

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2557947
IN THE NAME OF ERIKS INDUSTRIAL SERVICES LIMITED**

**AND IN THE MATTER OF OPPOSITION No. 101392 THERETO
BY VOLVO TRADEMARK HOLDING AKTIEBOLAG**

**AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
BY THE OPPONENT
AGAINST A DECISION OF MR O. MORRIS DATED 1 APRIL 2014**

DECISION

Introduction

1. This is an appeal against a decision of Mr. Oliver Morris, acting for the Registrar, dated 1 April 2014, BL O/142/14, in which he rejected an opposition brought by Volvo Trademark Holding Aktiebolag (“the Opponent”) against Application number 2557947 in the name of Eriks Industrial Services Limited (“the Applicant”).
2. Application number 2557947 was filed on 7 September 2010 requesting registration of the sign REVOLVO for use as a trade mark in the UK, essentially in relation to bearings and parts and fittings for bearings in Classes 7 and 12, and consultancy and design services relating to bearings and parts and fittings for bearings in Class 42. A full list of the goods and services applied for can be found at Annex A to this decision.
3. Following publication, the Opponent filed a Notice of opposition and statement of grounds against the Application on 7 January 2011¹.
4. The grounds of the opposition were under Section 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994, which state:

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

[...]

(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,

¹ Amended on 8 February 2011, although nothing turns on this.

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

(3) A trade mark which –

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

(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 ...”

5. The Opponent relied on a number of earlier UK/Community trade marks in its ownership for differing purposes and to different extents, as shown in brief schematically below:

Mark	Grounds	Goods/services relied on	Goods/services opposed
UK 747362 VOLVO	Section 5(2)(b)	Class 12	Class 12
	Section 5(3)	Class 12	All
UK 1051579 VOLVO	Section 5(2)(b)	Class 7	Class 7
	Section 5(3)	Class 7	All
UK 1552529 VOLVO	Section 5(2)(b)	Class 42	Class 42
	Section 5(3)	Class 42	All
CTM 2361087 VOLVO	Section 5(2)(b)	Classes 7, 12 & 42	All
	Section 5(3)	Classes 7, 12 & 42	All

A full list of the goods and services relied on by the Opponent in the above earlier trade marks can be found at Annex B to this decision.

6. All of the Opponent's earlier trade marks were subject to the proof of use provisions in Section 6(A) of the Act, and the Opponent claimed genuine use of VOLVO in respect of all the goods and services relied on.
7. For the purposes of the ground of opposition under Section 5(4)(a) of the Act, the Opponent relied on its earlier rights in the unregistered sign VOLVO used in the UK since 1955, "in relation to a broad range of goods and services within the automotive industry, including motor cars and trucks, as well as vehicle servicing, maintenance and repair services".
8. The Applicant took issue with the grounds of opposition in a Notice of defence and counterstatement filed on 9 November 2011. In the counterstatement, the Applicant put the Opponent to proof of use in respect of all the goods and services in the earlier trade marks, which the Opponent considered to be similar to the goods and services in the Application (para. 2).
9. The Applicant also claimed in the counterstatement that REVOLVO was an invented word consisting almost entirely of the word "revolve", which was recognisably the basis for the mark (para. 4).
10. Both sides filed evidence, which was substantial on the Opponent's part, and the matter came to a hearing before Mr. Morris on 7 March 2014. At that hearing, the Opponent was represented by Ms. Charlotte May of Queen's Counsel instructed by Hogan Lovells International LLP. The Applicant was represented by Ms. Rigel Moss McGrath of WP Thompson & Co. The same representatives appeared on behalf of the parties before me on appeal.

The evidence

11. The second and third grounds of appeal were that the Hearing Officer erred in failing to deal with the grounds of opposition under Section 5(3) and 5(4)(a) of the Act independently of his findings under Section 5(2)(b), or at all. It is therefore necessary for me to say something about the evidence.

Opponent's evidence

12. The Opponent's evidence was given by Ms. Monica Dempe, the Opponent's Managing Director and Mr. David Baddeley, Customer Service Director at Volvo Car UK Limited.
13. Ms. Dempe gave evidence as to the overall business of the Opponent under the VOLVO trade mark in the EU/UK, with some concentration on the use of VOLVO in connection with bearings for trucks, buses, construction equipment, marine and industrial engines and power systems, and related services.
14. Mr. Baddeley's evidence on the other hand, dealt with VOLVO car sales and VOLVO car aftermarket sales and services (including in relation to bearings) in the UK.
15. Ms. Dempe explained relevantly to this opposition that there were 3 arms to the VOLVO business (First Witness Statement of Monica Dempe, dated 24 July 2013, paras. 11 – 17):

- 1) The Opponent who holds the VOLVO trade mark, and licenses it to 2) and 3) below for use in connection with their businesses.
 - 2) Volvo Group who manufactures sells and supplies under the VOLVO trade mark trucks, buses and construction equipment and parts and accessories therefor, and under the VOLVO PENTA trade mark marine and industrial engines and power systems and parts therefor². The Group provides support services to its customers and dealers under the VOLVO trade mark such as financing, leasing and insurance, and vehicle maintenance and diagnostics. Volvo Group's net turnover for 2012 in Europe was GBP 11.1 billion, with the UK, France and Sweden being its biggest European markets.
 - 3) Volvo Cars including Volvo Car UK Limited, who manufactures, sells and supplies under the VOLVO trade mark cars, car parts and accessories, and related services.
16. Historically, the VOLVO brand was first adopted in 1915 by AB Volvo, then a subsidiary of SKF, the Swedish ball bearing manufacturer³. Ms. Dempe exhibited a picture of an old ball bearing from 1915 marked with the VOLVO trade mark (MD 13). The first wide scale use of VOLVO was in relation to a car produced in Sweden in 1927, followed by the first VOLVO branded truck in 1928. The first VOLVO factory was opened in the EU in Belgium by 1964. VOLVO trucks and construction equipment were introduced onto the UK and Irish markets in 1967; VOLVO cars entered the EU and UK markets in the 1970s (Dempe 1, paras. 21 – 26).
17. The historical and other publicly outward facing materials exhibited by Ms. Dempe emphasise the core values of the VOLVO brand as quality, safety and environmental care (see MD 12 and e.g., MD 1 – Volvo Group Annual Report 2010, MD 3 – trucks, MD 4 – buses and MD 5 – construction equipment respectively).
18. Ms. Dempe gave market share figures *inter alia* in the UK as follows (Dempe 1, paras. 27 – 40):
- (a) trucks, an average of 16.2% per year in the years 2003 – 2010;
 - (b) buses, 50.8% in 2005 and 41.5% in 2006;
 - (c) construction equipment, an average of 7.6% per year in the years 2006 – 2010.
- Net sales of VOLVO PENTA marine and industrial engines and power systems for Europe were GBP 439 million in 2009 and GBP 451 million for 2010 but no further breakdown was provided (Dempe 1, para. 40).
19. Ms. Dempe highlighted the importance of the aftermarket business to the competitiveness and profitability of the VOLVO brand (Dempe 1, paras. 18 – 20). She exhibited copies of various brochures, web pages and UK press releases referring to Genuine Volvo Service and Genuine Volvo Parts for VOLVO trucks, buses and

² Until October 2012 when the Volvo Aero business was sold off, the Volvo Group also supplied advanced engine components for aircraft and space rockets and related aftermarket services consisting mainly of engine overhaul.

³ "Volvo" is Latin for "I roll".

construction equipment, and VOLVO PENTA marine and industrial parts and accessories (MD 8A – MD 8E, MD 9, MD 10, MD 11).

20. Pertinently, Ms. Dempe provided detailed information on the sale of bearings under the VOLVO brand in the UK for trucks, buses and construction equipment, and marine and industrial applications going back many years. Sales figures in the 5-year period before the relevant date were *inter alia* exhibited in support (Dempe 1, paras. 43 – 69 and the exhibits mentioned therein). Pictures of VOLVO/VOLVO PENTA spare parts were exhibited at MD 11.
21. Information was also given by Ms. Dempe on the aftermarket services provided by the Volvo Group in the UK under the VOLVO brand (e.g., VOLVO Trucks Transport Solutions including VOLVO emergency roadside assistance and online access to truck loading information and fleet service records) (Dempe 1, para. 72).
22. VOLVO aftermarket services had also been supplied in the UK in relation to bearings. An example was the Certified Refurbishment Program for articulated haulers and wheel loaders launched in the UK in 2012 (but in practice offered in the UK for many years beforehand) the promotional materials for which spoke of replacing bearings (Dempe 1, para. 75 and MD 38).
23. Voluminous evidence was provided by Ms. Dempe of UK advertising of the VOLVO brand particularly in relation to cars where advertising spend from 2005 to 2010 totalled around GBP 179 million. Significant advertising spends were also incurred in the UK in the period 2005 to 2010 in relation to VOLVO buses and trucks. The evidence of advertising provided by Ms. Dempe spanned television, cinema, outdoor, press, online and direct mail advertising, all supported by independent third party reports (Dempe 1, paras. 92 – 110 and MD 44 – 48). The advertising stressed the core values of the VOLVO brand.
24. UK sponsorships under the VOLVO brand included high profile golfing and sailing events (Dempe 1, paras. 111 – 112 and MD 49 – 50).
25. The Witness Statement of David Baddeley, Customer Service Director at Volvo Car UK Limited, dated 19 July 2013, dealt with VOLVO cars. Mr. Baddeley gave evidence that on average 33,000 VOLVO cars were sold in the UK in each of the years 2005 to 2010 inclusive. The UK was the third biggest market for VOLVO cars in 2009 and 2010 (Baddeley, paras. 12 – 13 and DB 3).
26. VOLVO car aftermarket services included VOLVO service plans which listed among their benefits use of only VOLVO genuine parts “ensuring that the highest safety, quality and environmental demands are met” (DB 4).
27. Mr. Baddeley explained that genuine VOLVO car component or spare parts were sold in the UK through Volvo-owned and independent dealerships and service networks. Dealerships were centrally monitored, and an online VOLVO information and diagnostics tool was centrally available to dealers for servicing (Baddeley, paras. 17 – 18, DB 5).

28. Well over GBP 60 million VOLVO spare parts for cars were sold in the UK in each of the years 2005 to 2010 inclusive. Mr. Baddeley provided copy spreadsheets for 2006, 2007, 2008, 2009 and 2010 with breakdowns into type or category of spare parts sold in those years. There were numerous entries for bearings (Baddeley paras. 10 – 28, DB 6 – DB 10) and pictures of genuine VOLVO packaged bearings and parts were exhibited at DB 12. Mr. Baddeley exhibited numerous copy invoices to UK VOLVO dealers dated 2006 – 2010 for VOLVO spare parts including various kinds of bearings (DB 13 – DB 17). VOLVO aftermarket services included inspection and replacement of car bearings (Baddeley para. 33).
29. Finally, Mr. Baddeley provided spreadsheets extracted from Google data of unique visits to the Volvo Car UK website (e.g., 674,584 in May 2010) broken down to show unique visits to its “Service Products” (2,000 – 3,000 per month in 2010) and “Dealer Locator” (15,000 – 25,000 per month in 2010).

Applicant’s evidence

30. The Applicant’s evidence was given by Mr. Richard John Ludlam, Marketing Manager of the Applicant (Witness Statement of Richard John Ludlam, dated 25 September 2013).
31. Mr. Ludlam explained that the mark in suit had been used by Revolvo Limited, a company within the Applicant’s group of companies, in the UK since 1972 in relation to bearings (Ludlam, paras. 4 – 6).
32. REVOLVO products were sold to bearing manufacturers, other companies within the Applicant’s group and repair companies. They were also sold directly to certain industries within the UK such as railways, marine and machinery (Ludlam, para. 7).
33. Mr. Ludlam said that turnover in REVOLVO products in the period 2006 to 2010 was in excess of GBP 20 million. Further, the average yearly advertising spends for REVOLVO products in this period were around GBK 70 thousand (Ludlam, paras. 8 – 9).
34. Historic and current print-outs of the www.revolvo.com website were exhibited at RJL 1 showing use of REVOLVO (mainly within an arrow device) in relation to bearings.
35. Copies of 2 brochures or flyers, which Mr. Ludlam said were distributed to potential customers in the UK, were exhibited at RJL 2. The flyer entitled “REVOLVO INGENUITY” (dated June 2010) contained pictures of bearings with REVOLVO written on them.
36. Some copy articles from the trade press mentioning REVOLVO products (mainly split roller bearings) were provided by Mr. Ludlam at RLJ 3. Again there are pictures showing REVOLVO branded bearings (e.g., The eBearing News, August 2007).
37. Mr. Ludlam commented that although the REVOLVO trade mark had been used continuously in the UK for over 40 years, the Applicant had not been contacted by the Opponent, not had any instance of confusion come to light.

Hearing Officer's findings on the evidence

Opponent's evidence

38. The Hearing Officer's findings on the Opponent's evidence were limited.
39. He said that first, he was prepared to accept on judicial notice that VOLVO was a well-known car brand in the UK and EU. Second, VOLVO was a "well used brand" for buses, trucks, construction equipment and certain uses in the marine and industrial fields. The Hearing Officer said that Mr. Baddeley's evidence supported his first finding, and Ms. Dempe's evidence his second finding (Decision, para. 7). However, he did not summarise the Opponent's evidence in the usual way for opposition proceedings, as I have done above.
40. The reason for this appears to have been the Hearing Officer's view that the proportionate approach was to decide the opposition under Section 5(2)(b) of the Act in relation to Class 12 of the Application. Only if necessary, would he then either (1) differentiate between the various VOLVO trade marks, or (2) address the other goods and services in the Application (Decision, para. 6). As it turned out, in the Hearing Officer's estimation, neither proved necessary
41. Regarding proof of use for the purposes of Section 5(2)(b), the Hearing Officer held that a fair specification for the Opponent's goods in Class 12 would include "vehicle bearings parts and vehicle parts" (Decision, para. 15). On that basis, there was identity between the parties' Class 12 goods.

Applicant's evidence

42. The Hearing Officer was unsatisfied that parties had traded in overlapping markets. The Applicant's claim of parallel trade had little significance (Decision, paras. 28 – 29).
43. The Applicant did not challenge those findings.

The appeal

44. The Hearing Officer issued his decision on 1 April 2014, under number BL O/142/14, refusing the opposition under Section 5(2)(b) because he had found there was no likelihood of confusion in Class 12. He would not consider the Applicant's goods and services in Classes 7 or 42, or the Opponent's grounds under Section 5(3) or 5(4)(a) because to his mind, the Opponent's position could be no stronger.
45. On 1 May 2014, the Opponent filed Notice of appeal to the Appointed Person under Section 76 of the Act. The Opponent contended that the Hearing Officer was wrong to have found no likelihood of confusion under Section 5(2)(b), and erred fundamentally in failing to consider the oppositions under Section 5(3) and 5(4)(a) properly.
46. Ms May accepted that the appeal was by way of review not rehearing and whatever my own assessment, I should be reluctant to interfere in the absence of material error by the Hearing Officer (*REEF Trade Mark* [2003] RPC 5, paras. 28 – 29, *BUD Trade*

Mark [2003] RPC 25, para. 12, *DALSOUPLE Trade Mark* [2014] EWHC 3963 (Ch), paras. 34 – 35).

Ground 1 of appeal - Section 5(2)(b)

47. The Opponent’s first ground of appeal under Section 5(2)(b) of the Act, focussed on the Hearing Officer’s comparison of the marks.
48. Otherwise, the following findings by the Hearing Officer were accepted:
- (1) The respective goods in Class 12 were identical, or else were highly similar.
 - (2) The average consumer of bearings/parts would likely be a mechanic or other technically skilled person (possibly working in-house, e.g., in a business operating a fleet of buses or trucks etc.) who would purchase and fit the bearings/parts on behalf of the ultimate user. Such a person would have specialist knowledge, and would pay a reasonably high level of care and attention to the purchase act.
 - (3) The goods would be selected through perusal of websites, brochures or other technical information, and could be ordered on the telephone. The visual and aural aspects would play a fairly equal role.
 - (4) Post sale confusion on the part of an end user was not highly relevant⁴.
 - (5) VOLVO would be perceived as an invented word and was inherently possessed of high distinctive character. Further, VOLVO was one of the best known car manufacturers in the world. Whilst that reputation did not extend to bearings per se, it would extend to parts of VOLVO vehicles including bearings. Overall, the distinctiveness of the VOLVO mark was very high.
49. It was also accepted that the Hearing Officer correctly directed himself as to the law governing the application of Section 5(2)(b) by reference to the Registrar’s usual summary of principles gleaned from the case law of the Court of Justice of the EU (“CJEU”).
50. The contentious passages were paragraphs 21 to 23 of the Decision. Having rightly noted that the marks must be compared overall, and that the marks to be compared were VOLVO v. REVOLVO, the Hearing Officer said this:

“21) Ms May highlighted that the word “Volvo” is Latin for “to roll”. She accepted, however, that only a small subset of average consumers would know this. Ms Moss argued that such knowledge would be extremely thin. I agree with Ms Moss, the likely level of knowledge of this Latin word is so small that it should not be taken as being representative of the average consumer’s perception of the mark. The average consumer will perceive the word

⁴ The Hearing Officer gave the example of a car with a bearing problem where in his experience the end user would be more interested in the cost of the repair and how long it would take rather than the brand of the replacement bearing, although he accepted that the Opponent’s evidence stressed the importance of genuine VOLVO parts being used.

VOLVO simply as an invented word, with no allusiveness or suggestiveness whatsoever. In relation to the word REVOLVO, Ms May argued that this would be seen as the word VOLVO together with the word RE (as used in words such as regarding). She argued, therefore, that the VOLVO element was the dominant part of the mark and, in addition, this created conceptual similarity. Ms Moss, on the other hand, submitted that the word REVOLVO was so similar to the word REVOLVE that any conceptual value would be based upon this word (particularly given that the goods and services of the REVOLVO mark were bearings or services relating to bearings) and, consequently, that the mark would be seen as a single word with no dominant element leaping from it. Again, I agree with Ms Moss. The goods and services of the REVOLVO mark relate to bearings. I consider the average consumer will know that the primary purpose of a bearing is to rotate (or revolve) so as to reduce friction in machinery; ball bearings, as the name suggests, are ball like and will be assumed to revolve. As Ms Moss suggests, the word REVOLVO is so close to REVOLVE that average consumers will see the play on word – they will see an evocation. The General Court (“GC”) has considered how trade marks may have a conceptual connotation despite not being in themselves dictionary words. In *Usinor SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-189/05 the GC referred to a “suggestive connotation”. In *Ontex NV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T- 353/04 it referred to the “evocative effect”. Consequently, I consider that the average consumer will:

- i) See REVOLVO as having an evocative effect based upon the word REVOLVE.
- ii) See REVOLVO as a single (invented but evocative) word and that VOLVO is not its dominant component.
- iii) Consider that there is a conceptual difference between VOLVO (an invented word with no meaning) and REVOLVO (an invented word with an evocative effect based on the word REVOLVE).

22) Regardless of the above, I think it is difficult to say that there is absolutely no similarity on a visual and aural basis between VOLVO and REVOLVO. However, from a visual perspective, whilst the marks have five letters in common (the totality of VOLVO and the last five letters of REVOLVO) I do not agree with Ms May that the marks are highly similar, irrespective of what she described as the repeating V/O pattern. The fact that the marks are relatively short and that the beginnings of the marks are different (which I accept are both simply rules of thumbs, albeit operative ones in this case) means that I assess the level of visual similarity as moderate.

23) From an aural perspective, VOLVO will be articulated as VOL-VO or, perhaps, VOLV-O. REVOLVO will most likely be articulated as RU (with a soft RU sound)-VOLV-O; although sometimes a harder RE (as in “REH”) sound may be articulated at the beginning. There are three syllables versus

two. The difference is at the beginnings of the marks. However, there is clearly a similar sound in the last two syllables of REVOLVO and VOLVO. Ms May considered that in the REVOLVO mark greater emphasis would be placed on the VOLVO part of the mark given the soft RU sound. I disagree. If anything, the average consumer is likely to place greater emphasis on REVOLV, pronouncing it, effectively, as the word REVOLVE with an additional O. I consider there to be a moderate degree of aural similarity.”

51. Ms. May’s first criticism of this was that the Hearing Officer had no evidence on which to base his (Ms. May contended, wrong) assumption that the public would perceive REVOLVO as an evocation of “revolve”. Ms. May argued that since the Applicant relied so heavily on “revolve” being the obvious foundation for REVOLVO, the Applicant should have proved it.
52. On the other hand, the Opponent had early notice from the Notice of defence and counterstatement that the Applicant would argue that the word “revolve” was recognisably the basis for REVOLVO. The Opponent (who bore the onus of proving its opposition) also filed no evidence of public perception of the REVOLVO mark.
53. “Revolve” is a dictionary word, the meaning of which is well understood by the English language speaking public. There was no suggestion that the word and/or its meaning were in any way obscure. The evidence of both parties showed bearings which rolled.
54. In the absence of any survey or other evidence as to how the public would perceive REVOLVO in the context of the goods and services, the Hearing Officer needed, and was entitled, to form a view.
55. He considered (not unreasonably in view of the evidence) that the relevant consumer (agreed to be a specialist) would know that the primary purpose of bearings was to rotate in order to reduce friction.
56. In my judgment, whilst other minds might have formed a different view, the Hearing Officer was well within his decision making powers in finding that the public would perceive REVOLVO as an invented word but suggestive of the word “revolve”, and that VOLVO was not its distinctive component because REVOLVO would be regarded as a single word overall.
57. Second, the Opponent argued that the Hearing Officer failed to take into account that the only difference between the marks was the prefix RE which the public was used to understanding in the sense of “relating to xxx”. However, this second criticism is in my view unjustified since it is clear from paragraph 21 of the Decision (see para. 50 above) that the Hearing Officer did consider this argument advanced by Ms. May, but agreed with Ms. Moss McGrath that REVOLVO would not be dissected by the public in this way.
58. Third, Ms. May said that the Hearing Officer mispronounced REVOLVO. I reject that argument too. The Hearing Officer canvassed possible pronunciations of REVOLVO but considered that REVOLVE-O was the most likely. That was not an error of principle.

59. Fourth, Ms. May said that the Hearing Officer failed to have any or proper regard to the fact that the later mark contained the earlier mark within it, and was distinguishable only by virtue of the non-distinctive prefix RE. Clearly the Hearing Officer did take the former into account because it was on this basis that he determined that there was a moderate degree of visual and aural similarity between the marks. I have already dealt with Ms. May's RE point at paragraph 57 above.
60. Fifth, the Opponent argued that even if the Hearing Officer was right (which the Opponent did not accept) that REVOLVO evoked the word "revolve" in the minds of the relevant public, he still should have found that there was a likelihood of confusion.
61. Ms. May accepted that the Hearing Officer directed himself correctly as to the interdependency of factors in the global assessment of likelihood of confusion, but contended that the Hearing Officer placed too much emphasis on the comparison of the marks. She also argued that the Hearing Officer failed to take into account the possibility of indirect confusion in the sense of there being an economic connection between the originators of goods/services sold respectively under the REVOLVO and VOLVO trade marks.
62. Ms. May argued that irrespective of whether the visual and aural similarities between the marks were high (as the Opponent had claimed) or merely moderate (as the Hearing Officer had held) there was likelihood of confusion because the identity of the goods and/or similarity of the services and the very high distinctive character of the earlier mark, offset the differences in the marks.
63. She particularly criticised the following passage in the Decision at paragraph 33:
- "The crux of the matter rests, in my view, on the marks themselves which, of course, must be considered in totality, without artificial dismemberment. I have already stated that the average consumer will see an evocative effect and will recognise that the REVOLVO mark is based on the word REVOLVE. The effect of this, in my view, is the removal of the likelihood of the average consumer from seeing the word/brand VOLVO (which is well known) standing out from the mark. To find otherwise would be to suggest an artificial process of analysis and dismemberment which average consumers will not likely adopt. The moderate visual and aural levels of similarity are borne in mind, but the differences are nevertheless sufficient to prevent the marks from being mistaken for one another when the nature of the purchasing process is borne in mind. Nor do I think that one mark will be imperfectly recalled as the other. The points I have already made concerning artificial dismemberment put pay to Ms May's points regarding indirect confusion. **There is no likelihood of confusion and the claim under section 5(2)(b) fails in class 12.**"
64. The Opponent said that the Hearing Officer erred in regarding the comparison of the marks as the "crux of the matter". However, the Hearing Officer had at the beginning of paragraph 33, already noted that certain factors went in favour of the Opponent namely the identity of the goods in Class 12 and the high distinctive character of the earlier mark. Further imperfect recollection had some role to play despite the reasonable level of attention he had found would be paid by the relevant consumer.

65. It is well established that the different factors in the global assessment of likelihood of confusion do not necessarily carry equal weight. Instead, the tribunal is required to carry out a balancing exercise according to the particular circumstances of the case.
66. Here the Opponent has sought to challenge the weight the Hearing Officer attributed to how, in his evaluation, the average consumer would perceive the respective marks. Having taken into account the various factors, the Hearing Officer thought that this tipped the balance against likelihood of confusion. In my judgment, whilst other minds might differ, that was a view he was entitled to take.
67. There is more substance in Ms. May's criticism that the Hearing Officer did not properly consider the possibility of indirect confusion because of his conclusion: "Nor do I think that one mark will be imperfectly recalled as the other", which appears to be a further statement that he thought there was no direct confusion.
68. That said, Ms. May had referred the Hearing Officer to the explanation of indirect confusion with examples by Mr. Iain Purvis QC sitting as the Appointed Person in *L.A. SUGAR Trade Mark*, BL O/375/10 (paras. 16 – 17). The Hearing Officer reproduced that guidance at length in his Decision and also discussed Ms. May's application of the examples provided by Mr. Purvis to the facts of the present case (Decision, 31 and 32).
69. In those circumstances, I think it unlikely that the Hearing Officer wrongly appreciated the meaning of indirect confusion in this context. I am prepared therefore to regard the suspect sentence identified by Ms. May as a matter of poor expression.
70. The first ground of appeal against the Hearing Officer's findings under Section 5(2)(b) of the Act, accordingly fails.

Grounds 2 and 3 – Section 5(3) and 5(4)(a)

71. The Hearing Officer's total consideration and findings in respect of the remainder of the opposition was as follows:

"34) I do not consider it necessary to consider the other classes and/or the other grounds of opposition. The opponent is in no stronger position and its claims would fail for the following reasons:

- i) Under section 5(2)(b), the other classes involve the same arguments with matters resting primarily on the marks. The degree of care and consideration of the average consumer is no different and in all instances the REVOLVO mark, for all its goods and services, would have the same conceptual evocation as set out above.
- ii) Under section 5(4), it is clear that the opponent's have the requisite goodwill, but for similar reasons as to why I found no likelihood of confusion, I would have found that no misrepresentation would occur.

- iii) Under section 5(3), it is clear that the opponent's have the requisite reputation, but given my view that the brand VOLVO (even taking into account its reputation) will not stand out in REVOLVO then I consider that no link will be made between the marks.

In view of the above, all the other claims are hereby dismissed.”

72. The Opponent's second and third grounds of appeal were that the Hearing Officer failed properly to consider the grounds of opposition under Section 5(3) and 5(4)(a) respectively, both of which had been fully argued by the Opponent below. Ms. Moss McGrath argued that this was a proportionate approach on the part of the Hearing Officer. I disagree.

Section 5(3)

73. The CJEU has made clear that the degree of similarity of marks required for Section 5(2)(b) is not the same as the degree of similarity of marks required for Section 5(3), which may be less. Each ground must be determined separately according to the decided principles governing the global assessments of the cumulative criteria pertaining to each ground. This was forcibly explained by the CJEU in the recent Joined Cases C-581/13 P and C-582/13 P, *Intra-Press SAS v. OHIM*, 20 November 2014⁵ in relation to Article 8(1)(b) and 8(5) of Regulation (EC) 40/94 (replaced by Regulation (EC) 207/2009), the equivalents to Section 5(2)(b) and 5(3) of the Act:

“72. The Court has consistently held that the degree of similarity required under Article 8(1)(b) of Regulation No 40/94, on the one hand, and Article 8(5) of that regulation, on the other, is different. Whereas the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks at issue so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation. Accordingly, the types of injury referred to in Article 8(5) of Regulation No 40/94 may be the consequence of a lesser degree of similarity between the earlier and the later marks, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (see judgment in *Ferrero v OHMI*, C- 552/09 P, EU:C:2011:177, paragraph 53 and the case-law cited).

73. According to the same case-law, Article 8(5) of Regulation No 40/94, like Article 8(1)(b), is manifestly inapplicable where the General Court rules out any similarity between the marks at issue. It is only if there is some similarity, even faint, between the marks at issue that the General Court must carry out an overall assessment in order to ascertain whether, notwithstanding the low degree of similarity between them, there is, on account of the presence of other relevant factors such as the reputation or recognition enjoyed by the

⁵ Since the Judgment was published shortly before the present appeal hearing, I allowed the parties time after the hearing within which to make written submissions on the relevance of that decision to the present case. Both parties provided me with written submissions, which I have taken into account.

earlier mark, a likelihood of confusion or a link made between those marks by the relevant public (*Ferrero v OHIM*, EU:C:2011:177, paragraph 66).

74. In the present cases, the General Court found in paragraph 72 of the judgments under appeal that, ‘having regard to the assessments made in paragraphs 41 to 51 [of those judgments]’, the signs at issue lacked the requisite similarity for the purposes of applying Article 8(5) of Regulation No 40/94.

75. However, although the General Court found in paragraphs 41 to 51 of the judgments under appeal that those signs were not at all visually or phonetically similar, it also found that there was a low degree of conceptual similarity between them. Thus, the General Court did not, in those judgments, rule out all possibility that the marks at issue were similar.”

76. Consequently, in accordance with the case-law cited in paragraph 73 above, the General Court was wrong to rule out the application of Article 8(5) of Regulation No 40/94 without first undertaking an overall assessment of the marks at issue in order to ascertain whether that low degree of similarity was nevertheless sufficient, on account of the presence of other relevant factors such as the reputation or recognition enjoyed by the earlier mark, for the relevant public to make a link between those marks.”

74. In *Intra-Press*, the CJEU also criticised the failure by the Board of Appeal to deal with the ground of opposition under Article 8(5) in relation to the disputed goods falling outside the purview of the Board of Appeal’s assessment of the likelihood of confusion, ruling that the Board of Appeal had not fulfilled its obligation fully to examine the merits of the opposition (paras. 80 – 86).
75. Ms. May criticised first, the Hearing Officer’s failure under Section 5(3) globally to assess the likelihood of a link according to all the relevant factors specified by the CJEU in Case-252/07, *Intel Corporation Inc. v CPM United Kingdom Ltd* [2008] ECR I-8823, paragraph 42. Second, she said that the Hearing Officer erred in justifying his refusal of the opposition under Section 5(3) on the basis that, in his view, “the brand VOLVO (even taking into account its reputation) will not stand out in REVOLVO”.
76. The following points must be made:
- (1) Whilst the Hearing Officer indicated that he had taken account of the reputation of the earlier trade mark, his findings on reputation were: (a) limited (see paras. 38 – 40 above); (b) taken in the context of distinctiveness for Section 5(2)(b); and (c) confined to Class 12 – seemingly cars and car parts including bearings (Decision, para. 25).
 - (2) On the other hand, the relevant reputation in the VOLVO brand claimed and evidenced by the Opponent under Section 5(3) went much wider and covered not only cars and car parts and accessories, but also trucks, buses, construction equipment, marine and industrial engines and power systems, parts and accessories therefor, and services related to all the foregoing.

- (3) It is unclear whether the Hearing Officer took into account any of the *Intel* factors other than reputation in denying the existence of a “link” for Section 5(3), for example, the uniqueness or essential uniqueness of the VOLVO mark (*Intel*, para. 56)⁶.
- (4) In *Intel*, the CJEU confirmed: “the fact that for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark would call the earlier mark to mind is tantamount to the existence of such a link” (para. 60).

The Hearing Officer said he thought no link would be made between the marks because “the brand VOLVO (even taking into account its reputation) will not stand out in REVOLVO”. That was the same reason he gave for his finding that no likelihood of confusion existed (Decision, para. 33). Yet, the Hearing Officer also said that the average consumer could not fail to perceive a moderate degree of visual and aural similarity between the marks because of the common 5 letters VOLVO.

It is therefore not clear to me from the Decision that that the Hearing Officer applied the correct standard in determining the non-existence of a link under Section 5(3). Instead, he seems to have based that finding on his previous assessment of no likelihood of confusion for Section 5(2)(b).

- (5) The Hearing Officer did not consider the opposition under Section 5(3) in relation to the goods and services applied for in Classes 7 and 42 (i.e., the disputed goods and services falling outside the purview of his assessment of likelihood of confusion).
77. For the above reasons, in my judgment, the ground of appeal against the Hearing Officer’s decision under Section 5(3) succeeds. The Hearing Officer failed either to consider the ground for opposition under Section 5(3) properly, or to give adequate reasons for rejecting it⁷.
 78. Since the ground of opposition under Section 5(3) has not been determined at first instance according to its governing conditions, I will refer the case back to the Registrar for that ground to be determined by a different Hearing Officer.
 79. I should add that this issue is not academic. The Opponent had legal concerns (supported by evidence and argument) that irrespective of likelihood of confusion, registration and use of REVOLVO in the UK for the subject goods and services would cause relevant damage to the reputation of VOLVO, not least because the Opponent would be unable to control the quality of bearings parts sold under the later mark by the Applicant or its successor in future. The Opponent rightly had legitimate expectations that its case under Section 5(3) would properly be heard and determined.

⁶ The fact that he said he thought it unnecessary to consider the other grounds (i.e., Section 5(3)) suggests that he did not.

⁷ Rule 69(1), Trade Marks Rules 2008.

Section 5(4)(a)

80. The question for determination under Section 5(4)(a) was whether use of REVOLVO for the purposes of distinguishing the goods and services applied for in Classes 7, 12 and 42 from those of other undertakings was liable to be prevented at the date of filing Application number 2557947 (7 September 2010) by enforcement of rights which the Opponent could then have asserted against the Applicant under the law of passing off (*CRANLEYS Trade Mark*, BL O/354/14, para. 7(7)).
81. I agree with Ms. May that this is not the same test as for Section 5(2)(b). Section 5(4)(a) is dependent on use not registration, and the viewpoint is that of a substantial proportion of customers not the average consumer (*Marks & Spencer PLC v. Interflora Inc.* [2012] EWCA Civ 1501, para. 34, *Interflora Inc. v. Marks & Spencer PLC* [2014] EWCA Civ 1403, paras. 107 – 128, Joined Cases T-114/07 and T-115/07, *Last Minute Network Ltd v. OHIM* [2009] ECR II-1919, paras. 60 – 65).
82. I also agree with Ms. May that although the Hearing Officer appeared to accept that the Opponent had the requisite goodwill, he made no findings as to the nature of that goodwill.
83. Ms. May emphasised that although VOLVO was perhaps best known for the design, manufacture and sale of cars, buses and trucks, the Opponent's goodwill included a significant aftercare service in all aspects of the Opponent's businesses plus direct sales of Genuine Volvo Parts in the fields of cars, trucks, buses, construction/industry and marine.
84. The Hearing Officer indicated that he had not considered the ground of opposition under Section 5(4)(a) (Decision, para. 34). I think it inescapable that the Hearing Officer based his rejection of the Opponent's case under Section 5(4)(a) on his determination of Section 5(2)(b) (taken *inter alia* in relation to Class 12 only)⁸.
85. In my judgment, the Opponent was justified in complaining on appeal that the Hearing Officer failed properly to consider the ground of opposition under Section 5(4)(a) even though the Opponent had fully argued that ground below and provided extensive evidence.
86. Again, the appropriate course in my view is to remit the case to the Registrar for the Section 5(4)(a) ground of opposition to be determined by a different Hearing Officer.

Standard of review

87. The following Court of Appeal statements were pertinent to this appeal:

“The Court of Appeal is not here to retry the case. Our function is to review the judgment and order of the trial judge to see if it is wrong. If the judge has applied the wrong legal test, then it is our duty to say so ...” (*Okotoks Limited v. Fine & Country Limited* [2013] EWCA Civ 672, para. 50)

⁸ Alternatively any separate reasoning under Section 5(4)(a) was unclear contrary to Rule 69(1) Trade Marks Rules 2008.

“It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision ...” (*Fage UK Limited v. Chobani UK Limited* [2014] EWCA Civ 5, para. 115).

Conclusion

88. To conclude, for the reasons I have given:

- 1) The Opponent’s appeal against the Hearing Officer’s decision under Section 5(2)(b) of the Act is dismissed.
- 2) The Opponent’s appeal against the Hearing Officer’s decision under Section 5(3) of the Act is allowed.
- 3) The Opponent’s appeal against the Hearing Officer’s decision under Section 5(4)(a) of the Act is allowed.
- 4) Opposition number 101392 is remitted to the Registrar for the grounds of opposition under Section 5(3) and Section 5(4)(a) of the Act to be determined by a different Hearing Officer.
- 5) The Hearing Officer’s decision as to the costs of the opposition proceedings in the Registry is set aside.
- 6) The costs of this appeal are to be treated as costs incurred in the opposition proceedings and the question of how and by whom they are to be paid is reserved for determination by the Registrar as part of his decision on costs at the conclusion of the proceedings in the Registry.

Professor Ruth Annand, 30 January 2015

Ms. Charlotte May of Queen’s Counsel instructed by Hogan Lovells International LLP appeared on behalf of the Opponent/Appellant

Ms. Rigel Moss McGrath of WP Thompson & Co. appeared on behalf of the Applicant/Respondent

ANNEX A – Applicant’s goods and services

Class 7

Anti friction bearings; Bearings for industrial machines and equipment, namely mining equipment, quarrying equipment, machines used in the manufacture and processing of paper and pulp, food, beverages and metal; Bearings for industrial machines and equipment used in the extraction industries; Bearings for industrial machines and equipment used in the printing industry; Bearings for industrial machines and equipment for power generation; Bearings for industrial machines and equipment used in civil engineering projects, namely the building of railways; Bearings for motors, gearboxes, and engines (excluding land vehicle motors); Bearings for use in theme park rides; Bearings for shafts; Bearings for transmission shafts; Parts and fittings therefor, namely rings for bearings, bearing brackets, bushings for bearings, discs for clutch thrust bearings

Class 12

Anti friction bearings; Bearings for use in land, air and sea vehicles and vessels; Anti friction bearings for motors, gearboxes, and engines; Release bearings for the friction clutches of land vehicles; Transmission bearings for land vehicles; Parts and fittings therefor, namely rings for bearings, bearing brackets, bushings for bearings, discs for clutch thrust bearings

Class 42

Consultancy services relating to the design of anti friction bearings; Consultancy services relating to the design of bearings for industrial machines and equipment, (namely mining and quarrying equipment, machines used in the manufacture and processing of paper and pulp, food, beverages and metal, machines and equipment used in the extraction industries, the printing industry, machines and equipment for power generation, machines and equipment used in civil engineering projects) motors, gearboxes, and engines, shafts and transmission shafts; Consultancy services relating to the design of bearings for use in theme park rides; Design services concerning bearings for industrial machines and equipment, namely mining equipment, quarrying equipment, machines used in the manufacture and processing of paper and pulp, food, beverages and metal, machines and equipment used in the extraction industries, the printing industry, machines and equipment for power generation, machines and equipment used in civil engineering projects; Design services for parts of vehicle motors, namely anti friction bearings for motors, gearboxes, and engines, bearings for shafts and transmission shafts; Design services for anti friction bearings for use in theme park rides; Design services for parts and fittings for anti friction bearings, namely rings for bearings, bearing brackets, bushings for bearings, discs for clutch thrust bearings; Computer aided design engineering services; Engineering services for the design of anti friction bearings for industrial machines and equipment, (namely mining equipment, quarrying equipment, machines used in the manufacture and processing of paper and pulp, food, beverages and metal machines and equipment used in the extraction industries, the printing industry, machines and equipment for power generation, machines and equipment used in civil engineering projects), motors, gearboxes, engines, shafts and transmission shafts and for use in theme park rides

ANNEX B – Opponent’s goods and services

UK Registration 747362

Class 12

Land vehicles and parts thereof included in Class 12

UK Registration 1051579

Class 7

Marine engines, air craft engines, engines for industrial, agricultural and forestry machines, stationary combustion engines, and parts and fittings included in Class 7 for all the aforesaid engines; turbines and electric motors, none being for land vehicles; electric generators; converters for liquid fuels, injectors, vaporizers, ignition devices and parts thereof, all included in Class 7, sparking plugs, silencers, spark arresters for combustion engines, bearings, shafts, shaft seals, gearwheels, drive wheels, pulleys, drive chains, drive belts, springs, filters, pumps, regulators, relief valves and control devices, all included in Class 7, cooling fans, fan belts, all for machines or for machine motors; transmissions, gearboxes, reverse gears, reduction gears, shaft connections, couplings, and clutches, none for land vehicles; drive units for inboard and outboard engines; hydraulic pumps and hydraulic motors, and parts of such pumps and motors, all included in Class 7; hydraulic valves, boost units for hydraulic transmissions, all for machines; compressors (machines), compressed air cylinders and compressed air motors, all for machines; bilge pumps, separators (machines), machine tools and tools therefor, hydraulic lift jacks, body and frame aligners (machines), packing and labelling machines, conveyors (machines), conveyor belts; combine harvesters, loaders (machines), motor operated grading machines and implements therefor included in Class 7; digging machines, forestry machines and parts thereof included in Class 7, hydraulic lifting apparatus, cranes, winches; bucket, grapples and fork type implements for machines; delimbing, slashing and debarking apparatus included in Class 7; forks, teeth and cutting edges, all for machines

UK Registration 1552529

Class 42

Hire, leasing and rental of computers, data processing and computer apparatus and instruments and installations and apparatus for use therewith, software, computer programmes and of computer firmware; leasing access time to computers; computerised information services; computer services; computer programming; advisory services relating to all the aforesaid services and to networking and communications; all included in Class 42

CTM Registration 2361087

Class 7

Motors and engines (except for land vehicles), including marine engines, aircraft engines, engines for industrial, agricultural and forestry machines, stationary combustion engines, turbines, electric motors; electric generators and alternators; high-frequency generators; air cleaners (air filters) for engines and anti-pollution devices for motors and engines; carburettors, converters for liquid fuels, injectors, injection pumps, fuel pumps, speed governors, injection nozzles and nozzle holders, machine valves, vaporizers, starters, ignition systems, ignition coils, glow plugs, spark plugs, spark plug connectors, lambda probes,

magnetos, silencers/mufflers and spark arresters for combustion engines; fuel filters, oil filters, air filters; rolling bearings, plain bearings, shafts, shaft seals, gearwheels, drive wheels, speed change gear, pulleys, drive chains and belts, springs, filters, pumps, regulators, relief valves, controls, fans and fan belts, all for engine cooling radiators; cooling fans, cooling radiators, starters, fuel feed apparatus, oil cooling apparatus, brakes, caps for cooling radiators, accelerators, hydraulic pumps, hydraulic cylinders, hydraulic reservoirs, hydraulic filters, hydraulic motors, hydraulic pipes, hydraulic valves, boost units for hydraulic transmission, all for machines, engines and motors; machine coupling and transmission components (except for land vehicles), including power transmissions, gearboxes/transmissions, reverse gears, reduction gears, gearbox controllers, traction control systems, vehicle dynamics control systems, shaft connections, couplings and clutches, exhausts, couplings and transmission belts; power transmission take-off units for motor vehicle engines, for use as prime movers; inboard/outboard drive units and sailing boat drive units for inboard engines; hydraulic pumps and motors and components thereof, surgical pumps or air pumps as vehicle accessories; bushes and bearings; pneumatic valves, power steering systems, control valves, braking valves; exhaust-gas turbo-chargers; compressors, compressed air brakes, compressed air reservoirs, compressed air cylinders and compressed air motors, bilge pumps; metal and plastics working machines; machines for the chemical industry, for agriculture, mining, textile machines, machines for the beverage industry; incubators for eggs; agricultural implements (not hand operated); construction machines; electronic control devices for production technology and servo drives, programmable controllers; machines for the automobile industry; machine tools and tools therefore; electric power tools and their plug-in tools; electric can openers; hydraulic lift jacks, body and frame aligners; packing and labelling machines, conveyors, conveyor belts; loading and handling machines for pressing plants and foundries and machines for the tooling of blanks; loaders, dumper bodies, excavators as well as parts, including components, and accessories to such products; hydraulic lifting apparatus, cranes, winches; bucket, grapple and fork type implements for machines; wood working machines, including delimiting-, slashing-, and debarking equipment; teeth and cutting edges for machines; car vacuum cleaners; car wash facility; parts, fittings and accessories for the abovementioned goods and for motor land vehicles, included in class 7

Class 12

Vehicles, including cars, vans, sport-utility vehicles (including golf carts), buses, trucks, tractor units/prime movers, on and off road vehicles/dump trucks and parts, including components, and accessories to these items which do not pertain to other classes, including vehicle chassis, vehicle bodies, braking installations, brake calipers, draw bars, bumper bars, clutches, engines, electric engines, motors, electric motors, turbines, starter motors, combustion engines, starting devices for internal combustion engines, hydraulic cylinders and motors, cooling radiators, silencers/mufflers, spark eliminators, power transmissions, gearboxes/transmissions, transmission shafts, differential gears, drive gears, drive shafts, gear change selectors, radiators, radiator caps, exhausts, exhaust cowls, axles, shafts and couplings, machine coupling and transmission components, manual and power steering apparatus, power steering systems, hydraulic steering systems, as well as component parts of these items, compressed air reservoirs, compressed air cylinders and compressed air motors, anti-pollution devices, air pumps, anti-dazzle devices, anti-theft devices and alarms, vehicle immobilizing units, trailer hitches, power take-offs, springs, shock absorbers, fans, fan belts, level regulators, bearings, wheels, wheel bearings, wheel trims, balance weights for wheels, engine mountings, tanks and fuel tanks, engine noise shields, protective covers, radiators grilles, front grills, fluid reservoirs, deflectors, direction indicators, hatches, upholstery,

handles for doors, hoods, horns, hubs, hub caps, hydraulic circuits, tyres, non-skid devices for tyres, mud flaps, brakes, servobrakes and compressed-air brakes, antilock brake systems, brake pads and brake linings, bumpers, mudguards/fenders, cabs, cab tilt mechanisms, reversing alarms, mechanical controls, head rests for seats, arm rests, doors, seats, safety-seats, personal safety restraints seats, safety seats for children, tables for seats, seat covers, headrest covers, seat belts, devices for collision protection, parking assistance systems, sliding roofs, sun roofs, vehicle steering columns, steering wheels, steering linkages, stabiliser bars, suspensions, suspension lowering outfits, torsion bars, tow bars, windows, window winding mechanisms, power windows, windscreens/windshields (also of safety glass), windscreen/windshield and headlight wipers, defrosting systems for windscreens, wiper blades, vehicle window blinds, driving mirrors, mirrors (retrovisors), tank caps, cover caps for extra headlights, warning triangles, jumper cables, starter cables, warning lamps, luggage restraints for vehicles, luggage nets, luggage carriers, wheel carriers, bicycle carriers, surfboard carriers, boat carriers, mud-guards, snow chains, pet screens, stone screens, storage screens, roof racks and ski racks, stowage boxes, deposit boxes, stowage compartments, trim panels, spoilers, side and rear skirts, safety cushions, air bags, breakdown cases, holders for mirrors, sun shades, mobile telephone mounting equipment; restraining systems for installation in motor vehicles, namely belt tensioners, airbags and sensors; tires, pneumatic tires; adhesive rubber patches for repairing inner tubes; baby carriages, wheeled chairs for invalids; bicycles; rudders, propellers, trimming vanes, steerage units, steering wheels and fittings for boats as well as component parts of these items; apparatus for locomotion by land, air or water

Class 42

Technical consultation and preparation of expert opinions; engineering services; services in connection with research development and testing of new products; computer programming, installation, maintenance and care of computer programs; guard-duty services including alarming of ambulance, police, fire and rescue brigade; theft notification; stolen vehicle tracking; operation of data processing centers, service and alarm centers for transport and traffic, in particular the detection, checking (supervision), evaluation and processing of alarm messages, and signal, measuring, sound, image, video, position, movement, state and working hour data and (remote) control/automatic control of land vehicles, air vehicles and aircraft, locomotion systems, the load thereof as well as of engines/motors and machines (including drive units and construction machines); sorting of waste and recyclable material, in particular from vehicles, engines/motors and machines (including drive units and construction machines), and from parts and accessories thereof; technical consultation in the field of recycling in the field of environmental protection; scientific research, also relating to the ocean; meteorological research; industrial research; hotel services; restaurant and catering services; medical, hygienic and beauty care; veterinary and agricultural services; legal services