethernet switches and routers, fiber-to-the-home and ethernet-over-vdsl access aggregators, terminators and repeaters, and remote presence management products, namely, switches, and console, alarm, sensor and power management devices; telephone call router, for home and office touchtone phones, for international and long distance calls made from various telephony platforms including voip platform without the requirement for internet; telephone call routers; telephone call routers for long distance calls made through pstn and voip platforms from any touchtone phone without a requirement for internet access; weighing scales; wide area network (wan) routers; wireless routers; wireless electronic scales; camera hardware systems for ip (internet protocol) video surveillance; led lighting controls for energy management, computer environment illumination, color energy, and lighting schedule; plug adaptors; plug connectors; free-space optics transmission systems, ethernet switches and routers, and software sold both as components thereof and separately, namely, software adapted and arranged for operating, installing, testing, diagnosing and managing the forgoing telecommunication equipment; amplifiers for wireless communications; scales; scales with body mass analysers; touch screen pens; touch screens; alarm sensors; bathroom scales; day and night vision systems

primarily comprising day and night sensors, day and night cameras, power sources, communication means, monitors and operating software; digital bathroom scales; electric sensors; electrical sensor apparatus for sensing the presence or absence of individuals or objects by contact or pressure; electronic weighing scales for kitchen use; interactive touch screen terminals; light emitting diodes (leds); pens with conductive points for touch screen devices; pressure sensors; proximity sensors; temperature sensors; touchscreen sensors; wireless communication devices for transmitting images taken by a camera; computer application software for mobile phones, tablets, and desktop computers that controls and automates smart home sensors and devices; plugs; electric doorbells; electrical outlets; computer cameras; dashboard cameras; digital cameras; digital video cameras; ip (internet protocol) cameras; motion-activated cameras; photographic cameras; video cameras; home and office electrical power automation systems comprising wireless and wired controllers, controlled devices, and software for appliances, lighting, hvac, security and other home and office electrical power monitoring and control applications; light switches; electronic power supplies; electric wiring.

Class 11

LED lighting systems, namely, LED modules; LED luminaires; Electric bulbs; Electric light bulbs; Fluorescent electric light bulbs; Halogen light bulbs; LED light bulbs; Light bulbs; Miniature light bulbs; LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED lighting fixtures for indoor and outdoor lighting applications; Sockets for electric lights.

Class 38

Transmission and delivery of video images or audio files via wireless communication networks or the Internet.

Class 42

Application service provider featuring application programming interface (API) software for mobile phones, tablets, and desktop computers that controls and automates smart home sensors and devices.

Class 45

Home security monitoring using wireless and wired sensors, motion detectors, alarms, audio devices, video devices, home automation devices, and security devices and equipment.

ANNEX 3

Class 7

Vacuum cleaners; Robots, namely, robotic vacuum cleaners; rechargeable floor sweeping machines; Carpet cleaning machines; floor cleaning machines; electric vacuum cleaners; robotic vacuum cleaners; road sweeping machines, self-propelled; machines and apparatus for carpet shampooing, electric; electric machines and apparatus for cleaning; cleaning appliances utilizing steam; Self-propelled road sweeping machines; brushes for vacuum cleaners; dust exhausting installations for cleaning purposes; dust removing installations for cleaning purposes; vacuum cleaner hoses; suction nozzles for vacuum cleaners; electric machines and apparatus for cleaning, namely, steam cleaning machines; Cleaning tools and accessories, including brushes, trash bags, mops, filters, detergent; Robot vacuum cleaner and control software system; Handheld vacuum cleaner and control software system; Robot mop and control software system; Handheld electric mop and control software system; Automatic dust collection equipment and control software system; Automatic cleaning equipment and control software system; Air purifier and control software system; Smart lawn mower and control software system; Household lawn mower and control software system; Irrigation system control equipment and software; Water supply system control equipment and software; Sprinkler system control equipment and software; Climate monitoring equipment and control software; Environmental monitoring equipment and control software.

Class 9

Humanoid robots with artificial intelligence; robots with artificial intelligence, namely, robotic lawn mowers, robotic fertilizer distributing machines, and robotic sowing machines; robots with artificial intelligence, namely, telepresence robots for use in business environment and private and public settings; robots with artificial intelligence, namely, robots for navigation being robots with autonomous capabilities of navigating, path planning, obstacle avoidance and tracking for indoor and outdoor environments; humanoid robots with artificial intelligence, namely, robots capable of recognizing human speech and human gesture, and act according to the person's request; humanoid robots with artificial intelligence, namely, robotic irrigation sprinklers;

Electronic water control devices, namely control units for use in the timing and operation of irrigation systems; electronic controls for irrigation systems; electronic sensors for irrigation uses; Computer application software for mobile phones, namely, software for controlling a sprinkler system remotely; Downloadable computer software for controlling a sprinkler system remotely; Contact sensor, Windows and Door Sensor, Temperature and Humidity Sensor, Water Leak Sensor, Smoke Sensor, CO Sensor, Thermostat(HVAC), Thermostat Radiator Valve, Smart IR controller; Outdoor Camera, Battery Camera, Floodlight Camera; Video Door Bell, Peephole Video Camera, Li-Battery, Solar Charging Panel; Service robot and control software system; Security robot and control software system; Video playback equipment and control software system; Projector and its control software system; computer software for classifying, transmitting, receiving, processing, reading and watching, and controlling applications, texts, electronic data, images, audio and video files; computer software for reproducing, processing and streaming audio, video and multimedia content and for audio calling, video calling and remote collaborating; computer software for multimedia sharing, media-share computer software for computers; classifying, transmitting, receiving, processing, reading and viewing, and examining texts, data, images, audio and video files, namely, computer software and computer hardware; video devices, namely, software and hardware for audio and video enhancement sold as an integral part of web cameras and video cameras; audio and sound system devices, namely, audio speakers, mobile speakers, wireless speakers, headsets, headphones, earbuds and microphones; telephony equipment namely headsets, headphones, earbuds and microphones for use with computers and telephones, telephones, mobile phones, videophones; video-conferencing equipment namely video-conferencing cameras, speakerphones, computer monitors, televisions, and other audio-visual components; computer software and computer programs for use in connection with electronic transmission of video, audio and data across local area, wide area and global computer networks; Electronic lock assemblies; electronic locks; electronic locks that can be controlled from a remote location; Access control and alarm monitoring systems; remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location; programmable locking systems, consisting of electronic cylindrical locksets and keypads; computer software for accessing, controlling, and managing electronic locks;

computer software for programming, sharing, and revoking virtual keys for electronic locks; Computer services, namely, providing a website featuring technology that allows users to monitor, control, and manage electronic locks from a remote location and to program, share and revoke virtual keys for electronic lock; lock operated by built-in computer with numerical keyboard; Biometric, Electric, electronic and electromechanical locks and lock goods; biometric access control readers; units for programming locks, lock cylinders, keys, biometric sensors readers, key cards and key card readers; apparatus for measuring biomagnetic signals; Biometric, electronic and magnetic sensors; apparatus and instruments for signaling and checking, also including checking and/or controlling people's movement within, entrance to and exit from buildings and through doors and gates and/or for use with locks; magnetic and electronic identity cards; battery-operated locks and keypad controllers therefor; automatic door operators; key pads; key pad-operated locks; electric alarmed exit devices and electrically operated holder/closer for doors; electronically controlled door opener/ closer; locks operated by internal computer; radio-frequency door closer and door controls; security systems and apparatuses, including scanners, microprocessor controlled door locks actuated by encoded cards; power supplies and battery back-ups for power supplies, and computer software to assist in preparing specification for architect.

Class 11

Light Strip, String Light, Flood Light, Desktop Light/Lamps.

ANNEX 4

Class 9

Thermostats; Telemetry systems; Computer programs; computer software; Electric installations for the remote control of industrial operations; Interfaces for computers; Remote control systems; Thermostats for heating systems; Thermostats for air conditioning systems; Climate control systems; Climate control systems; Heating control systems; Climate control systems; Systems and software for displays; Monitoring and control of air conditioning in living environments; Control systems and software for battery-charging equipment; Systems and software for controlling and regulating heating systems; Air conditioning systems and Ventilation equipment; Systems and software for switching and regulating technical systems; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy consumers; Systems and software for switching and regulating electricity consumers; Systems and software for switching and regulating power generators; Systems and software for switching and regulating energy generators; Systems and software for remote maintenance of technical systems; Systems and software for remote monitoring of technical systems; Systems and software for remote control of technical systems; Systems and software for remote maintenance of power supply devices; Systems and software for remote monitoring of power supply devices; Systems and software for remote control of power supply devices.

Class 35

Arranging of commercial and business contacts; Providing of addresses for advertising purposes; Arranging commercial transactions, for others; Arranging of contracts, for others, included in class 35; Arranging of contracts, for others, for the providing of services; Arranging of contracts, for others, for the buying and selling of goods; Arranging of contracts with electricity suppliers; Arranging contracts with gas suppliers; Arranging contracts with oil suppliers; Arranging contracts with energy suppliers; Arranging subscriptions to telecommunication services for others; Sales promotion (for others); Updating and maintenance of data in computer databases; Cost price

analysis; Retailing via the Internet of heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances, Remote maintenance systems, remote control systems, energy-generating systems; Wholesaling via the Internet of heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances, Remote maintenance systems, remote control systems, energy-generating systems; On-line advertising on a computer network; Presentation of companies on the Internet and other media, price comparison services; Advertising on the Internet, for others.

Class 42

Consultancy in the field of energy-saving; Providing search engines for the internet; Provision of scientific information, advice and consultancy in relation to carbon offsetting; Computer system analysis; Electronic data storage services; Development of usage concepts for real estate with regard to technical matters (facility management); Remote monitoring and remote control of technical systems via the Internet; Remote monitoring and remote control of computer systems; Remote monitoring and remote control of heating systems via the Internet; Remote monitoring and remote control of air-conditioning systems via the Internet; Remote monitoring and remote control of ventilation systems via the Internet; Remote monitoring and remote control of air-conditioning control systems via the Internet; Remote monitoring and remote control of electricity consumers via the Internet; Remote monitoring and remote control of energy storage devices via the Internet; Remote monitoring and remote control of power generators via the Internet; Remote monitoring and remote control of energy generators via the Internet.

ANNEX 5

TP-Link's first mark

Class 9

Computer application software for mobile phones, tablets; cameras; day and night cameras; electric plugs; electrical plugs and sockets; remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location; day and night vision systems primarily comprising day and night cameras, communication means, monitors and operating software; light emitting diodes (leds); wireless communication devices for transmitting images taken by a camera; plugs; digital video cameras; motion-activated cameras; video cameras; home and office electrical power automation systems comprising wireless and wired controllers, controlled devices, and software for appliances, lighting, security and other home and office electrical power monitoring and control applications.

Class 11

LED light bulbs; Light bulbs.

TP-Link's second mark

Class 9

Outdoor Camera; Video playback equipment and control software system; computer software for classifying, transmitting, receiving, processing, reading and watching, and controlling images, audio and video files; computer software for reproducing, processing and streaming audio, video and multimedia content; remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location.

Class 11

Light Strip.

ANNEX 6

Class 9

Thermostats; Telemetry systems; Computer programs; computer software; Interfaces for computers; Remote control systems; Thermostats for heating systems; Thermostats for air conditioning systems; Climate control systems; Climate control systems; Heating control systems; Climate control systems; Systems and software for displays; Monitoring and control of air conditioning in living environments; Control systems and software for battery-charging equipment; Systems and software for controlling and regulating heating systems; Air conditioning systems and Ventilation equipment; Systems and software for switching and regulating technical systems; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy storage devices; Systems and software for switching and regulating energy consumers; Systems and software for switching and regulating electricity consumers; Systems and software for switching and regulating energy generators; Systems and software for remote maintenance of technical systems; Systems and software for remote monitoring of technical systems; Systems and software for remote control of technical systems; Systems and software for remote maintenance of power supply devices; Systems and software for remote monitoring of power supply devices; Systems and software for remote control of power supply devices.

Class 35

Arranging of commercial and business contacts; Arranging commercial transactions, for others; Arranging of contracts, for others, included in class 35; Arranging of contracts, for others, for the providing of services; Arranging of contracts with electricity suppliers; Arranging contracts with energy suppliers; Updating and maintenance of data in computer databases; Cost price analysis; Retailing via the Internet of heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances, Remote maintenance systems, remote control systems, energy-generating systems; Wholesaling via the Internet of

heating technics, air conditioning technology, ventilation technology, building automation, facility control, control techniques, control engineering, energy technology, building technology, Tools, Metal goods, Construction articles, electrical goods and Electronics goods, home appliances, Remote maintenance systems, remote control systems, energy generating systems.

Class 42

Consultancy in the field of energy-saving; Computer system analysis; Electronic data storage services; Remote monitoring and remote control of technical systems via the Internet; Remote monitoring and remote control of computer systems; Remote monitoring and remote control of heating systems via the Internet; Remote monitoring and remote control of air-conditioning systems via the Internet; Remote monitoring and remote control of ventilation systems via the Internet; Remote monitoring and remote control of air-conditioning control systems via the Internet; Remote monitoring and remote control of electricity consumers via the Internet; Remote monitoring and remote control of energy storage devices via the Internet; Remote monitoring and remote control of power generators via the Internet; Remote monitoring and remote control of energy generators via the Internet.