

O/0381/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF TRADE MARK APPLICATION NOS.

3894905 AND 3894896

BY

APOLLO AUTOMOBILE LIMITED

TO REGISTER THE FOLLOWING TRADE MARKS



AND

APOLLO EVO

IN CLASSES 9, 12, 14, 18, 25, 28, 35, 37, 39, 41 AND 42

AND

OPPOSITIONS THERETO UNDER NOS.

443087 AND 443092

BY

LIVE NATION (MUSIC) UK LIMITED

Background and Pleadings

1. On 29 March 2023, Apollo Automobile Limited (“the Applicant”) applied to register the trade marks as set out on the cover page of this decision (collectively “the contested marks”). They were published for opposition purposes on the 16 June 2023. The applications were made for the broad range of identical goods and services as set out in full in the Annex to this decision.¹

2. On 18 September 2023, Live Nation (Music) UK Limited (“the Opponent”) opposed the applications in full under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

3. Under section 5(2)(b) the Opponent relies upon the following trade mark registrations:

UKTM no. 2445682

APOLLO

Filed on 5 February 2007 and registered on 12 September 2008 in relation to a broad range of goods and services in classes 9, 16, 25, 35, 41, 42, 43 and 45 as set out in full in the Annex to this decision.

(“the first earlier mark”)

UKTM no. 2445684

MANCHESTER APOLLO

Filed on 5 February 2007 and registered on 18 January 2008 for goods and services in classes 9, 16, 25, 35, 41, 42, 43 and 45 as set out in full in the Annex to this decision.

(“the second earlier mark”)

¹ Throughout the proceedings the Applicant filed several amendments and limitations to its specification in classes 9, 14 and 35 in an attempt to settle the dispute between the parties. On each occasion the Opponent confirmed that it was maintaining its opposition in full.

4. Under section 5(2)(b) the Opponent claims that as a result of the similarity between the respective marks and the identity/high similarity between the respective goods and services there exists a likelihood of confusion.

5. Under section 5(3) the Opponent relies upon the same marks and goods/services as aforesaid claiming that use by the Applicant of the contested marks would without due cause mislead and confuse the consumer into believing that there is an economic connection between them and that use of the Applicant's marks would take unfair advantage of and/or be detrimental to the distinctive character and/or repute of the earlier marks.

6. Due to their earlier filing dates, the marks upon which the Opponent relies qualify as earlier marks within the meaning of section 6 of the Act. Both earlier trade marks completed their registration process more than five years before the filing date of the contested mark and therefore they are subject to the proof of use provisions under section 6A of the Act. The Opponent provided a statement that it had used the marks for the full range of goods and services relied upon.

7. Under section 5(4)(a) the Opponent relies upon the signs APOLLO, MANCHESTER APOLLO said to have been used throughout the UK since 2007 for the goods and services as set out below. It is contended that use by the Applicant of marks that are similar and for identical/similar goods/services would be contrary to the law of passing off misleading the public into believing that the parties are connected, causing damage to the Opponent's goodwill.

Continuation Sheet Section C Question 3 for APOLLO and MANCHESTER APOLLO

Apparatus for recording, transmission or reproduction of sound, vision, or images; recording discs; data processing equipment and computers; computer hardware and firmware; computer software (including software downloadable from the Internet); computer games equipment adapted for use with TV receivers; amusement apparatus for use with television receivers only; computer operating programs; computer programs; computer games; videos; DVDs; MP3s; CDs; audio and/or visual tapes; cassettes; discs; records; digital music (downloadable from the Internet); film, sound and video recordings; sound and video recordings and publications in electronic form supplied on-line, from databases or from facilities provided on the Internet; cinematographic, photographic, teaching and optical apparatus and instruments; video games; digital music (downloadable) supplied from MP3 websites on the Internet; telephone ring tones (downloadable); computer programs (downloadable software); podcasts; magnetic discs; magnetic data media; computer game programs; downloadable electronic publications; video game cartridges; databases; magnetic data carriers, sunglasses, computer databases; Paper, cardboard and goods made from these materials; printed matter and printed publications; books, magazines, brochures and event programmes; posters; photographs; greeting cards, postcards; stationery; pens; document cases, card holders, photograph holders, leaflets, prints; tickets for concerts, shows and other events; albums of all kinds; Clothing articles; t-shirts, sweatshirts, sweatpants, sweaters, suits, singlets, vests, headscarves, shirts, blouses, hats, gloves, stockings, slippers, dressing gowns, underwear, capes, shawls, jeans, pyjamas, children's clothing, pullovers, knitwear, jogging suits, bomber jackets, waterproof clothing, wind-cheaters, overcoats, shorts, jackets, socks, rugby shirts, fleece tops, jumpers, belts, polo shirts, dresses, hosiery, swimwear, cardigans, coats, trousers, mini-skirts, pinafores, waistcoats, overalls, dance clothing, leotards, leggings, scarves, ties, bow-ties; footwear, shoes, boots, trainers, sandals, espadrilles; headgear, caps and baseball caps, bandannas; Advertising; dissemination of advertising matter; advertising by mail order; business management of performing artists; compilation of information into computer databases; organisation of exhibitions for commercial or advertising purposes; publicity; public relations; publication of publicity texts; radio advertising; sales promotion; distribution of samples; television advertising; radio and television commercials; business management; business administration; accounting and office functions in relation to the reservation, issue and sale of tickets; advertising services provided via the Internet; production of television and radio advertisements; provision of business information; hiring disc jockeys; organisation, operation and supervision of customer loyalty schemes; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing; Education; entertainment; sporting and cultural activities; electronic games services provided by means of the Internet; organisation of competitions for education or entertainment; production of radio and television programmes; providing on-line electronic publications (not downloadable); publication of texts (other than publicity texts); electronic games services provided by means of the Internet; the provision of on-line electronic publications and digital music (not downloadable) from the Internet; provision of recreational and entertainment facilities; live band performances; club entertainment services; organising nightclub events; recording of music onto a variety of media; production of sound recordings; production of musical recordings; production of audio recordings; nightclub management; hiring of audio and/or visual equipment; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; production of television, film, radio and music programmes and recordings; composition of music; video taping; digital music (not downloadable) supplied from MP3 websites on the Internet; providing digital music (not downloadable) from MP3 Internet websites; digital music (not downloadable) provided from the Internet; booking agencies; ticket reservation and ticket agency services for concerts and other events; ticket agency services provided online, by telephone, mobile

telephone, and through ticket outlets; the provision of on-line electronic publications and digital music (not downloadable) from the Internet in the form of podcasts; management of theatres and music venues; provision of theatre facilities; theatre services; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing; Creating and maintaining websites for others; compilation of websites; design of computer databases; design, drawing and commissioned writing for the compilation of websites; computer software design and development; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory

and information services relating to the foregoing; Restaurant, café, fast food catering, snack-bar, pub and bar services; temporary accommodation reservations; hiring of bar, catering and restaurant equipment and facilities; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing; Exploitation of music productions; licensing of musical shows.

8. On 2 January 2024, the Applicant filed a defence and counterstatement to each opposition, denying all the grounds relied upon and putting the Opponent to strict proof of its claims to include providing proof of use of all goods and services of its trade mark registrations as relied upon.

9. The proceedings were consolidated on 16 February 2024 and the parties were notified accordingly.

Representation

10. The Applicant is represented by Mishcon de Reya LLP, and the Opponent is represented by Fieldfisher LLP. Only the Opponent filed evidence consisting of the witness statement of Melissa Bury dated 25 July 2024, accompanied by 12 exhibits marked WS1-WS12. No hearing was requested but the Opponent filed submissions in lieu of a hearing. This decision is taken following a careful consideration of all papers filed.

Preliminary issues

11. When it filed its original evidence, the Opponent requested a confidentiality order for the financial figures that were originally disclosed to be kept from public inspection. This request was refused following a Case Management Conference (“CMC”) held to challenge the initial view taken by the Tribunal to the request. The Applicant did not participate in the CMC and did not advance any submissions on the matter. The reasons for the refusal were set out in a letter dated 4 July 2024 and I adopt those reasons here. The Opponent refiled its evidence, the only difference being that the financial figures and tables referred to in the refiled evidence were presented in general terms but the exhibits were unaltered in their content and specificity. I hasten to add that for reasons that will become apparent the refusal of the confidentiality order has made no material difference to my assessment of the evidence or disadvantaged the Opponent in any way.

Relevance of EU Law

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated

law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Decision

Proof of Use

13. The relevant statutory provisions are as follows:

“6(1) This section applies where:

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

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

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

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

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

mark in the variant form is also registered in the name of the proprietor),
and

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

(5) - (5A) [Repealed]

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

Section 100 of the Act 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.”

14. The relevant period for assessing genuine use is the five-year period ending with the filing date of the application in issue i.e. 30 March 2018 to 29 March 2023.

15. 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 Bunderversammlung 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 Marken 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].”

16. 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 or services protected by the mark” is, therefore, not genuine use.

Evidence

17. The Opponent's evidence to demonstrate the use it has made of its marks, the reputation and goodwill it holds and to show that its marks have acquired enhanced distinctive character through use, comes from Ms Bury. Ms Bury is the General Manager of a venue called the O2 Apollo Manchester ("the venue"), a position she has held since 2023. Ms Bury states that the venue is operated by the Opponent and she provides background information as to the corporate structure of the Opponent which is a subsidiary of Live Nation Entertainment which is a live music and event management company operating entertainment venues in the United Kingdom.

18. Ms Bury states that the Opponent primarily provides the following services to the general public namely "*entertainment, cultural activities, recreational and entertainment facilities; live band performances; club entertainment services; organising, arranging, managing and staging musical events, shows, concerts, gigs and live band performances*".

19. Ms Bury states that the Opponent has used the marks in relation to these aforementioned services since 2005. She states that various well known musical artists have performed at the venue between 2010 and 2023 to include Michael Bolton, One Direction, Ed Sheeran and Bob Dylan. Screenshots are produced taken from www.concertarchives.org, listing examples of events held at the venue and artists who have performed there.²

20. Ms Bury provides the following table showing the number of events held at the venue each year:

Year	Number of events
2018	99
2019	56
2020	29
2021	41
2022	108
2023	64

² Exhibit WS2

21. Ms Bury produces a poster listing the events hosted at the venue in 2024 (reproduced below). Whilst she acknowledges that the poster is dated after the relevant period, she states that it illustrates the types of events hosted at the venue within the relevant period.³



³ Exhibit WS3

22. Ms Bury produces screenshots taken from various sources of the news coverage received regarding the use of the Opponent's earlier marks. This shows use of the earlier marks referenced as follows:⁴

Avril Lavigne cuts an edgy figure as she commands attention on stage at her sold-out Manchester Apollo concert... after postponing UK tour

By [JESSICA JANES FOR MAILONLINE](#)

PUBLISHED: 00:42, 7 May 2023 | UPDATED: 00:47, 7 May 2023

50
shares

9
View comments

Avril Lavigne cut an edgy figure as she commanded attention on stage on Saturday at her sold-out gig at the Manchester Apollo after postponing her UK tour.

The singer, 38, took to the stage for an energetic performance after she pushed back her UK and European tour from 2020 to this year due to the **coronavirus** pandemic.

James Arthur review - brash pop and emo soul from X Factor comeback kid

★★★★☆

Apollo, Manchester

Rising above past controversy, the Middlesbrough singer wears his heart on his sleeve and remains refreshingly and likably unfiltered

OPINION **Review: Gary Barlow at Manchester Apollo – 'an absolute masterclass in pop perfection'**

'When he's not touring and making music with Take That he's writing and launching musicals, and now he's back on the road'

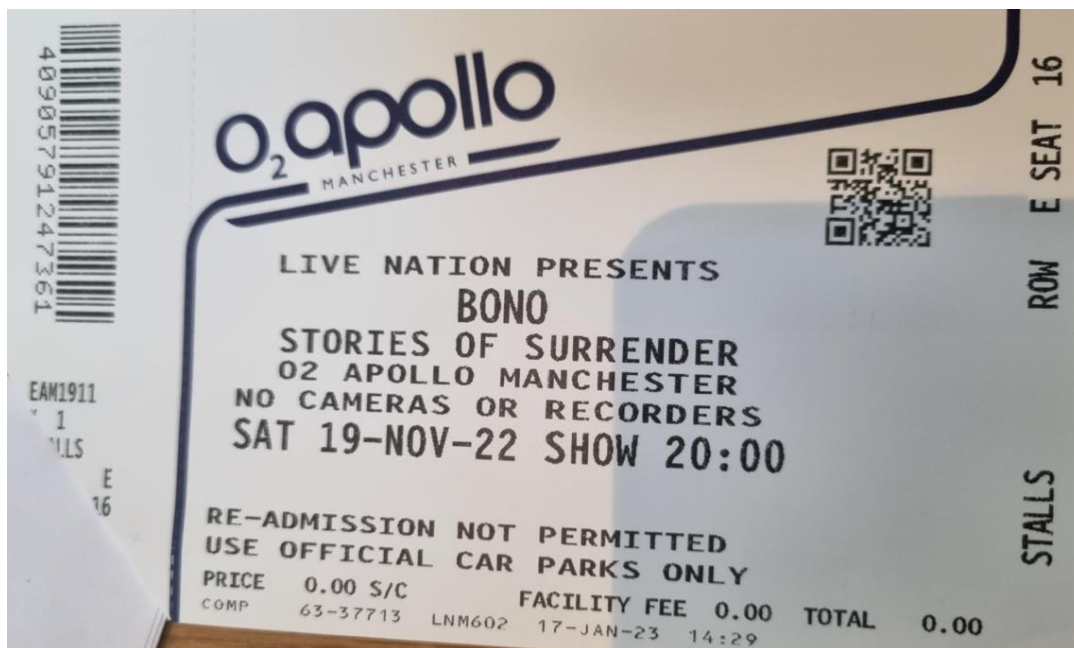
GARY BARLOW ★★★★★

⁴ Exhibit WS4 taken from The Guardian, The Daily Mail and Manchester Evening News.

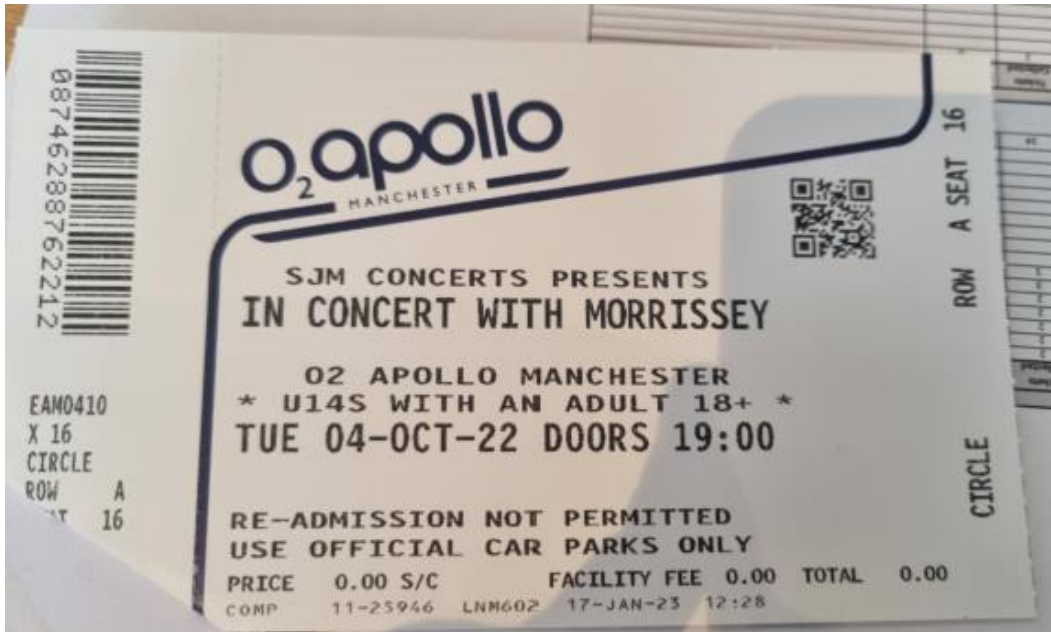
23. The Opponent provides turnover figures for the venue as follows:

Year	Amount
2018	Over £3 million
2019	Over £2.5 million
2020	Over £350,000
2021	Over £300,000
2022	Over £4 million
2023	Over £3 million

24. It is said that each ticket purchased by a customer for entry to an event at the venue clearly features the earlier trade marks alongside 'O2' which sponsors the venue. The marks are displayed on the tickets as follows:⁵



⁵ Exhibit WS5



25. Ticket sales by year for the venue are presented in the following table:

Year	Ticket sales
2018	Over 290,000
2019	Over 200,000
2020	Over 25,000
2021	Over 20,000
2022	Over 320,000
2023	Over 210,000

26. An example invoice is produced showing the use of the earlier marks as follows:⁶

VENUE: O2 APOLLO MANCHESTER
 INVOICE NO: 54/09/2021 [REDACTED]
 DATE: 54/09/2021
 PRESENTATION: [REDACTED]
 TYPE OF SHOW: Standing
 U.K. RESIDENT: Middleman
 PROMOTER:
 PROMOTER VAT NUMBER



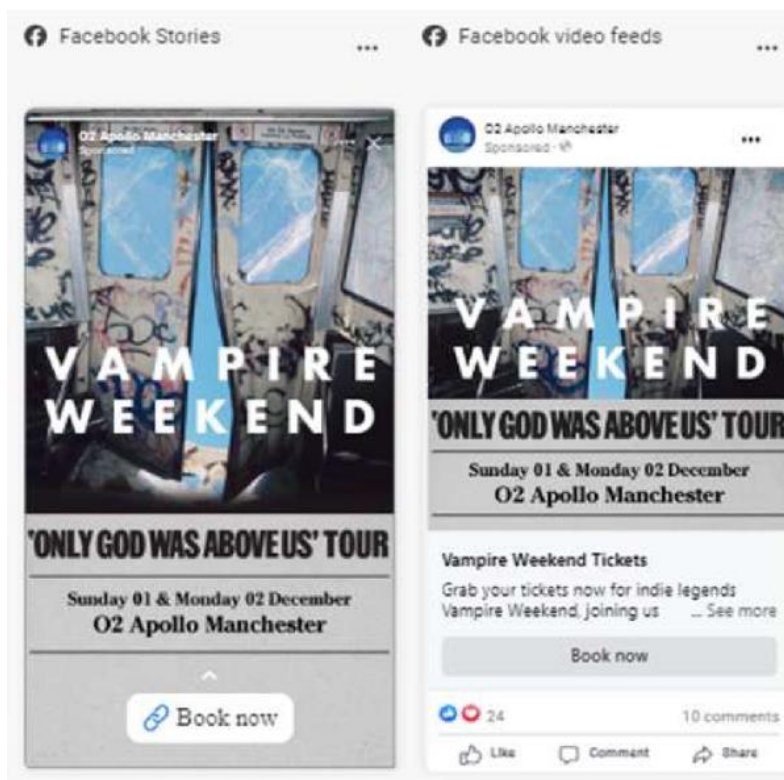
Live Nation (Music) Limited
 2nd Floor Regent Arcade House
 19-25 Argyll Street
 W1F 7TS
 Tel 0207 0093443

⁶ Exhibit WS6

27. I note that no explanatory information is provided explaining the content of the invoice or the financial arrangement between the Opponent and the artist/performer for the use of the venue although I note that the invoice appears to indicate that the venue is provided as a hired facility.

28. Ms Bury states that the venue has a maximum capacity of 2693 (seated) and 3500 (standing) with a number of events held having been sold out. Examples of these include the comedian Peter Kay's live shows in 2021 and Avril Lavigne (a singer) in 2023 (postponed from 2020 due to the covid pandemic).⁷

29. The Opponent is said to pay to advertise events which are hosted at the venue. Examples taken from Instagram and Facebook are provided. Some of these examples are dated outside the relevant period but are said to show the type of advertising that took place for the venue during the relevant period.⁸



⁷ Exhibit WS7

⁸ Exhibit WS8 and WS9

Instagram Stories Facebook Stories Facebook video feeds

O2 Apollo Manchester
Multi-instrumentalist, songwriter and producer Masago is heading out on his ... see more

ACADEMYUSODROPOOM
Tickets are on sale
O2 Apollo Manchester

27 2 comments 4 shares

Like Comment Share

Vertical video (with an aspect ratio taller than 4:5) may be restricted to A.S.

O2 Apollo Manchester
1 December 2019 · 🌐

A handful of tickets have been released for tonight show! Grab them fast:
<https://www.ticketmaster.co.uk/sno.../event/3600571DC2901DB8>

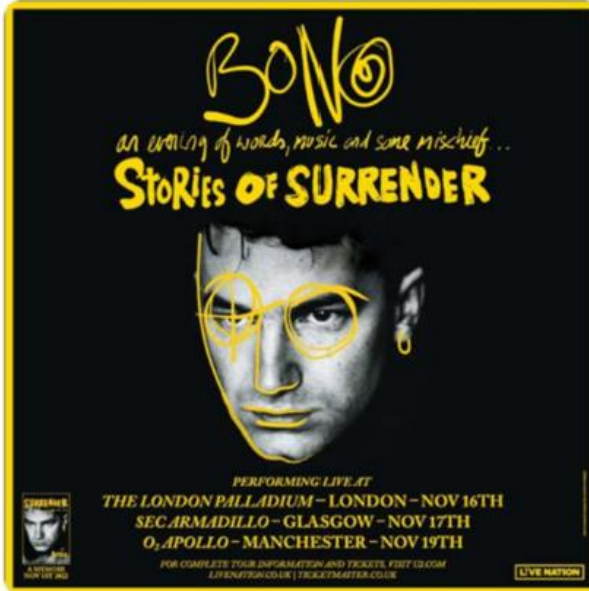
SUN, 1 DEC 2019
Snow Patrol: Reworked Tour 2019 - Manchester
 Manchester
 You've checked in to O2 Apollo Manchester before

Interested

O2 Apollo Manchester @O2ApolloManc · Nov 19, 2022 ...
We're super excited about Bono's Stories of Surrender show here tonight 🎉
Doors open from 6.30pm 📅

All usual security checks are in place 🤝 Please head to our pinned tweet
for all other essential information you need for your visit 📌

and lastly... Enjoy the show!! 🎶



🗨️ 5 🔄 2 ❤️ 16 📊 📌 📤

O2 Apollo Manchester @O2ApolloManc · Mar 13, 2023 ...
.@UB40OFFICIAL are heading here to celebrate 45 years of the band,
performing some of their most-loved classic hits and fan favourites. Catch
them Thu 1 Jun 📅

Get 48-hour early access Priority Tickets from 10am Wed 15 Mar 🎟️
in-venues.com/vOnK50Ngob2



🗨️ 🔄 ❤️ 📊 1.8K 📌 📤

30. It is said that the coronavirus pandemic significantly impacted the venue during 2020-2023 where there were lengthy periods where the venue was unable to operate. Screenshots taken from articles published by the BBC and ukmusic.org are produced outlining the effect of the pandemic on the music industry and live events.⁹

31. Ms Bury acknowledges that the use of the trade marks has been primarily for services in class 41 but states that it is also common for merchandise to be sold. The extent of her evidence in this regard, however, is providing examples of merchandise being offered for sale by other venues and events, giving the examples of the Glastonbury Festival and the Albert Hall.¹⁰

Use of the mark as registered or in a variant form

32. Before I consider whether the evidence constitutes sufficient use of the earlier marks, it is necessary to address the marks shown in use and determine whether this is either use of the marks as registered and/or use of an acceptable variant of the same.

33. Where the Opponent has used the earlier marks in the form in which it is registered, then clearly this will be use upon which it may rely. The evidence also includes the use of the earlier marks as follows:

(i) O2 Apollo

(ii)

OPINION **Review: Gary Barlow at Manchester Apollo – 'an absolute masterclass in pop perfection'**

(iii)

O2 Apollo Manchester
@O2ApolloManc

⁹ Exhibit WS11
¹⁰ Exhibit WS12

(iv)



34. It is settled law that use of a trade mark includes its independent use and its use as part of a composite mark, provided that it continues to be indicative of the origin of the product.¹¹

35. Further in *Lactalis McLelland Limited v Arla Foods AMBA*,¹² Mr Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said (emphasis added):

“13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable just use and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative

¹¹ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

¹² BL O/265/22.

elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

36. In my view, the stylisation in the figurative forms used is not greatly distinctive and given that a word only mark can be used in any size or font, the fact that the word APOLLO is used in a variety of lower, upper and title case does not detract from the word itself. Additionally, the word Manchester will be seen as a geographical location and therefore it matters not whether it is shown before, after or below the word APOLLO. The word ‘APOLLO’ is clearly identifiable within the figurative forms, and therefore still acts to indicate trade origin. Consequently, the various forms as shown above are acceptable variants.

37. Further where the earlier marks are used with matters added, here in combination with the letters O2, this does not alter the distinctiveness of the marks at issue. The use of the marks in this context will not alter the distinctiveness of the element

apollo/APOLLO as it still retains its independent distinctive character and may be relied upon. This would merely be seen as co-affixing as per *Colloseum* and would be an acceptable variation.

Assessment of the evidence

38. To my mind the evidence clearly demonstrates that the marks have been used during the relevant period. The evidence shows that the Opponent hosts live music and comedy events at a venue called the (O2) Apollo Manchester/(O2) Manchester Apollo. The sales figures provided and ticket numbers demonstrate the extent of the use which are not insubstantial. However, there is no indication as to market share in order to evaluate the level of use in comparison to the market as a whole or particularly for what goods and services relied upon. This makes it difficult to assess the extent of use across the market and, for reasons that will become relevant later in my decision, whether the figures provided represent significant use or not. I note that the article taken from the BBC article at exhibit WS11 talks about “6 million people attending small and medium gigs last year” which in light of the date of the article appears to indicate the year 2019. In the same year Ms Bury states that over 200,000 tickets were sold for the venue. Whilst I appreciate that the actual number of sales may, in reality, be higher than that shown in evidence, the figures produced roughly equate to approximately 3% or 4% of the UK market. Even if I took the maximum capacity figures into account this would be no more than 7% of the market. I do not consider that the use has been shown to be significant although it is sufficient to demonstrate genuine use of the marks.

39. Turning now to consider the goods and services for which use has been shown. I note that whilst the Opponent relied upon a broad range of goods and services in its pleadings, in its submissions it limited reliance on those goods and services in classes 16, 35, 41 and 45 as follows:

Class 16: tickets for concerts, shows and other events; [all of the foregoing relating to music venues and for theatrical venues].¹³

Class 35: Advertising; dissemination of advertising matter; publicity; public relations; publication of publicity texts; accounting and office functions in

¹³ I note that the limitation in square brackets for its class 16 goods and class 35 and 41 services only apply to earlier mark 2445682.

relation to the reservation, issue and sale of tickets; advertising services provided via the Internet; hiring disc jockeys; [all of the foregoing relating to venues and/or theatrical venues].

Class 41: entertainment; cultural activities; provision of recreational and entertainment facilities; live band performances; club entertainment services; organising nightclub events; nightclub management; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; booking agencies; ticket reservation and ticket agency services for concerts and other events; ticket agency services provided online, by telephone, mobile telephone, and through ticket outlets; management of theatres and music venues; provision of theatre facilities; theatre services; [all of the foregoing relating to music and or theatrical venues].

Class 45: Exploitation of music productions; licensing of musical shows.

40. The Opponent submits a broad statement that the evidence demonstrates use of the marks for all the above goods/services. However, Ms Bury's witness statement appears to acknowledge that the Opponent has primarily used the marks solely for services in class 41 namely "*entertainment, cultural activities, recreational and entertainment facilities; live band performances; club entertainment services; organising, arranging, managing and staging musical events, shows, concerts, gigs and live band performances*".¹⁴ She also suggested that in addition, "it is common for event spaces and hosts to produce merchandise"¹⁵

41. Dealing with the use in relation to merchandise and goods in class 25 first as it was referred to in evidence, Ms Bury's evidence does not show that the Opponent produced, sold or offered for sale any clothing goods/merchandise under the earlier marks or used the marks in relation to any specific goods in this class during the relevant period. It is my understanding that any merchandise sold at a particular event hosted at the venue would be of the particular artist or performer performing there rather than of the venue itself. It is not in my view common for merchandise of this type to be sold as suggested by Ms Bury. In any event, even if I am wrong, there is no direct

¹⁴ Paragraphs 6 and 18.

¹⁵ Paragraph 18 and Exhibit WS12.

evidence to show that the Opponent sells any merchandise or clothing or any of the goods it relies upon in class 25 under the marks.

Class 35

42. In relation to its class 35 services, the Opponent submits that it is common knowledge that in the provision of its class 41 services it needs to provide accounting and office functions in relation to the issue and sale of tickets for events performed at the venue. This is not, however, borne out from the evidence. There is no direct evidence which shows that the Opponent provides such functions for the benefit of third parties other than an inference that it carries out these services in the course of managing the venue.

43. Further the Opponent submits that it has shown use for what can generally be categorised as advertising services because it submits that it advertises and provides publicity for the events performed at the venue via social media to include Instagram and Facebook which it submits to be advertising for the benefit of the third party performers. I disagree. Whilst the Opponent has produced images of posters and social media posts promoting and advertising upcoming performances of artists who perform at the venue, this is merely an ancillary service of advertising its own events in order to sell tickets rather than an independent or separate commercial service creating or maintaining a share in the market as an advertising agency. There is no evidence that it supplies advertising services to third parties in order to enhance a company's market presence or brand. The publicity for events is part and parcel of the organising and staging services. Consumers would in my view understand that the use of the earlier marks for the promotion of events taking place at the Opponent's venue constitutes advertising of its own services. This does not amount to use of the marks in relation to advertising services as an independent activity to others.

44. In so far as *hiring disc jockeys* services it is submitted that the Opponent enters into agreements with disc jockeys who then perform at the venue. This is said to be shown by the fact that the well known artists Orbital performed at the venue in December 2018. The submissions then attempt to introduce evidence of fact regarding background information as to the artists Orbital which have not been provided in Ms Bury's witness statement. The extent of the evidence in relation to the artists Orbital as provided by Ms Bury is as follows:

45. There is no indication regarding the nature of the performer other than its name and the date of the performance in evidence. I dismiss the Opponent's submissions, therefore, that it has shown use for services in relation to *hiring disc jockeys*.

Class 41

46. I take particular note of Ms Bury's evidence outlining that the focus of the Opponent's use is predominantly for services in this class as outlined above. However, I do not consider that all of the services referred to have been sufficiently shown to have been used in her evidence.

47. For example, in relation to the Opponent's particular submissions that it provides *booking agency* services it relies on the invoice Ms Bury produced at exhibit WS6 to support such a contention submitting that this invoice supports use for these services because "the invoice sets out the amounts to be paid for a musical performance at the venue and costs for hosting a performance at the venue".¹⁶ The invoice is a single invoice dated September 2021 with no explanation as to what or how I am to interpret the content. The figures are redacted and, to my mind, all the invoice shows is the hiring out of the venue as a facility to host the event or the run of performances to a particular undisclosed artist. Given that there is no other specific evidence particular to these services, in effect I am asked to infer that because the Opponent operates the venue that these services are part and parcel of the provision. However, the financial figures provided are not broken down by category to any given service and therefore I have been unable to attribute the use with any degree of certainty to these services.

48. Dealing with what can generally be described as ticketing services next, namely *ticket reservation and ticket agency services for concerts and other events; ticket agency services provided online, by telephone, mobile telephone, and through ticket outlets* whilst the evidence provides details of the number of tickets sold during the relevant period and copies of images of physical tickets bearing the marks there is no additional evidence regarding how these services are undertaken. There is little or no

¹⁶ Paragraph 22.

evidence as to how customers made bookings or obtained tickets. There is no evidence which show customers being directed to the Opponent's ticketing website under the mark from which they can purchase tickets or from the ticket office at the venue bearing the marks. Whilst I note that several of its Instagram and Facebook posts have a booking button link within the post, the references to Vampire Weekend, for example, is not dated within the relevant period. Therefore, even if I was to take the links as directing consumers to the venue's booking portal there is no clear evidence that this was the position during the relevant period. I note that several of the screenshots promoting the performers include links directing consumers to purchase tickets from third parties such as ticketmaster.co.uk, In-venues.com, gigsandtours.com and O2 Priority. The evidence in my view, therefore, comes up short of demonstrating use for these services. I cannot be sure that the responsibility for the issuing and selling of tickets falls to an entirely different entity rather than to the Opponent or the venue. The display of the name on the actual ticket is no more than indicative of the place where the performance takes place rather than showing trade mark use for the provision of these services under the mark. I find that the extent of the use shown is purely in relation to the goods in class 16 namely *tickets for concerts, shows and other events, all relating to music/theatrical venues*.

49. I see no direct evidence that supports the contention that it has sufficiently proven it provides any of the services it relies upon in class 45 under the marks.

50. Having considered all the above and the evidence as a whole in particular in light of the focus of Ms Bury's evidence, I consider that the evidence shows that the Opponent operates a music/theatre hosting venue for performers and artists and whilst it may undertake various ancillary activities in the course of its business there is no specific evidence of use in relation to these activities other than broad statements in its submissions. It is not for me to infer what the evidence shows, it should be clear and unequivocal.

51. Consequently, I consider that a fair specification of the use shown in evidence and upon which the Opponent may rely for the purposes of the opposition in relation to both its earlier marks is as follows:

Class 16: tickets for concerts, shows and other events; all of the foregoing relating to music venues and for theatrical venues;

Class 41: Organisation, arrangement, management and staging of concerts, shows, gigs, live music events and live entertainment events; operating a live entertainment venue for the purposes of concerts, shows, gigs, live music events and live entertainment events; management of theatres and music venues; provision of theatre facilities; all of the foregoing relating to music and/or theatrical venues.

Section 5(2)(b)

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

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

(a)...

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

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

53. Section 5A of the Act reads as follows:

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

The principles

54. The 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 and are as follows:

(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 the goods and services

55. When conducting a goods/services comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc*, Case C-39/97, where the court stated at paragraph 23 that:

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

56. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat* [1996] R.P.C. 281, namely:

- (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.

57. In so far as construing words in specifications, Lord Kitchin set out the proper approach to considering terms in specifications in *SkyKick UK Ltd & Anor v Sky Ltd & Ors*¹⁷:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

58. Further, in *YouView TV Ltd v Total Ltd*,¹⁸ Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

¹⁷ (*Rev1*) [2024] UKSC 36

¹⁸ [2012] EWHC 3158 (Ch)

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

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

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

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

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

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

62. Whilst on the other hand:

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

63. I also note section 60A of the Act which states:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

64. The competing goods and services are set out in the Annex to this decision.

65. Given the limitations filed by the Applicant in relation to the goods and services it seeks to register, I note that some of its goods and services are restricted to motor vehicles, motor racing and related virtual reality goods for entertainment in online environments expressly excluding music and live music events. In light of my earlier findings, the Opponent’s goods and services upon which it may rely are those focussed on musical performances and events and the operating and managing of venues for this purpose as well as the provision of the physical tickets for admission.

66. The Opponent’s tickets in class 16 relate to the physical pass to allow admission to any particular concert or event which shares no similarity with any of the applied for goods and services.

67. With regards the Applicant’s class 41 services and those in the Opponent’s related class, whilst they may come within the broad category of entertainment in that the users participate in the events that are held, the Applicant’s services in this class are specific to entertainment in relation to automobiles and automobile racing, specifically excluding music entertainment, live music concerts and related events whereas the

Opponent's services are those related to the organisation, management and staging of concerts, live music events and the operating of music and theatrical venues.

68. Taking into account the *Treat* criteria I see no obvious similarity between any of the respective goods and services. They differ in nature, purpose, method of use, users and channels of trade. They are neither complementary nor in competition.

69. Given that I have found no similarity between the respective parties' goods and services then the ground under section 5(2)(b) must fail since without any identity/similarity between the respective goods/services then there can be no likelihood of confusion.

Section 5(3)

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

“5(3) A trade mark which-

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

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


(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

72. I bear in mind the relevant case law set out in the following judgments of the Court of Justice of the European Union (“CJEU”): Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Addidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the Opponent must show that the earlier marks and the contested marks are similar. Secondly, the Opponent must show that the earlier marks have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between

the marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the later mark. Fourthly, assuming that the first three conditions are met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) for the goods/services to 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. For the purposes of section 5(3) the relevant date for the assessment is 29 March 2023.

Similarity between the marks

73. The contested marks are set out as follows:

Contested marks	Earlier marks
<p><i>First contested mark</i></p> <p>APOLLO EVO</p>	<p><i>First earlier mark</i></p> <p>APOLLO</p>
<p><i>Second contested mark</i></p> 	<p><i>Second earlier mark</i></p> <p>MANCHESTER APOLLO</p>

Overall Impression

74. The earlier marks are word only marks. The first earlier mark is for the word APOLLO. The overall impression resides in the entirety of the word. The second earlier mark is the combination of the words MANCHESTER and APOLLO. Despite the word APOLLO being the second word that will be read it plays the greater role within the mark as a whole given that the word MANCHESTER will be seen as a reference to a geographical location and therefore has little trade mark significance.

75. The first contested mark is the combination of the words APOLLO and EVO. The overall impression resides in these two words in combination weighted in favour of the

word APOLLO given that the word EVO may be seen as an abbreviation for the word evolution and thus for reasons as set out below will be less distinctive.

76. The second contested mark consists of a shield/badge type device within which is displayed a stylised letter A. Underneath is the word 'apollo' in a stylised lower case font. The badge/shield device is larger and therefore draws the eye but is separate and independent from the word underneath. The device is also not particularly remarkable with the letter A merely reinforcing the first letter of the word apollo underneath. I consider that the overall impression resides in the two elements in combination with the word 'apollo' dominating as this is the only element that can be read.

Visual comparison

77. The marks overlap in the element Apollo/apollo. They differ visually with the stylisation, casing and the additional elements:- the shield/badge device, the words EVO and MANCHESTER. Weighing up the similarities as against the differences and taking into account the dominant and distinctive elements in each mark I consider that both the contested marks are visually similar to the earlier marks to a high degree as a result of the shared element APOLLO. Each mark includes less distinctive elements relative to the word APOLLO and therefore whilst the additions are different in each the degree of similarity remains the same for each comparison.

Aural comparison

78. The second contested mark and the first earlier mark are aurally identical given that no pronunciation will be given to the device. The aural difference between the second contested mark and the second earlier mark arises from the word MANCHESTER meaning that aurally they will be similar to a medium degree.

79. The first contested mark and the first earlier mark are aurally similar to a medium degree also given that the first contested mark includes the word EVO with no counterpart in the first earlier mark. The aural differences between the first contested mark and the second earlier mark are the additional words EVO and MANCHESTER rendering them aurally similar to a slightly lesser degree to slightly below medium.

Conceptual comparison

80. The marks all share the identical concept arising from the element APOLLO which will be perceived as the name of a Greek god. The conceptual differences arise from the addition elements EVO, MANCHESTER and the device. The word EVO in my view will be perceived as an abbreviation of the word evolution giving rise to the perception of a modified/advanced version which is a point of conceptual difference but not considerably so. The device will be merely seen as a stylistic addition with no particular concept other than reinforcing the letter A of the word apollo. The word MANCHESTER will be seen as a reference to a geographical location. Overall, I consider that the marks are conceptually similar to a high degree as a result of the shared concept of APOLLO.

Reputation

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

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

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

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

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

82. In assessing whether the earlier marks have a reputation to a significant number of consumers, I must assess the evidence in terms of the extent it demonstrates “the

market share held by the trademark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it.”¹⁹

83. I have outlined the evidence earlier in my decision. It is clear that the Opponent operates and manages a music and events venue in Manchester. There is no indication as to the geographical extent of the use, given that it is limited in scope to one area. Further, as stated, I have no indication as to the market share held by the Opponent although I surmised it was modest. The duration of the use, as a venue to host live events and musical performances, has, however, been longstanding over several years with well-known musicians and comedians performing at the venue. Save for the period over the covid pandemic, the turnover figures run into the millions of pounds and hundreds of thousands of tickets have been sold up until the relevant date. Assessing the evidence as a whole I consider the reputation held in the marks only extends to services relating to the *operation and management of a music and events venue* and has only been shown to be a modest degree.

Link

84. Having found a modest reputation for the *operating and managing of a live music and events venue*, I must now go on to consider whether this reputation would give rise to the necessary mental link being made between the respective trade marks. The factors to be taken into account to establish as to whether a link would be made, are those as set out in *Intel*.²⁰ Taking each of the factors in turn

The degree of similarity between the conflicting marks

85. The marks are similar in varying degrees overall, as per my earlier findings, which I adopt here.

The nature of the goods 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.

86. The Applicant’s goods and services relate to a broad range of goods and services across various classes to include those in relation to motor vehicles, the motor racing

¹⁹ *General Motors* para 27.

²⁰ *Intel Corporation Inc v CPM United Kingdom Ltd* - [2009] RPC 15 (CJEU).

industry and virtual goods related to the online environment related to the same, some of which specifically exclude services relating to music entertainment, live music concerts, live music festivals, live comedy, live theatre performances, live podcast performances, or live music events. The Opponent's services in which I found it to hold a reputation are those for the management and operation of a live music and events venue.

87. There is in my view no similarity between any of the applied for goods and services and those services in which the Opponent holds a reputation when going through the *Treat* criteria. The goods/services differ in nature, purpose, end user (other than on a very high level of generality), channels of trade, method of use and are neither complementary nor in competition.

88. Consequently, I cannot see any meaningful similarity between the respective goods/services within the parameters of the caselaw cited.

89. The relevant public is a member of the general public. The Applicant's goods and services are broad ranging some of which i.e. vehicles in class 12 would attract a high price point and not be everyday purchases, whereas the vast majority of the goods/services are unlikely to attract an exceptionally high cost and will be purchased relatively frequently. Considerations taken into account when purchasing the goods and services would be price, quality, availability, location and performance. Taking these matters into account, for the applied for vehicle goods in class 12 these would attract a high degree of attention in the selection process, whereas consumers purchasing those goods and services at the lower end of the scale would still undertake an average (medium) level of attention.

90. The goods will be selected by self-selection from retail outlets or following perusal of the goods on websites or in catalogues. Similarly, the services will be selected following perusal of signage on physical premises, from websites or advertisements in conventional printed publications or social media. Consequently, visual considerations will dominate the selection/purchasing process. Despite this, I do not discount aural considerations where advice may be sought from sales staff.

The strength of the earlier marks' reputation

91. I have found that based upon the evidence filed, as at the relevant date, the Opponent has a modest reputation in the UK for managing and operating a live music and events venue.

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

92. 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-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in 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).”

93. 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 and services, to those with high inherent distinctive character, such as

invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

94. The earlier marks are for the word APOLLO/ MANCHESTER APOLLO. Given that the word MANCHESTER will be seen as a geographical location as to where the venue is located it will not possess any distinctive character. The dominant and distinctive element of the respective marks, therefore, lies in the word APOLLO which is neither descriptive nor allusive of the services for which it holds a reputation. Rather the relevant public will merely see it as referring to the name of the venue, the name not being a common name in the UK. Consequently, I consider that the word APOLLO is inherently distinctive to a medium degree. By virtue of the use made of the marks, the evidence shows that its distinctive character has been enhanced further to a slightly higher than medium degree but no higher, for managing and operating a live music and events venue.

Whether there is a likelihood of confusion

95. The respective goods and services are too distant and, therefore, I do not consider that there would be a likelihood of confusion.

96. A finding that the goods and services are dissimilar does not, of course, prevent a claim under section 5(3) from succeeding. However, in this instance I consider that despite the similarities between the marks, the distance between the respective goods and services is too great to bridge the gap between the two entities for a commercial connection to be made. In my view if the Opponent's marks are brought to mind when coming across the Applicant's marks it will be fleeting at best and insufficient for any of the heads of damage to arise.

97. The opposition under section 5(3) is unsuccessful.

Section 5(4)

98. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

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

99. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

100. I can deal with this ground briefly. Here, the Opponent relies upon signs identical with the first and second earlier marks relied upon in the above grounds, namely APOLLO and MANCHESTER APOLLO and in respect of goods and services as outlined in paragraph 7 earlier in my decision.

101. The evidence summarised at paragraphs 17 to 31 above concerns marks with broader specifications from those relied upon here, however the assessment of the evidence applies equally for the purposes of establishing goodwill. As such I find that the level of use discussed above is sufficient to find that there exists a modest level of protectable goodwill in the Opponent’s business in respect of the services I have already found that it holds a reputation. I find that the Opponent’s signs are distinctive of and/or associated with that goodwill. That being said, I do not consider that the extent of the goodwill which I find only to be to a modest degree, within a narrow field of activity, is sufficient to give rise to the necessary misrepresentation to arise. This is because, for the reasons already outlined, the distance between the respective parties’ goods and services are too great. There is insufficient connection between the respective goods/services for a substantial number of the Opponent’s customers or potential customers to be misled into purchasing/selecting the Applicant’s goods/services in the mistaken belief that they are the goods/services of the Opponent

or those of an undertaking economically linked to the Opponent.²¹ A mere wondering whether there is a trade mark connection is insufficient.²² It is my view that the distance between the respective goods/services is sufficient for no misrepresentation to arise or one that would lead to damage being suffered by the Opponent. It is unlikely that the customers of the Opponent would transfer their custom to the Applicant believing that they are dealing with the Opponent.

102. Consequently, the section 5(4)(a) ground fails.

Conclusion

103. The opposition has failed in its entirety, subject to appeal, the Applicant's registrations shall proceed to registration for all the goods and services applied for.

Costs

104. The Applicant has succeeded and therefore is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. I note however, that the Applicant, other than filing a number of limitations has not participated in the proceedings or responded to any of the evidence or filed submissions itself. Taking this into account, I award costs to the Applicant as follows:

Preparing a counterstatement and considering a Notice of opposition (x2):	£400
Total	£400

²¹ *Harrods Limited v Harrodian School Limited* [1996] RPC 697.

²² *Phones 4U Ltd v Phone 4U.co.uk Internet Ltd* [2007] RPC 5 at 16–17

105. I therefore order Live Nation (Music) UK Limited to pay Apollo Automobile Limited the sum of £400. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an (unsuccessful) appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 5th day of May 2026

L Davies

For the Registrar

Annex of Goods and Services

UKTM no. 3894905 and 3894896

Class 9: Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data for use in relation to automobiles, including electric cars; recorded and downloadable media for use in relation to automobiles, including electric cars; digital recording and storage media for use in relation to automobiles, including electric cars; computers and computer peripheral devices, not for the purpose of the recording or production of sound or music; computer software; computer hardware, not for the purpose of the recording or production of sound or music; computer programs; interactive multimedia computer programs; computer game software; mobile applications for use in relation to automobiles, including electric cars; downloadable image, video, and multimedia files for use in relation to automobiles, including electric cars; downloadable graphic for mobile phones; eyewear; sunglasses; eyewear cases; 3D glasses; smartglasses; carrying cases for mobile telephones; electronic key fobs being remote control apparatus; speed checking apparatus for vehicles; anti-theft warning apparatus; directional compasses; electricity gauges; speed indicators; computer software for speed control; computer software for automobile parking assistance; hands-free kits for telephones; encoded key cards; security tokens [encryption devices]; batteries; electric batteries; virtual and augmented reality software; downloadable virtual goods, namely, digital images, digital graphic designs, digital cars, digital sports cars, digital electric cars, digital hyper cars, digital clothing, digital footwear, digital headwear, digital bags, digital jewellery, digital watches and digital eyewear authenticated by non-fungible tokens created with blockchain technology to represent a collectible item; non-fungible tokens (NFTs); downloadable audio visual recordings featuring cars, sports cars, electric cars, hyper cars, clothing, footwear, headwear, bags, jewellery, watches and eyewear, authenticated by non-fungible tokens (NFTs); downloadable computer programs featuring virtual goods, namely, cars, sports cars, electric cars, hyper cars, clothing, footwear, headwear, bags, jewellery, watches and eyewear; downloadable digital media namely digital collectibles relating to digital automobiles, digital automobiles parts and fittings and digital scale model vehicles; downloadable virtual goods, namely, computer

programs featuring automobiles, automobile parts and fittings for use online and in online virtual worlds; parts and fittings for all the aforementioned goods; none of the aforesaid being for bicycles, electric bicycles, scooters, electric scooters or in relation to cycling, for cyclists, scooters or for scooters.

Class 12: Vehicles; apparatus for locomotion by land, air or water; electric vehicles; electric sports cars; electric racing cars; electric hyper cars; automobiles; cars; sports cars; racing cars; hyper cars; autonomous cars; driverless cars; land vehicles; engines for land vehicles; remote controlled vehicles; electric motors for land vehicles; automobile bodies; automobile hoods; bumpers for automobiles; covers for vehicle steering wheels; gear boxes for land vehicles; head-rests for vehicle seats; vehicle covers [shaped]; vehicle wheel spokes; air pumps [vehicle accessories]; anti-glare devices for vehicles; anti-theft devices for vehicles; axles for vehicles; brake linings for vehicles; brake pads for automobiles; doors for vehicles; seat covers for vehicles; sun-blinds adapted for automobiles; upholstery for vehicles; vehicle seats; parts and fittings for all the aforementioned goods; none of the aforesaid being bicycles, electric bicycles, scooters, electric scooters or in relation to cycling for cyclists, scooters or for scooters; none of the aforesaid being tyres, tubes or wheel flaps for automobiles.

Class 14: Precious metals and their alloys; jewellery; precious and semi-precious stones; clocks; electric clocks; tie clips; cuff links; pin badges; brooches; charms; badges; key rings, key fobs; charms for key rings; decorative key rings; key chain tags; key holders; leather key rings; presentation boxes for watches; medals; parts and fittings for all the aforementioned goods.

Class 18: Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals; wallets; bags; purses; handbags; travelling bags; tote bags; backpacks; rucksacks; business card cases; credit card cases; net bags for shopping; briefcases; suitcases; duffle bags; sports bags; leather key cases; coin holders; parts and fittings for all the aforementioned goods.

Class 25: Clothing, headgear; sweaters; sweatshirts; shirts; polo shirts; blouses; t-shirts; camisoles; trousers; shorts; tracksuits; loungewear; dresses; jumpsuits; outer clothing; gilets; jackets; jumpers; knitwear; hoodies [clothing]; coats; parkas; jerseys; sports clothing; leather jackets; sports jackets; caps; sports caps; knitted hats; belts; scarves; gloves; parts and fittings for all the aforementioned goods.

Class 28: Games, toys and playthings; video game apparatus; gymnastic and sporting articles; remote controlled scale model vehicles; radio-controlled toy vehicles; toy model vehicles; scale model vehicles; scale model cars [toys]; hand-held electric games; video game machines; video game consoles; joysticks for video games; hand-held consoles for playing video games; golf bags; golf articles; boxing gloves; scooters [toys]; card games; jigsaw puzzles; board games; parts and fittings for all the aforementioned goods.

Class 35: Advertising; business management; business administration; office functions; auctioneering; planning and conducting of trade fairs, exhibitions and presentations for commercial or advertising purposes; event marketing; arranging of exhibitions for commercial purposes; promotion of goods and services through sponsorship of sports events; presentation of goods on communication media, for retail purposes; wholesale and retail services connected with the sale of apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data for use in relation to automobiles, including electric cars, recorded and downloadable media for use in relation to automobiles, including electric cars, digital recording and storage media for use in relation to automobiles, including electric cars, computers and computer peripheral devices not for the purpose of the recording or production of sound or music, computer software, computer hardware not for the purpose of the recording or production of sound or music, computer programs, interactive multimedia computer programs, computer game software, mobile applications, downloadable image, video, and multimedia files, downloadable graphic for mobile phones, eyewear, sunglasses, eyewear cases, 3D glasses, smartglasses, carrying cases for mobile telephones, electronic key fobs being remote control apparatus, speed checking apparatus for vehicles, anti-theft warning apparatus, directional compasses, electricity gauges, speed indicators,

computer software for speed control, computer software for automobile parking assistance, hands-free kits for telephones, encoded key cards, security tokens [encryption devices], batteries, electric batteries, virtual and augmented reality software, downloadable virtual goods, namely, digital images, digital graphic designs, digital cars, digital sports cars, digital electric cars, digital hyper cars, digital clothing, digital footwear, digital headwear, digital bags, digital jewellery, digital watches and digital eyewear authenticated by non- fungible tokens created with blockchain technology to represent a collectible item, non-fungible tokens (NFTs), downloadable audio visual recordings featuring cars, sports cars, electric cars, hyper cars, clothing, footwear, headwear, bags, jewellery, watches and eyewear, authenticated by non-fungible tokens (NFTs), downloadable computer programs featuring virtual goods, namely, cars, sports cars, electric cars, hyper cars, clothing, footwear, headwear, bags, jewellery, watches and eyewear, downloadable digital media namely digital collectibles relating to digital automobiles, digital automobiles parts and fittings and digital scale model vehicles, downloadable virtual goods, namely, computer programs featuring automobiles, automobile parts and fittings for use online and in online virtual worlds, Vehicles, apparatus for locomotion by land, air or water, electric vehicles, electric sports cars, electric racing cars, electric hyper cars, automobiles, cars, sports cars, racing cars, hyper cars, autonomous cars, driverless cars, motorcycles, motor vehicles, land vehicles, engines for land vehicles, remote controlled vehicles, electric motors for land vehicles, automobile bodies, automobile hoods, automobile tires [tyres], bumpers for automobiles, covers for vehicle steering wheels, gear boxes for land vehicles, head-rests for vehicle seats, tires for vehicle wheels, vehicle covers [shaped], vehicle wheel spokes, air pumps [vehicle accessories], anti-glare devices for vehicles, non-skid devices for vehicle tires, anti-theft devices for vehicles, axles for vehicles, brake linings for vehicles, brake pads for automobiles, doors for vehicles, seat covers for vehicles, sun-blinds adapted for automobiles, upholstery for vehicles, vehicle seats, Clothing, headgear, sweaters, sweatshirts, shirts, polo shirts, blouses, t-shirts, camisoles, trousers, shorts, tracksuits, loungewear, dresses, jumpsuits, outer clothing, gilets, jackets, jumpers, knitwear, hoodies [clothing], coats, parkas, jerseys, sports clothing, leather jackets, sports jackets, caps, sports caps, knitted hats, belts, scarves, gloves, precious metals and their alloys, jewellery, precious and semi-

precious stones, clocks, electric clocks, tie clips, cuff links, pin badges, brooches, charms, badges, key rings, key fobs, charms for key rings, decorative key rings, key chain tags, key holders, leather key rings, presentation boxes for watches, medals, leather and imitations of leather, animal skins and hides, luggage and carrying bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, collars, leashes and clothing for animals, wallets, bags, purses, handbags, travelling bags, tote bags, backpacks, rucksacks, business card cases, credit card cases, net bags for shopping, briefcases, suitcases, duffle bags, sports bags, leather key cases, coin holders.

Class 37: Repair and maintenance of automobiles and parts thereof; repair and maintenance of automobile engines and parts thereof; automobile engine conversion; installation of electric and electronic equipment in automobiles; custom modification of automobiles; custom restoration of automobiles; custom interior installation for automobiles; automobile customisation; automobile upgrading; fitting of replacement automobile parts; charging of electric automobiles; charging of electric automobile batteries; providing information relating to automobile maintenance and repair; advisory services relating to automobile maintenance; vehicle tyre fitting and repair; maintenance, servicing and repair of vehicles; advisory services relating to vehicle repair; garage services for vehicle repair; vehicle and automobile cleaning services; information, advisory and consultancy services relating to all the aforesaid.

Class 39: Transport; packaging and storage of goods; travel arrangement; vehicle routing by computer on data networks; providing driving directions for travel purposes; providing on-line driving directions; renting, hire and leasing of vehicles for the transport of persons; transportation of passengers in chauffeur driven vehicles; taxi services; driverless taxi services; travel arrangement services; traffic information services; GPS navigation services; arranging and coordinating peer-to-peer vehicle sharing and rental services; coordinating travel arrangements for individuals and for groups; providing information concerning collection, tracking and delivery of goods in transit; providing information relating to traffic and traffic congestion; provision of road and traffic information; transport and delivery of goods;

providing information via a website, namely, managing, monitoring, and tracking travel, transportation, and delivery services; monitoring, managing, and tracking of conveyances in transit; travel arrangement, namely, transport arrangement for travellers; transportation and delivery services, namely, monitoring, managing, and tracking of transportation of persons and delivery of goods and packages; transportation of passengers and goods; vehicle sharing services, namely, arranging and coordinating temporary use of vehicles; vehicle recovery; vehicle storage; vehicle rental; vehicle transport services; vehicle rescue services; vehicle parking services; vehicle location services; provision of vehicle parking facilities; storage of parts for motor vehicles; providing information relating to vehicle driving services; rental services related to vehicles, transportation and storage; rental of parking places and garages for vehicles; rental of motor racing cars; rental of navigation systems.

Class 41: Education in relation to automobiles, driving, racing and operation of automobiles, and automobile design, including in relation to electric cars; providing of training relating to automobiles, driving, racing and operation of automobiles, and automobile design, including in relation to electric cars; entertainment; sporting and cultural activities in relation to automobiles and automobile racing; organizing, arranging and conducting of entertainment, sporting, arts and cultural events in relation to automobiles and automobile racing; entertainment services in relation to automobiles and automobile racing; motor sports events; organisation of automobile races; organisation of automobile rallies; entertainment services provided at a motor racing circuit; organization of competitions relating to motor vehicles; training for automobile races; driving instructions; training for automobile design; providing online videos (non-downloadable); providing online videos (non-downloadable) in relation to automobiles, automobile design and electric cars; entertainment services, namely, providing on-line non-downloadable virtual goods in the nature of cars, electric cars, sports cars, hyper cars, automobile parts and fittings, scale model cars, clothing, footwear, headwear, jewellery, bags and eyewear for use in virtual online environments; entertainment services, namely providing an online virtual environment for entertainment purposes; none of the foregoing relating to music

entertainment, live music concerts, live music festivals, live comedy, live theatre performances, live podcast performances, or live music events.

Class 42: Design and development of computer hardware and software; Design and development of virtual reality software; Provide virtual computer systems through cloud computing; Design and development of virtual private network (VPN) operating software; Technical consulting services on digital transformation; Cross-platform transformation of digital content forms; Digital compression of computer data; Computer graphic design; Design of image processing software; User authentication service using blockchain technology; Provide online non-downloadable single sign-on software temporary use service; Provide online non-download temporary use of software development tools; Computer graphics design for projection mapping video; Data encryption services; Data encryption and decoding services; User authentication services using technology for e-commerce transactions; Provide user authentication services for e-commerce transactions using biometric hardware and software technologies; Design and development of multimedia products; Development and creation of computer programs for data processing; Platform as a service [PaaS]; Homepage and website design; Computer programming; Multimedia application programming; Computer software design and development; Design and development of computer game software; Design, production or maintenance of computer programs; Computer video game programming; Computer game programming; Video Game Development Services; Electronic data storage; Data conversion of electronic information; Design and development of application software for mobile phones; Software as a service [SaaS]; Software design and development; Computer software design for computer animation design; consultancy regarding artificial intelligence technology; Research on artificial intelligence technology; certificate of quality system; Provides non-downloadable online geographic maps; chemical research; medical research; meteorological information; vehicle roadworthiness testing; industrial design; interior design; dress designing; authenticating works of art; graphic design of promotional materials; cloud seeding; handwriting analysis [graphology]; cartography services; rental of meters for the recording of energy consumption; Weigh goods for others; Design of cars; Design of automobiles and parts; Design and development of

computer software for automobiles; Design and development of machine learning for automobiles; Design and development of artificial intelligence for automobiles; Design and development of computer software for transport infrastructure; Design and development of machine learning for transport infrastructure; Design and development of artificial intelligence for transport infrastructure; Testing, authentication and quality control for automobiles; Research and development relating to the automation of engineering; Design of computer systems in relation to sensors, information capture analysis and transmission systems for transport; Research and development in the field of machine learning; Software as a service, namely intelligent mobility solutions; Software as a service, namely the provision of software enabling owners and users to connect remotely with their vehicle to access vehicle information and control functions; Software as a service, namely connectivity services enabling accident, maintenance and breakdown management, provision of emergency calls and telediagnosis; Software as a service, namely vehicle location and recovery; Design of vehicles and parts; information, advisory and consultancy services in relation to the aforesaid.

UKTM no. 2445682

Class 9: Apparatus for recording, transmission or reproduction of sound, vision, or images; recording discs; data processing equipment and computers; computer hardware and firmware; computer software (including software downloadable from the Internet); computer games equipment adapted for use with TV receivers; amusement apparatus for use with television receivers only; computer operating programs; computer programs; computer games; videos; DVDs; MP3s; CDs; audio and/or visual tapes; cassettes; discs; records; digital music (downloadable from the Internet); film, sound and video recordings; sound and video recordings and publications in electronic form supplied on-line, from databases or from facilities provided on the Internet; cinematographic, photographic, teaching and optical apparatus and instruments; video games; digital music (downloadable) supplied from MP3 websites on the Internet; telephone ring tones (downloadable); computer programs (downloadable software); podcasts; magnetic discs; magnetic data

media; computer game programs; downloadable electronic publications; video game cartridges; databases; magnetic data carriers, computer databases; all of the foregoing relating to music venues and for theatrical venues, sunglasses.

Class 16: Paper, cardboard and goods made from these materials; printed matter and printed publications; books, magazines, brochures and event programmes; posters; photographs; greeting cards, postcards; stationery; pens; document cases, card holders, photograph holders, leaflets, prints; tickets for concerts, shows and other events; all of the foregoing relating to music venues and for theatrical venues; albums of all kinds.

Class 25: Clothing articles; t-shirts, sweatshirts, sweatpants, sweaters, suits, singlets, vests, headscarves, shirts, blouses, hats, gloves, stockings, slippers, dressing gowns, underwear, capes, shawls, jeans, pyjamas, children's clothing, pullovers, knitwear, jogging suits, bomber jackets, waterproof clothing, wind-cheaters, overcoats, shorts, jackets, socks, rugby shirts, fleece tops, jumpers, belts, polo shirts, dresses, hosiery, swimwear, cardigans, coats, trousers, mini-skirts, pinafores, waistcoats, overalls, dance clothing, leotards, leggings, scarves, ties, bow-ties; footwear, shoes, boots, trainers, sandals, espadrilles; headgear, caps and baseball caps, bandannas; all of the foregoing relating to music venues and/or theatrical venues.

Class 35: Advertising; dissemination of advertising matter; advertising by mail order; business management of performing artists; compilation of information into computer databases; organisation of exhibitions for commercial or advertising purposes; publicity; public relations; publication of publicity texts; radio advertising; sales promotion; distribution of samples; television advertising; radio and television commercials; business management; business administration; accounting and office functions in relation to the reservation, issue and sale of tickets; advertising services provided via the Internet; production of television and radio advertisements; provision of business information; hiring disc jockeys; organisation, operation and supervision of customer loyalty schemes; all of the foregoing relating to venues and/or theatrical venues; information relating to all the foregoing provided by

telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 41: Education; entertainment; sporting and cultural activities; electronic games services provided by means of the Internet; organisation of competitions for education or entertainment; production of radio and television programmes; providing on-line electronic publications (not downloadable); publication of texts (other than publicity texts); electronic games services provided by means of the Internet; the provision of on-line electronic publications and digital music (not downloadable) from the Internet; provision of recreational and entertainment facilities; live band performances; club entertainment services; organising nightclub events; recording of music onto a variety of media; production of sound recordings; production of musical recordings; production of audio recordings; nightclub management; hiring of audio and/or visual equipment; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; production of television, film, radio and music programmes and recordings; composition of music; video taping; digital music (not downloadable) supplied from MP3 websites on the Internet; providing digital music (not downloadable) from MP3 Internet websites; digital music (not downloadable) provided from the Internet; booking agencies; ticket reservation and ticket agency services for concerts and other events; ticket agency services provided online, by telephone, mobile telephone, and through ticket outlets; the provision of on-line electronic publications and digital music (not downloadable) from the Internet in the form of podcasts; management of theatres and music venues; provision of theatre facilities; theatre services; all of the foregoing relating to music and or theatrical venues; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 42: Creating and maintaining websites for others; compilation of websites; design of computer databases; design, drawing and commissioned writing for the compilation of websites; computer software design and development; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a

computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 43: Restaurant, café, fast food catering, snack-bar, pub and bar services; temporary accommodation reservations; hiring of bar, catering and restaurant equipment and facilities; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 45: Exploitation of music productions; licensing of musical shows.

UKTM no. 2445684

Class 9: Apparatus for recording, transmission or reproduction of sound, vision, or images; recording discs; data processing equipment and computers; computer hardware and firmware; computer software (including software downloadable from the Internet); computer games equipment adapted for use with TV receivers; amusement apparatus for use with television receivers only; computer operating programs; computer programs; computer games; videos; DVDs; MP3s; CDs; audio and/or visual tapes; cassettes; discs; records; digital music (downloadable from the Internet); film, sound and video recordings; sound and video recordings and publications in electronic form supplied on-line, from databases or from facilities provided on the Internet; cinematographic, photographic, teaching and optical apparatus and instruments; video games; digital music (downloadable) supplied from MP3 websites on the Internet; telephone ring tones (downloadable); computer programs (downloadable software); podcasts; magnetic discs; magnetic data media; computer game programs; downloadable electronic publications; video game cartridges; databases; magnetic data carriers, sunglasses, computer databases.

Class 16: Paper, cardboard and goods made from these materials; printed matter and printed publications; books, magazines, brochures and event programmes; posters; photographs; greeting cards, postcards; stationery; pens; document cases,

card holders, photograph holders, leaflets, prints; tickets for concerts, shows and other events; albums of all kinds.

Class 25: Clothing articles; t-shirts, sweatshirts, sweatpants, sweaters, suits, singlets, vests, headscarves, shirts, blouses, hats, gloves, stockings, slippers, dressing gowns, underwear, capes, shawls, jeans, pyjamas, children's clothing, pullovers, knitwear, jogging suits, bomber jackets, waterproof clothing, wind-cheaters, overcoats, shorts, jackets, socks, rugby shirts, fleece tops, jumpers, belts, polo shirts, dresses, hosiery, swimwear, cardigans, coats, trousers, mini-skirts, pinafores, waistcoats, overalls, dance clothing, leotards, leggings, scarves, ties, bow-ties; footwear, shoes, boots, trainers, sandals, espadrilles; headgear, caps and baseball caps, bandannas.

Class 35: Advertising; dissemination of advertising matter; advertising by mail order; business management of performing artists; compilation of information into computer databases; organisation of exhibitions for commercial or advertising purposes; publicity; public relations; publication of publicity texts; radio advertising; sales promotion; distribution of samples; television advertising; radio and television commercials; business management; business administration; accounting and office functions in relation to the reservation, issue and sale of tickets; advertising services provided via the Internet; production of television and radio advertisements; provision of business information; hiring disc jockeys; organisation, operation and supervision of customer loyalty schemes; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 41: Education; entertainment; sporting and cultural activities; electronic games services provided by means of the Internet; organisation of competitions for education or entertainment; production of radio and television programmes; providing on-line electronic publications (not downloadable); publication of texts (other than publicity texts); electronic games services provided by means of the Internet; the provision of on-line electronic publications and digital music (not downloadable) from the Internet; provision of recreational and entertainment

facilities; live band performances; club entertainment services; organising nightclub events; recording of music onto a variety of media; production of sound recordings; production of musical recordings; production of audio recordings; nightclub management; hiring of audio and/or visual equipment; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; production of television, film, radio and music programmes and recordings; composition of music; video taping; digital music (not downloadable) supplied from MP3 websites on the Internet; providing digital music (not downloadable) from MP3 Internet websites; digital music (not downloadable) provided from the Internet; booking agencies; ticket reservation and ticket agency services for concerts and other events; ticket agency services provided online, by telephone, mobile telephone, and through ticket outlets; the provision of on-line electronic publications and digital music (not downloadable) from the Internet in the form of podcasts; management of theatres and music venues; provision of theatre facilities; theatre services; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 42: Creating and maintaining websites for others; compilation of websites; design of computer databases; design, drawing and commissioned writing for the compilation of websites; computer software design and development; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 43: Restaurant, café, fast food catering, snack-bar, pub and bar services; temporary accommodation reservations; hiring of bar, catering and restaurant equipment and facilities; information relating to all the foregoing provided by telephone, mobile telephone, on-line from a computer database or via the Internet; consultancy, advisory and information services relating to the foregoing.

Class 45: Exploitation of music productions; licensing of musical shows.

