

O/0622/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3632002
IN THE NAME OF SHENZHEN TUOBIYING TECHNOLOGY CO., LTD
FOR THE TRADE MARK**



IN CLASSES 9 AND 18

AND

**THE OPPOSITION THERETO UNDER NUMBER 427083
BY TOBY ELECTRONICS LIMITED**

Background and pleadings

1. On 25 April 2021, Shenzhen Tuobiyang Technology Co., Ltd (“the applicant”) filed an application for the trade mark shown on the cover page of this decision for goods in classes 9 and 18.¹

2. Following publication, the application was opposed by Toby Electronics Limited (“the opponent”) under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following earlier trade mark registration for its section 5(2)(b) and 5(3) grounds:

2543875

TOBY

Filing date: 1 April 2010; registration date: 16 July 2010.

Relying on all the registered services in classes 35 and 42.

3. Under section 5(2)(b) of the Act, the opponent claims that some of the contested class 9 goods are “identical, similar and complementary” to the services of the earlier mark. It gives an example of “charging devices and cables” in the contested application and “retail services connected to the sale of electrical power cables” in the earlier mark’s specification. The opponent claims that the dominant and distinctive part of the contested mark is identical to the earlier mark. It claims that the combination of similarities between the marks and the parties’ goods and services leads to a likelihood of confusion.

4. Under section 5(3) of the Act, the opponent claims a reputation in its mark, opposing the class 9 goods of the application, as follows:

¹ The trade mark register records two applicants. However, the names are identical, as are the company numbers identified. The only difference is that one is located in London and the other in China. I will refer to the applicants in the singular.

“As a result of the long-term and substantial use of the Opponent’s earlier mark in the UK, it has acquired goodwill in a business conducted in the UK by reference to the mark TOBY relating to a range of electrical goods, component [sic] and accessories.”

5. The opponent claims:

“The use of the mark applied for is liable to cause confusion amongst members of the public in the UK and result in the misrepresentation that the Applicant’s goods as [sic] those of the Opponent or are affiliated, associated, or otherwise connected with the Opponent.”

6. Further, the opponent claims:

“The Opponent’s earlier mark has been used consistently in the UK since at least 1983 in relation to a range of electronic equipment and components, including cables, connectors, LEDs and PCB hardware (and associated services). The Opponent’s brand was (and still is) widely renown [sic] among the electrical equipment and components industry in the UK. As a result, the Opponent has acquired and maintained substantial goodwill and reputation in the name TOBY for many years in respect of equipment and components (and associated services) in the UK.”

7. The opponent claims that the applicant will unfairly benefit from the claimed repute of the earlier mark. The opponent also claims that use of the contested mark will erode the distinctiveness of the earlier mark because consumers will ‘mix and switch’ the parties’ goods and services. It also claims that the contested mark will damage the earlier mark’s repute if used in relation to goods of poor quality.

8. Under section 5(4)(a) of the Act, the opponent claims that it has used the sign TOBY throughout the UK since at least 1983 in relation to “electrical equipment and components; parts and fittings of the aforesaid”. The opponent claims that its goodwill in its business, distinguished by its sign, entitles it to prevent the use of the application under the law of passing off in relation to all of the applied for goods.

9. The applicant filed a defence and counterstatement, denying the grounds of opposition. It denies that the marks are similar and states that the goods and services are different. The applicant puts the opponent to proof that it has used its mark for the services for which it is registered.

10. The opponent is professionally represented by Wynne-Jones IP Limited. The applicant has a UK address for service, but this appears to be in the nature of a private individual rather than a professional representative. Only the opponent filed evidence. The applicant attempted to file a print from Amazon, but this was not in evidential form, a deficiency which it was invited to correct by the Tribunal but never did.² Consequently, the applicant has not filed evidence. Neither party requested a hearing, and only the opponent filed written submissions in lieu of a hearing. I make this decision after a careful consideration of all the papers.

Evidence

11. The opponent has filed evidence from Timothy Portlock, who has been the opponent's Managing Director since 1994.³ His evidence is aimed at proving that the earlier mark and sign have been used, and have a reputation and goodwill.

12. The first task is to assess whether, and to what extent, the evidence supports the opponent's statement that it has made genuine use of its mark in relation to the services for which it is registered, all of which it relies upon. The relevant period for this purpose is the five years ending on the filing date of the contested application: 26 April 2016 to 25 April 2021.

13. Section 6A of the Act states:

“(1) This section applies where

² The Tribunal's letter of 24 January 2023.

³ Witness statement dated 14 October 2022 and exhibits.

- (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.”

14. The onus is on the opponent, as the proprietor of the earlier mark, to show genuine use because Section 100 of the Act states:

“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.”

15. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch), Arnold J (as he then was) summarised the law relating to genuine use, as follows:⁴

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), 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], [2013] ETMR 16, Case C-609/11 P *Centrotherm*

⁴ “CJEU” is the abbreviation for the Court of Justice of the European Union. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark caselaw of EU courts.

Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], [2014] ETMR, 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] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(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] and [22]. 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]; *Reber* at [29].

(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]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(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] and [76]-[77]; *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. The services relied upon for the purposes of sections 5(2)(b) and 5(3) are:

Class 35: Retail services connected with the sale of electrical signal connectors; electrical power connectors; electrical signal-to-board connectors; electrical power-to-board connectors; electrical board-to-board connectors; electrical connectors for printed circuit boards; electrical signal connector adapters; electrical signal cable sockets; memory card sockets; electrical signal terminals; electrical power terminals; printed circuit board ground terminals; electrical signal cables; light emitting diodes; mounts, reflectors, lenses and light pipes for light emitting diodes; spacers, pillars and supports for printed circuit boards; cable clamps; cable ties; printed circuit board ejectors; printed circuit board feet; electrical signal cables; electrical power cables; electrical ribbon cables; pin interconnection strips; jumper links; printed circuit board headers; printed circuit board sockets; ball grid array adapters; card edge connectors; card-to-board systems; IC socket adapters; IC sockets; SIMM card connectors; SIMM sockets; DIMM sockets; transceiver interfaces; printed circuit board fixings; printed circuit board card guides; electrical signal splitters; electrical switches.

Class 42: Design services relating to electrical connectors for printed circuit boards.

17. Mr Portlock states that the opponent is one of the UK’s leading distributors of connectors, LEDs and PCB hardware; for example, he says that it is the leading distributor for a US manufacturer of connectors, cables, optics and radio frequency systems, called Samtec. It is also the Authorised Franchised Distributor in the UK for 3M Interconnect, which Mr Portlock states is a world leading manufacturer of such goods. He states that other clients include Sony, Raspberry Pi, Dyson and the F1 team, Williams, although I cannot see any evidence relating to these entities apart from a news article by Raspberry Pi which is not relevant, for the reasons given below.

18. Mr Portlock provides turnover and advertising figures from 2010 to September 2021. Bearing in mind that the five year period for proving use ended on the 25 April 2021, I give below the figures for 2016 to 2020, inclusive:⁵

Year	Turnover	Advertising
2016	£7,700,000	£30,000
2017	£8,600,000	£30,000
2018	£8,900,000	£50,000
2019	£9,000,000	£50,000
2020	£8,300,000	£50,000

19. Mr Portlock gives a list of UK locations where he states that the opponent has sold goods. The locations are major UK towns and cities (in England, Wales and Scotland).

20. The screenshots from the opponent's website stretch back several years prior to the relevant five-year period for proving genuine use.⁶ I can see from the screenshots which are taken from the Wayback Machine, the internet archive, and which begin on 12 June 2016 and end before the date on which the contested application was filed, that the mark consistently used is in the following format:



21. Some examples of screenshots showing products and product listings are:

⁵ The five year period began on 26 April 2016, so not all of 2016's figures are relevant. I give the figure for the whole year to balance the fact that I have not given any figures for the relevant period of 2021, because the opponent has not particularised the 2021 figures for the relevant part of that year.

⁶ Exhibit TJP-04.

http://www.toby.co.uk/content/catalogue/section.aspx?id=9

13 cartons

18 Mar 2010 - 7 Jul 2017

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 <p>10mm LED's</p> <p>10mm Round LED's with F...</p> <p>Show all Products</p>	 <p>3 Digit Common-Cathode</p> <p>3 Digit Common-Cathode</p> <p>Show all Products</p>
 <p>3mm LEDs</p> <p>3mm Flangeless Diffused...</p> <p>Show all Products</p>	 <p>5mm LEDs</p> <p>5x2mm Rectangular LEDs</p> <p>Show all Products</p>
 <p>90 Degree LED Assemblies - PCB Indicators</p> <p>T-1 (3mm) Single Statio...</p> <p>Show all Products</p>	 <p>Bread Board Friendly LED's</p> <p>3mm Bread Board Friendl...</p> <p>Show all Products</p>

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 <p>Bullet & Bullet Receptacle Connectors</p> <p>Female Bullet Receptac...</p> <p>Show all Products</p>	 <p>Cable & Wire Management</p> <p>Screw-down Plastic Cabl...</p> <p>Show all Products</p>
 <p>Card Guides & Pulls</p> <p>Snap-in Card Guides</p> <p>Show all Products</p>	 <p>Component Mounts & Spacers</p> <p>TO type Component Mount...</p> <p>Show all Products</p>

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Toby Part No.	Qty.
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signal-to-board connectors
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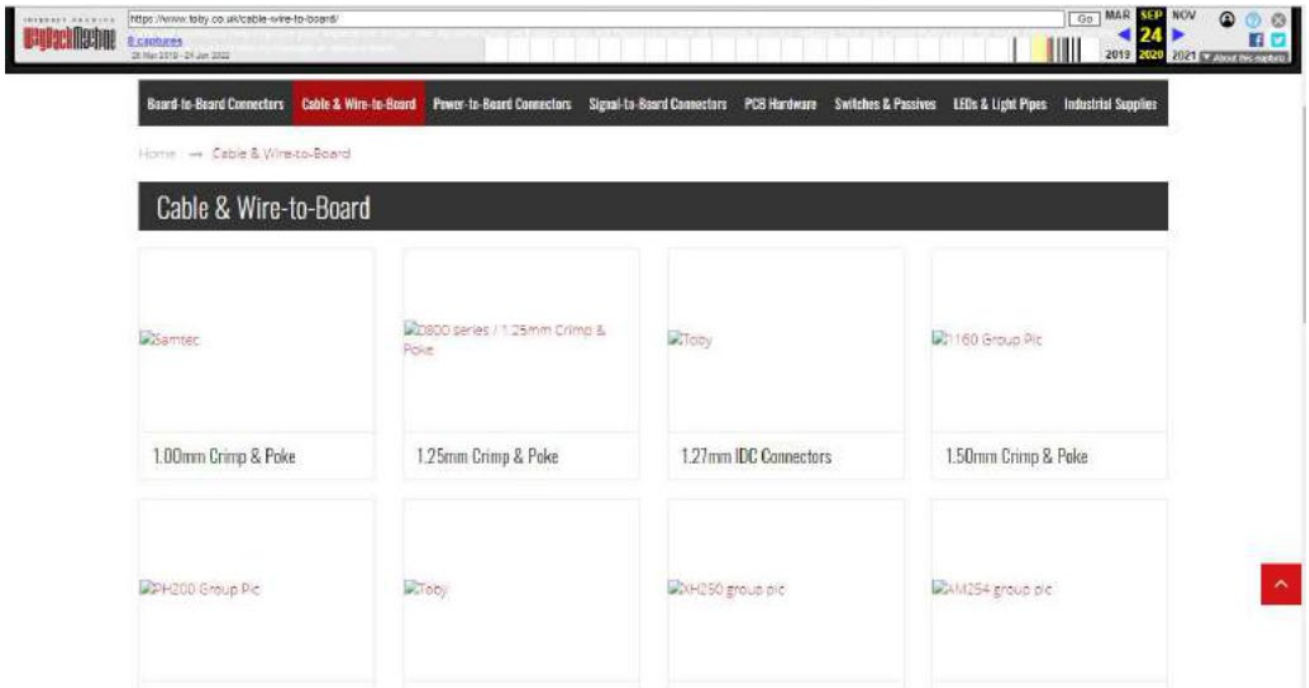
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Push Switches | Order by: Best Seller

<p>PBS - Lumberg Push Button Switch, Alternate On-Off Type (PBSA01)</p> <p>From £1.49</p>	<p>PBS - Lumberg Push Button Switch, Momentary (On)-Off Type (PBSM01)</p> <p>From £1.05</p>	<p>VPAB - Valcon Large Coloured Arcade Style PCB Push Buttons (VPAB)</p> <p>From £0.44</p>	<p>VPTS - Valcon Tactile Switch with short leads On / Off (VPTS)</p> <p>From £0.78</p>
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22. I note that these examples indicate that products identified by trade marks of third parties were sold: Samtec, Lumberg, 1160 Group Plc, PH200 Group Plc, XH250 group plc and AM154 group plc. Valcon is the opponent's own product trade mark, as indicated on the flyer on page 2 of Exhibit TJP-6: "Valcon – Toby's own range of economic, industry standard connectors and components." The flyer has a copyright date of 2011, prior to the relevant period from proving genuine use, so is of limited value, although I note that the some of the same third-party marks appear as above which are dated in the relevant period, such as Samtec and Lumberg:

franchise linecard

	High speed, high density and rugged/power interconnect and cable solutions		Hoods, connectors, contacts and cable assemblies
	Static protection products and industrial adhesives and tapes		Audio, datacomms, DC power and RJ45 connectors
	2mm Hardmetric, COM Express® and microTCA® connectors		German-quality cable-to-cable, cable-to-board, board-to-board and circular connectors
	LED Indication Products, Optoelectronics, PCB Assembly Hardware		High Precision, BGA and PGA sockets, adapters and connectors
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23. The social media evidence is undated and the posts appear to date from the year in which the screenprints were taken (10 October 2022), so this evidence is of limited value.

24. A flyer for the opponent's attendance at a 2016 'EDS' exhibition at the Ricoh Arena in Coventry refers to Samtec, as does another at the 2016 Southern Manufacturing & Electronics exhibition:



No one understands Samtec better

As one of the world's leading connector and cable manufacturers, Samtec has built an unrivalled reputation for high quality, fast turnaround, low MOQ solutions. And we should know. Toby has represented Samtec as a franchised distributor for over 30 years, delivering outstanding service and support in thousands of successful applications. Support that encompasses free product samples, expert in-house technical advice, custom and application-specific designs, and a team of experienced account managers committed to ensuring our clients get the right parts at the right price, precisely when and where they are needed.

- Expert technical advice
- Free product samples
- Application-specific solutions
- In-house cable assembly
- Comprehensive buffer stock and VMI facilities
- UK Inventory based on unrivalled experience of the Samtec range

SOUTHERN Manufacturing & Electronics SEE US ON STAND D92 SOUTHERN MANUFACTURING & ELECTRONICS 2016 9TH-11TH FEBRUARY

TOBY

No one understands Samtec better than Toby. To find out more about the benefits of this unbeatable partnership, call us now on **01295 271777** or email sales@toby.co.uk

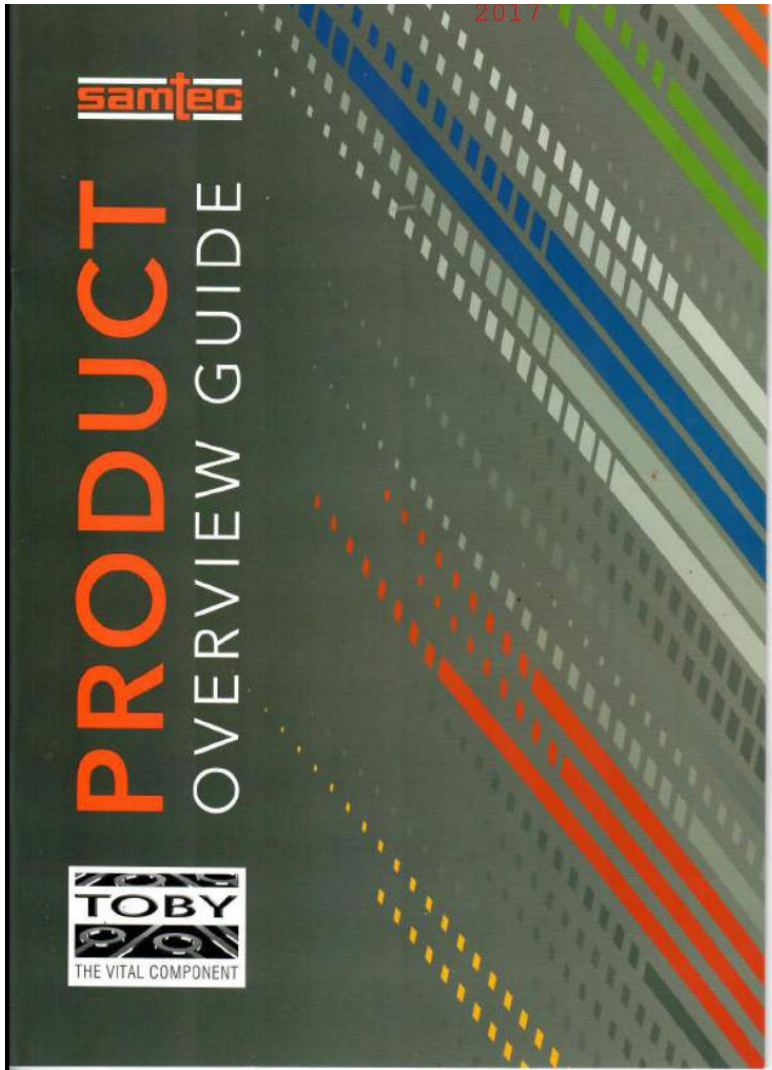
Order online at www.toby.co.uk

Toby Electronics, Beaumont Road Industrial Estate, Banbury, Oxfordshire, OX16 1TU

samtec

 facebook.com/TobyElectronics  [@TobyElectronics](https://twitter.com/TobyElectronics)

25. Other examples of sales of third-party products include:





Automotive

Automotive

Toby Electronics To Showcase Samtec Interconnection At EDS 2018

Technology Spotlights | ⌚ 1 min read

Samtec offers the largest variety of board-to-board interconnects in the industry and no-one understands Samtec better than Toby. Offering 3D model downloads, data, live pricing, lead time information, sample support and expert technical advice, toby.co.uk is the vital component for Samtec Interconnection.

Join Toby on Stand K50, 17th & 18th October at the Ricoh Arena in Coventry.

Toby will be there to assist electronics design engineers and buyers find their Samtec connector solutions.



TOBY ELECTRONICS ADDS A NEW OPTION FOR BUYERS OF SENSOR – ACTUATOR CONNECTORS AND CORDSETS

July 24, 2018

With a surge in demand for industrial signal, data and power applications, fuelled by the much vaunted Industry 4.0 revolution, Toby has moved to give buyers and specifiers another easy route to the most relevant and essential interconnect options on the market today.

LUTRONIC GmbH is a specialist manufacturer of actuator/sensor wiring solutions in Automation. Expanding Toby's range of circular and IP rated products, sitting alongside Lumberg and Samtec products. Sharing in the specific and expert knowledge base of sister company **Lumberg GmbH** who established M12 circular connectors as the industry global standard in the early 80's, Lutronic has developed a quality range of M8 and M12 circular connectors for signal, data and power applications.


Pedigree...quality...peace-of-mind

Lutronic offers a variety of actuator/sensor wires, one-sided or two-sided with overmolded A-coded connectors, with M8/M12, IP67 or as an M8 with a snap joint, IP65 are available, as are M8/M12 sockets and optionally with LED. Toby's Technical Director, Jim Portlock is keen to point out the pedigree attached to Lutronic; "... as a sister company of Lumberg GmbH, Lutronic provides sourcing professionals peace-of-mind that they are receiving a quality product with all necessary industry approvals from the outset"

All Lutronic solutions meet IEC 61076-2-101 standard and are already UL approved or approval pending.

26. According to Mr Portlock's witness statement, Exhibit TJP-05 supports the turnover figures. The exhibit consists of very heavily redacted invoices, whereby only the invoice date, the location of the customer and the total amount are shown. I do not know what was sold, how many items were sold, or for how much. For example:

SALES INVOICE



TOBY
THE VITAL COMPONENT

INVOICE TO:

Towcester
Northants

DELIVER TO:

Crownhill
Milton Keynes

Account No.	Invoice No.	Date
FOUN02	OP/1435032	23/01/2017
Customer Order No.		Delivery Note No.
4500167675		307613/3
Inv. Due Date	Vat No.	Currency
02/03/2017		GBP

PRODUCT / DESCRIPTION	TOBY PRODUCT NO	QUANTITY	UNIT	UNIT COST	LINE VALUE	VAT RATE
██████████	██████████	████	██	██	██	██
██████████	██████████	████	██	██	██	██
██████████	██████████	████	██	██	██	██
██████████	██████████	████	██	██	██	██
██████████	██████████	████	██	██	██	██

Certificate of Conformance:

The components detailed hereon have been certified by the manufacturer as conforming to the specifications/drawings/part number quoted. They have been stored under suitable conditions and conform in all other respects to the contract/order relative hereto.
These parts are RoHS compliant, unless stated otherwise

TOTAL NET	████
TOTAL VAT	████
TOTAL VALUE	193.32

Any Claims against this INVOICE must be made within 7 days of despatch.
TOBY ELECTRONICS LTD. TERMS AND CONDITIONS APPLY.
RETURNS CAN ONLY BE ACCEPTED AGAINST A RETURNS NUMBER AUTHORISED BY TOBY.

R. Crump
Operations Manager

F205 Invoice 6-108

VAT Registration No.: GB 387 5522 17
Registered in England 1713516

Page 1 of 1

Toby Electronics Ltd
 Beaumont Road Ind Estate
 Banbury
 OX16 1TU
 Oxon



Tel. 01295271777 Email: sales@toby.co.uk
 Fax 01295271744 Web: www.toby.co.uk
 VAT No. GB387552217

Invoice To:
 [Redacted]
 Newport
 Gwent
 United Kingdom

Deliver To:
 [Redacted]
 Newport
 Gwent
 United Kingdom

INVOICE
 Invoice number : **SINV18011486**
 Date : 29/01/2018
 Customer Code : [Redacted]
 Your reference : PO-059045
 VAT no. :

Delivery no. : SHP00001215
 Carrier : DHL Next Day - F.O.C.

Description	Customer Product	Sales Order	Quantity	Price	Unit Weight	Total
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Total Weight: 0.00 KG

Tax base	Rate	Tax amount
[Redacted]	[Redacted]	[Redacted]

Ex-VAT Lines Total	GBP	[Redacted]
Total Ex-VAT	GBP	[Redacted]
VAT Amount	GBP	[Redacted]
Total incl VAT		1,398.00
<i>Paid Amount</i>		1,398.00
NET TO PAY	GBP	0.00

Certificate of Conformance: The components detailed here on have been certified by the manufacturer as conforming to the specifications / drawings / part number quoted. They have been stored under suitable conditions and conform in all other respects to the contract/ order relative hereto. These parts are RoHS compliant, unless stated otherwise.

Any claims made against this INVOICE must be made within 7 days of despatch. Made to order / custom goods are non-cancellable and non-returnable (NC/NR). Toby Electronics Ltd standard terms and conditions of sale apply (available at www.toby.co.uk).

RETURNS CAN ONLY BE ACCEPTED AGAINST A RETURNS NUMBER AUTHORISED BY TOBY.

R. Cramp
 Operations Manager

27. Mr Portlock states that the opponent provides design services relating to electrical connectors for printed circuit boards to clients who are printed circuit boards engineers, electronic engineers, system architects, consultant designers and others in various industries using printed circuit boards. Exhibit TJP-10 is said to support this statement. The exhibit consists of a print of a news item from raspberrypi.com. This predates the relevant period by two years. In any event, it simply states that connectors for a PCB ‘add-on board’ called a HAT are available from the opponent at discounted pricing and that the opponent was “getting stock in now”. This is insufficient to show use of the class 42 services. I find that there is no use of the earlier mark in relation to the class 42 services within the relevant period, if at all.

28. The CJEU has stated that the “‘use’ of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark” as long as the mark is perceived as

indicative of the trade origin of the goods or service.⁷ I consider that the use of TOBY in the form shown in the evidence (sandwiched between two devices) falls within the CJEU's guidance and is use upon which the opponent may rely.

29. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each piece of evidence shows use by itself.⁸ I find that there is sufficient evidence that the opponent made genuine use of the earlier mark in the relevant period, taking into account the level of turnover, advertising and consistent use of the mark on its website in each year of the relevant period. However, there is a question in my mind as to whether the use has been in relation to the registered services in class 35, or whether it is in fact use in relation to goods in class 9, for which the earlier mark is not registered.

30. In *TUI Travel Amber E&W LLP v Thompson Hotels LLC*, BL O/440/14, Mr Daniel Alexander QC, sitting as the Appointed Person, observed:

“34. It suffices to say that difficult questions sometimes arise in cases where a mark is said to be used in respect of certain goods or services has been used by an undertaking which has been responsible for selecting those goods or services or arranging for them to be provided. In such a case, the nature of the use and the attendant reputation generated thereby may depend heavily on the context. For example, a greengrocer bearing a sign above the shop and selling loose apples which it has selected might be said to have used its sign in relation to apples. Conversely, a grocer bearing a similar sign above its shop but selling many types of individually branded goods may find it impossible to say that its sign has been used in relation to baked beans, simply because the shop has selected and stocks Heinz baked beans.”

31. A similar situation arose in *Cactus SA v OHIM*, Case T-24/13, in which the General Court (“GC”) held that the owner of what was then a CTM (now an EUTM) who used the mark only as the name of a shop had used the mark “in relation to” the natural

⁷ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, paragraphs 31 to 35.

⁸ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, General Court of the European Union, Case T-415/09.

plants, flowers and grains sold in the shop as well as in relation to retail services for those goods. This is because it had demonstrated that the public would link the otherwise unbranded goods to the mark used for the shop and regard the user of that mark as being responsible for the quality of the goods. The distinction in the example given by the Appointed Person is that the apples bear no third party trade mark, whereas the baked beans do. The greengrocer retail services and the goods themselves are bound up together, but not so in the example of a retailer selling goods which themselves have trade marks or branding which is not the same as that of the retailer.

32. The question has arisen in my mind partly as a result of the website evidence and also the nature of the opponent's pleadings under sections 5(3) and 5(4)(a). I have reproduced the pleadings at the beginning of the decision. Reputation for section 5(3) purposes is claimed for goods and for "associated services", the latter appearing within brackets. Goodwill for the purposes of section 5(4)(a) is claimed only for goods.

33. It is well established that retail-type services in class 35 cover the bringing together of a selection of goods for the convenience of the public, and other related services intended to encourage consumers to purchase those goods from the trade mark owner.⁹ There is evidence of the opponent doing just that, selling the goods of third-party brands, which I have described above. Such goods can include those offered by the trade mark owner itself, and I note that the opponent does that under its Valcon mark.¹⁰ Provided the services are more than an integral part of the offer for sale of the goods, they constitute services proper to class 35. The opponent's service of pre-selecting and offering for sale electrical components qualifies as a retail service.

34. Having decided that the evidence shows use of the earlier mark in relation to retail services, I am required to determine in relation to which of the registered services the mark has been used and, if that use is not on everything within the registered specification, or a reasonable range of services within the terms in the specification, to decide upon a reduced, fair specification represented by the use. In so doing, I am

⁹ *Netto Marken*, Case C-420/13, CJEU.

¹⁰ *Apple Inc. v Deutsches Patent- und Markenamt*, Case C-421/13, CJEU.

guided by *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*, in which Mr Justice Carr summed up the law relating to partial revocation as follows:¹¹

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand,

¹¹ [2016] EWHC 3103 (Ch).

protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

35. The evidence shows evidence of the retailing of a variety of electrical components, including connectors, switches, cables, LEDs, PCB components. I consider that most, if not all of the components listed as being the subject of the retail services in the registered specification have been shown in the evidence. To reduce the list of goods which are the subject of the retail services would be pernickety. The opponent may rely upon its class 35 specification, as registered, for its section 5(2)(b) ground and for the section 5(3) ground, dependent on the existence of a qualifying reputation in the case of the latter ground.

Section 5(2)(b) of the Act

36. Section 5(2)(b) states:

“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.”

37. Section 5A states:

“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.”¹²

38. The following principles for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are taken from the decisions of the CJEU in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(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

¹² This section also applies to the grounds raised under section 5(3) and 5(4)(a) of the Act.

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

Distinctive character of the earlier mark

39. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier mark has been enhanced (i.e. more distinctiveness has been acquired) through the use made of it. If a mark has an inherently high, or an enhanced, level of distinctiveness, the likelihood of

confusion is increased.¹³ I will begin by considering the inherent distinctive character of the earlier mark before reminding myself of the use that the opponent has made of its mark. TOBY will be perceived by the UK average consumer as a male forename. It is not descriptive of or allusive of the opponent's class 35 services (or of the goods which are the subject of the retail services). However, as a common UK forename, it is not endowed with a high degree of inherent distinctive character because it identifies many individuals. The earlier mark has an average degree of inherent distinctiveness.

40. Distinctive character is a measure of how strongly the earlier mark identifies the goods for which it is registered (and on which it may rely), determined, according to *Lloyd Schuhfabrik Meyer & Co.*, partly by assessing the proportion of the relevant public which, because of the mark, identifies the goods as originating from a particular undertaking. At paragraph 23, of its judgment, the CJEU stated:

“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).

41. The evidence provides turnover and marketing expenditure figures. However, I have no information from which I can gauge the scale of the opponent's trading within the UK electrical and electronic components retailing sector. Given the prevalence of electronic components in all sorts of goods, even relatively basic consumer items, the retailer sector must be of some size. The invoices are so heavily redacted that I do not know how many goods were sold or what the unit costs were. There is no alternative evidence, such as market share figures. Mr Portlock states that the opponent has


¹³ *Sabel BV v Puma AG*, Case C-251/95.

received several awards: Samtec Star Performer 1996, Samtec Outstanding Sales Growth 2006, Samtec Exceptional Contribution to New Designs 2012, Distributor Design-In Award 2012 and Cotswold Life (a magazine) Family Business Award 2014, in the category Family Business Innovation and Enterprise Award. Some of these predate the relevant date (25 April 2021) by some years. The Samtec awards appear to be in-house awards by Samtec; at least, there is no indication that the awards would have been widely known by either the trade or the general public. There is no information about the Distributor Design-In Award and the Cotswold Life magazine award is of a local nature.

42. Although I was able to discern enough of a picture of use to find that the opponent has made genuine use of its mark for the registered class 35 services, the gaps in the evidence prevent me from being able to tell that the inherent distinctiveness of the earlier mark had been enhanced at the relevant date through the use made of it.

Comparison of marks

43. The marks to be compared are:

Earlier mark	The applicant's mark
TOBY	

44. *Sabel BV v. Puma AG* explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means

of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

45. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

46. The earlier mark consists of a single element, in which the overall impression of the mark resides. The contested mark is more complex. It comprises a device element, consisting of a broken square in black and orange, containing the letter TB which sits above the word element TOBYON, also in black and orange. Beneath this is the word TECHNOLOGY, in fainter, smaller letters. The latter element is the weakest in terms of contribution to the overall impression because of its lack of distinctiveness for the goods, its size, position and the fainter font. The device and TOBYON elements draw the eye equally and contribute equally to the overall impression of the whole mark.

47. The only point of visual similarity between the parties' marks is TOBY, which forms the first four letters of the six-letter element TOBYON. TOBY in TOBYON is represented in black, whilst ON is in orange. This serves to separate the TOBY part from the ON part to some degree, but the visual perception will still be of TOBYON as a whole. Taking into account the differences as well as the similar TOBY element, there is a low to medium degree of visual similarity between the marks.

48. I doubt that TECHNOLOGY will be articulated when the contested mark is referred to aurally because it is non-distinctive or descriptive for the goods and there are other parts of the mark which will be the more natural point of aural reference. I also doubt that TB will be articulated (the square cannot be pronounced): it feels more likely that the contested mark will be referred to as TOBYON in speech, rather than “TB TOBYON”. In my view, the average UK consumer will pronounce TOBYON with a long O (as in ‘toe’) because there is no double B. There is at least a medium degree of aural similarity, the first two syllables of TOBYON sound the same as the earlier

mark. If, however, the letters TB will also be spoken, then these will be said first because they are at the top of the mark. TB TOBYON sounds similar to TOBY to a low degree.

49. I have already found that TOBY will be understood as a male forename in the UK. To the extent that the name TOBY will be perceived in TOBYON because of the bi-coloured representation, there is a low degree of conceptual similarity, taking into account the other elements which are absent from the earlier mark. If TOBYON is seen as an invented word, the marks are not conceptually similar.

Comparison of goods and services

50. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“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.”

51. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

52. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* the GC stated that complementary means:¹⁴

¹⁴ Case T-325/06.

“82 ... there is a close connection between [the goods], 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...”.¹⁵

53. The opponent gives an example in its notice of opposition as to the similarity of goods and services. It claims an average degree of similarity between the applicant’s “charging devices and cables” and “retail services connected to the sale of electrical power cables” in the earlier mark’s specification.¹⁶ I will assess the likelihood of confusion for the applicant’s cables and the opponent’s retail services connected to the sale of electrical power cables since they are an example of the opponent’s best case, returning to the other contested goods if necessary, which I have set out in the annex to this decision.

54. Goods and services are different in nature, purpose, and method of use. The GC, in *Oakley, Inc v OHIM*, stated that retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, making them similar to a degree.¹⁷

55. In *Tony Van Gulck v Wasabi Frog Ltd (“Miss Boo”)*, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, cautioned that “selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35”.¹⁸ The objective of retail services, as set out in *Oakley*, “includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction” and “those services play, from the point of view of the relevant consumer, an important role when he comes to buy the goods offered for sale.” On the basis of the European courts’ judgments in *Sanco SA v OHIM*, and *Assembled Investments (Proprietary) Ltd v. OHIM*, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*, Mr Hobbs concluded that:¹⁹

¹⁵ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods and services.

¹⁶ The opponent refers to various GC cases in its written submissions as supporting an average degree of similarity between retail services of specific goods and the specific goods themselves.

¹⁷ Case T-116/06.

¹⁸ BL O/391/14. This was the point I considered above in the genuine use assessment.

¹⁹ Case C-411/13P; Case T-105/05, at paragraphs [30] to [35] of the judgment; and, Case C-398/07P.

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

56. The applicant's goods are self-evidently different in nature to retail services. The intended purpose of cables is to supply electrical power. The intended purpose of retail services is to encourage the sale of power cables, which means that the purpose of the goods/services is different. The goods are not in competition with the services and their method of use also differs.

57. As the intended purpose of the opponent's retail services connected to the sale of power cables is to encourage the sale of power cables, I find that the opponent's said retail services are complementary to the applicant's cables because the applicant's goods are specified as the subject of the retail services. The goods are indispensable to the retail services relating to them. In addition to the complementary relationship between the goods and the retailing thereof, there is an overlap in the trade channels through which the goods and services reach the average consumer and, as the opponent submits, the goods and the retail service are directed at the

same consumers (people who want to buy cables). I find that there is a medium (or average, as the opponent submits) degree of similarity between the applicant's cables and the opponent's retail services connected to the sale of electrical power cables.

The average consumer and the purchasing process

58. As the caselaw cited above indicates, it is necessary to decide who the average consumer is for the parties' goods and how they purchase them. "Average consumer" in the context of trade mark law means the "typical consumer."²⁰ The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*.

59. The average consumer for the parties' goods and services which I have compared above will be members of the electronic and electrical trade and also the general public. Cables may be universal standard extension leads or more specialised cables to fit specific electrical ports and equipment. The level of attention will vary accordingly, but will be around medium, more or less depending on applicability of the cable. The level of attention paid to the selection of a retailer in order to buy a cable is not more than medium. For the parties' goods and services, the purchase is likely to be primarily visual, although there may be an aural aspect if advice about cables is sought from the retailer.

Likelihood of confusion

60. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. In order to test

²⁰ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch).

a likelihood of confusion, I have compared an example of the high point of similarity between the goods and services and have agreed with the opponent that the level of similarity is average, or medium.

61. Direct confusion occurs where marks are mistaken for one another, flowing from the principle that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them which has been retained in the mind. The differences between the marks, the medium degrees of goods/services similarity and distinctiveness of the earlier mark which is similar to only one element of the contested mark, mean that the differences will be recalled, even when only a medium degree of attention is paid to the purchase. The marks will not be mistaken for one another.

62. Indirect confusion was explained by Mr Iain Purvis QC, sitting as the Appointed Person, in *Back Beat Inc v L.A. Sugar (UK) Limited*, BL O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: *“The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark”*.

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that

no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

63. That the three categories in that case are non-exhaustive was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others*.²¹ Arnold LJ said, of the explanation given in *LA Sugar* about how indirect confusion arises:

“12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition. For example, one category of indirect confusion which is not mentioned is where the sign complained of incorporates the trade mark (or a similar sign) in such a way as to lead consumers to believe that the goods or services have been co-branded and thus that there is an economic link between the proprietor of the sign and the proprietor of the trade mark (such as through merger, acquisition or licensing).”

64. There will be no likelihood of indirect confusion for consumers who simply see TOBYON as an invented word and do not notice the forename concept of TOBY within TOBYON. The differences between the only similar elements will not cause average

²¹ [2021] EWCA Civ 1207

consumers, in spite of the differences, nevertheless to conclude that either mark must be another brand of the opponent or the applicant.²²

65. For those that perceive the forename TOBY in the only similar element (TOBYON), I also find that there is no likelihood of indirect confusion. I bear in mind that indirect confusion is not a consolation prize for an opponent which has not succeeded in a finding of direct confusion. Differences between marks which are the reason why there is no likelihood of direct confusion might also be the reason why there is no indirect confusion.²³ A finding of indirect confusion should not be made simply because two marks share a common element, or that one mark merely calls another to mind (which is association, not confusion).²⁴

66. Although a finding of indirect confusion does not depend upon the common elements being the same²⁵, I do not think that the common element will be the subject of imperfect recollection as i) as said above, if TOBYON is seen only as an invented word, the concept of TOBY as a name militates against imperfect recollection; and ii) if TOBYON is seen as a conjunction of TOBY and ON, there is no imperfect recollection. This means that for indirect confusion there must be something else about the incorporation of the opponent's mark into the contested mark which means that the average consumer will engage in a mental process and conclude that the marks belong the same or economically linked undertakings. Adding ON to TOBY does not seem to fit such a conclusion. In *Dirtybird Restaurants Ltd v. Salima Vellani*, BL O/413/18, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said:

“18. There is no rule or presumption to the effect that the concurrent use of a trade mark and one of its components for identical or similar goods or services will always or necessarily give rise to the perception that the goods or services concerned come from the same or economically linked undertakings. That might or might not be the case. In order to determine whether it is, the decision

²² Indirect confusion works both ways: *Dome Consulting Limited v Dome Group Financial Advisers Limited*, BL O/489/20, Mr Thomas Mitcheson QC, sitting as the Appointed Person, at paragraph 42.

²³ See the comments of Mr James Mellor QC, sitting as the Appointed Person in *Cheeky Italian Limited v Ashish Sutaria*, BL O/219/16

²⁴ Mr James Mellor QC, sitting as the Appointed Person in *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

²⁵ *Aveda Corporation v Dabur India Limited* [2013] EWHC 589 (Ch)

taker must give as much or as little significance to the visual, aural and conceptual differences and similarities between the marks in issue as the relevant average consumer would have attached to them at the relevant point in time (which in this case was July/August 2015). It is axiomatic that the relevant average consumer is to be regarded as reasonably well-informed and reasonably observant and circumspect. However, (s)he is not to be regarded as a person who normally engages in extended thought processes for the purpose of pairing and matching trade marks or actively considering how they might be developed or appropriated for use as siblings of other marks. Indirect confusion of the kind described by Mr Iain Purvis QC in paras. [16] and [17] of his decision in L.A. Sugar is a matter of instinctive reaction to precipitating factors rather than the result of detailed analysis, as emphasised by Mr James Mellor QC sitting as the Appointed Person in Duebros Ltd v Heirler Cenovis GmbH (BL O/547/17; 27 October 2017) at para. 81.”

67. For the average consumer to reach a conclusion that the undertakings responsible for the marks are linked, they would need to analyse the marks more than a reasonably observant and circumspect person would normally do and conclude that the additional ON after TOBY is some sort of brand variant or collaboration, or an otherwise non-distinctive addition. It does not fit any scenario that I can think of to reach such a conclusion; certainly without stepping over the line of instinctive reaction to conducting detailed analysis.

68. There is no likelihood of confusion, either directly or indirectly. It follows that the opponent is not in any better a position with regard to the other goods of the application. I also consider that if I am wrong that the inherent distinctiveness of the earlier mark has not been enhanced through use, that there would only be a modest lift to above average. This is not enough to alter my findings of no likelihood of confusion for all the reasons given above.

Section 5(2)(b) outcome

69. The section 5(2)(b) ground of opposition fails.

Section 5(3) of the Act

70. Section 5(3) states:

“(3) A trade mark which-

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom 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”.

(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.”

71. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12 P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

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

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

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

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

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier

mark; *L'Oreal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

72. For a successful claim under section 5(3), cumulative conditions must be satisfied by the opponent: similarity between the marks; a qualifying reputation in the earlier mark; a link between the marks (the earlier mark will be brought to mind on seeing the later mark); and one (or more) of the claimed types of damage. It is not necessary that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the relevant public will make a link between the marks. In this case, however, I have found that the goods and services are similar to a medium degree.

73. The first condition of some similarity between the marks is satisfied, as found earlier in this decision.

74. The next condition is reputation. Reliance upon this ground requires evidence of a reputation amongst a significant part of the relevant public, as stated in *General Motors*:

“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.”

75. Earlier in this decision, I referred to the opponent’s claim that it has a reputation in “equipment and components (and associated services) in the UK”. The earlier mark is not registered for goods and the only mention of services in the section 5(3) claim is in brackets. The reputation must be in what is covered by the trade mark registration. In *Tulliallan Burlington Ltd v EUIPO*, Case T-123/16, the GC considered whether a UK trade mark, BURLINGTON ARCADE, which was registered as a UK trade mark in relation to, inter alia, *the bringing together, for the benefit of others, a variety of goods, enabling customers to conveniently view and purchase those goods from general merchandise retail stores*, was entitled to benefit from the reputation of BURLINGTON ARCADE as the name of a well-known shopping arcade in the UK. The court held (at paragraph 27 of its judgment) that:

“It is apparent also from the file that the applicant’s earlier trade marks, which designate services in Classes 35 and 36, are known to a significant part of the public of the relevant market as being the name of a very well-known shopping

arcade in the United Kingdom, located in central London, bringing together luxury boutiques within the arcade. Since that reputation of the applicant's earlier trade marks is not disputed by the parties, the question which arises, in the present case, is ultimately whether that reputation corresponds in fact to the services in Class 35 for which the earlier trade marks have been registered, so that the applicant is properly entitled to benefit from the protection of the reputation in question."

76. The court went on to find that the services of bringing goods together via third party outlets in a shopping arcade did fall within the scope of the registration. It is clear from the court's judgment that this was an essential requirement for the trade mark to qualify for protection under article 8(5) of the EU Trade Mark Regulation (which is equivalent to s.5(3) of the Act). Furthermore, in *Intel*, one of the factors the CJEU said should be taken into account in order to decide whether the public will make a link between the earlier mark and the later mark is "*The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered.*" (emphasis added). The reputation relied on for the purposes of section 5(3) of the Act must therefore be in the services covered by the trade mark registration relied upon for which I have found genuine use (the class 35 services).

77. The issues I identified with the evidence in making the assessment as to whether the distinctiveness of the earlier mark had been enhanced through use also apply here. I cannot tell whether the required knowledge threshold had been reached by a significant part of the public concerned.²⁶ The section 5(3) claim fails because the evidence does not show the required reputation.

78. If I am wrong about that, and that the evidence does show a sufficient reputation, I consider that it is on a modest level. Part of the opponent's case is that there will be unfair advantage because the applicant's customers will assume the goods are those of the opponent or an economically linked undertaking because they are confused. As there is no likelihood of confusion, this part of the claim fails. Even if there is a link (for

²⁶ *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC 35 (IPEC) at paragraph 69. Also see *Jadebay and Anor v Clarke-Coles Limited* [2017] EWHC 1400 (IPEC) for evidential issues.

which a likelihood of confusion is unnecessary), it will be too fleeting, given the differences between the marks, to cause any damage. There is no image that comes out in the evidence which may be transferred, and no evidence (only speculation) that the distinctiveness of the earlier mark will be diluted through the use of the contested mark. Lastly, a claim that poor quality goods would damage the repute, without any evidence of such, is purely hypothetical. There is nothing about the contested mark or the goods which would tarnish the reputation of the earlier mark. The section 5(3) claim fails.

Section 5(3) outcome

79. The section 5(3) ground of opposition fails.

Section 5(4)(a)

80. Section 5(4)(a) states:

“(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.”

81. Subsection (4A) of Section 5 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.”

82. The three elements which the opponent must show are well known. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

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

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

83. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co’s Margerine Ltd* [1901] AC 217 at 223:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

84. As this is a case where there is no evidence that the contested mark is used, it is the date on which the contested application was made which is the relevant date for

the purposes of section 5(4)(a) of the Act: 25 April 2021.²⁷ The opponent must show that it had sufficient goodwill at this date to bring the claim. The passing off claim is based upon electrical equipment and components; parts and fittings of the aforesaid. It will be clear from my comments earlier in this decision that there is a tension between this claim and the claim to have made genuine use of the earlier mark which is registered for retail services, not the goods themselves. On the evidence, and bearing in mind my findings in relation to the retail services as opposed to simply the goods, I find that the opponent has not shown goodwill in relation to the goods, as opposed to the retail thereof. A factor in my consideration is that the evidence shows that it uses a different mark for its own goods: Valcon.

85. If I am wrong about that, and that the opponent does have goodwill in relation to the goods themselves, I nevertheless find that the claim of misrepresentation and damage fails. This is despite, in this scenario, potentially identical goods being in play (such as cables). The differences which I have identified between the sign TOBY and the contested mark mean that there will be no misrepresentation. At most, some of the opponent's customers may wonder if there is a connection, which is not enough to make a finding that use of the applicant's mark may be restrained under the law of passing off. In *W.S. Foster & Son Limited v Brooks Brothers UK Limited*, Mr Iain Purvis QC, sitting as a Recorder of the Court stated that:²⁸

“54. Mr Aikens stressed in his argument the difference between ‘mere wondering’ on the part of a consumer as to a trade connection and an actual assumption of such a connection. In *Phones 4U Ltd v Phone 4U.co.uk Internet Ltd* [2007] RPC 5 at 16–17 Jacob LJ stressed that the former was not sufficient for passing off. He concluded at 17:

‘This of course is a question of degree – there will be some mere wonderers and some assumers – there will normally (see below) be passing off if there is a substantial number of the latter even if there is also a substantial number of the former’.”

²⁷ *Advanced Perimeter Systems Limited v Multisys Computers Limited* [2012] R.P.C. 14, Mr Daniel Alexander KC, sitting as the Appointed Person.

²⁸ [2013] EWPC 18 (PCC).

86. The opponent's case is substantially weaker in relation to the applicant's class 18 goods, which it opposes under this ground (but not under sections 5(2)(b) and 5(3) of the Act). The class 18 goods are *Purses; tool bags, empty; handbags; haversacks; garment bags for travel; bags for sports; compression cubes adapted for luggage; conference folders / conference portfolios; travelling bags; chain mesh purses*. These goods are far removed from electrical equipment and components and parts and fittings of the aforesaid, even if goodwill in relation to such goods was established. The section 5(4)(a) ground fails in its entirety.

Section 5(4)(a) outcome

87. The section 5(4)(a) ground fails.

Overall outcome

88. The opposition has failed. The application may proceed to registration.

Final comments

89. The opponent submits that the applicant's silence following the filing of the defence and counterstatement means that it accepts the opponent has used its mark, has a reputation in its mark and has goodwill attached to the sign relied upon. I do not agree. The onus is on the opponent to prove its case in evidence.

Costs

90. The applicant has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 2 of 2016. As the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal invited it to indicate whether it intended to make a request for an award of costs and, if so, to complete a pro-forma indicating a breakdown of its actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the opposition; it was made clear to the

applicant that if the pro-forma was not completed “no costs, other than official fees arising from the action and paid by the successful party...will be awarded”.²⁹ Since the applicant did not respond to that invitation within the timescale allowed (nor has any response been received from the applicant prior to the date of the issuing of this decision), and as the applicant has not incurred any official fees in defending its application, I make no order as to costs.

Dated this 30th day of July 2023

**Judi Pike
For the Registrar**

²⁹ Letter dated 23 February 2023.

Annex

Goods opposed under sections 5(2)(b) and 5(3):³⁰

Section 5(2)(b)

Class 9: Adapter cables; data cables; HDMI cables; network cables; adapters Hdmi 90 degree adapter, 270 degree Hdmi adapter, 360 degree Hdmi adapter, joiner adapter; optical cables; computer console accessories; PDA accessories; hard disk enclosures; VOiP headsets and sim cards, Cases adapted for electronic equipment; Audio and stereo equipment; data transmitters and receivers; print selector switches; auto data switches; network adapter cards; power surge protection bars; data line boosters; line drivers; CPU Adapters; data and audio/video signal boosters; data and audio/video splitter switches; power adapters to provide power to data devices; video splitters; data couplers; transceivers; Power Supplies; Computer Cases; 1/0 Cards/computer expansion cards and Adapters; Fans and Coolers; Removable Drive Drawers/Mobile Racks; Drive Cases and Enclosures; Drive Mounting Brackets; data storage; Serial ATA 1/0 cards; computer cables; hard disk drive enclosures; computer batteries; power supplies; digital display interface adapters, cables, switches, mount and changer; Display Port adapters, cables, switches, mount and changer; sound cards and adapters; storage controller cards; expansion slot conversion and extension; drive converters and adapters and duplicators; flash media card readers and adapters; hard drive docks and drawers and enclosures; laptop docking stations and shelves; wall mount racks and cabinets; rack mount products; mobile hard disk drive mobile racks; keyboard video mouse data Switches; keyboard video mouse switch Cables; keyboard video mouse data switch Extenders; computer Racks and Cabinets; USB and Firewire Cables and Adapters; USB and Firewire Cards; USB and Firewire Hubs; USB and Firewire Card Readers; USB and Firewire Extenders; USB Cables; Networking Cables; Video/Monitor Cables; Internal PC Cables; 1/0 card Back Plates; Audio/Video and computer Game Cables; Multiple Data Port Extension Cables; External Power Cables; Printer Cables; Keyboard/Mouse Cables; Serial/Parallel Peripheral Cables; Modem Cables;

³⁰ Taken from the notice of opposition.

Data/computer interface Gender Changers and Adapters; Telephone Cables/ Adapters; SCSI Cables; SCSI Terminators; Data Switches/ Switch boxes; Data Bulk Wire and Connectors; Flat Panel Monitor Cables; Structured Data Wiring; Ethernet Network Interface Cards; Wireless Network Adapters; Ethernet Network Switches; Ethernet Media Converters; Routers; Networking Cables; Video/ AV Switches; Video Splitters; Video Extenders; Audio/Video Cables and Adapters; Ethernet extenders; LCD Rackmount Consoles, Electric cables; electronic cables; mains cables, computer cables; audio cables, audio-visual cables, television cables, video cables; extension leads for electrical and/or electronic apparatus and/or instruments; electric leads, all for use with computer apparatus and/or instruments, audio apparatus and/or instruments, audio-visual apparatus and/or instruments, television apparatus and/or instruments, visual display and/or visual monitoring apparatus and/or instruments, video apparatus and/or instruments; electricity connectors, electric connector boxes, sockets, units; connectors for joining electrical and/or electronic apparatus and/or instruments; parts, fittings and accessories for all the foregoing, Apparatus for recording, transmission or reproduction of sound or images; audio video cables; charging devices and cables; computers, cables peripheral devices and protective cases for portable computers; data processing equipment; Telecommunications apparatus and instruments and parts, fittings, components and accessories therefor; computer peripheral devices; electrical adaptors; electric cables and leads; connecting elements for communication networks; Audio video cables for transmission or reproduction of sound and/or images, including adaptors and connectors, splitters, switches, digital apparatus for the transmission or reproduction of sound, audio speakers, loud speakers, ground loops, microphones, microphone shields; apparatus, instruments and materials for transmitting and/or receiving and/or recording sound and/or images including parts and fittings; apparatus for recording, transmission, processing and reproduction of sound, images or data, hard drives, hard drive adaptors and converters, hard drive cases, memory cards, memory sticks, computer memory, memory card readers, monitors, USB cup warmers, USB expansion hubs, PC remote controllers, USB adaptors, USB cables, USB converters, USB connectors, USB cooling fridges; Ethernet adaptors, network adaptors; transmitters, radio transmitters, wireless transmitters, audio transmitters; cable tidies; Ethernet adaptors, controllers, repeaters, switches, transceivers, network switches, modems, routers and hubs,

USB Ethernet LAN network adaptors, cables for the transmission of internet data; data transfer and/or charging cables for use with mobile phones, batteries and rechargeable batteries, batteries with integrated docking for mobile electronic devices, portable communication devices, and portable media players; digital multimeter, testing leads and cables, measuring or testing machines and instruments, tally counters, electrical circuit testers; electrical plugs and switches; data transfer cables; optical sensors.

Section 5(3)

Smart phone and mobile phone accessories including adapters, cases, batteries, dongles, headsets, chargers, memory cards, screen protectors, stylus pens; accessories for music players; adapter cables; data cables; HDMI cables; network cables; adapters Hdmi 90 degree adapter, 270 degree Hdmi adapter, 360 degree Hdmi adapter, joiner adapter; optical cables; ink cartridges; computer console accessories; mp3 player accessories including cases, chargers, FM transmitters, headphones, screen protectors; net book accessories; PDA accessories; hard disk enclosures; VOiP headsets and sim cards, Cases adapted for electronic equipment; cases, holders and carriers adapted for mobile phones, tablet computers, e-book readers, personal electronic devices and parts and accessories for all the aforesaid, cases for tablet computers, cables for tablet computers, screen protectors for tablet computers, windscreen mounts for mobile phones, Holders and cases; protective holders and cases; retaining strap; stands; all the aforementioned goods being adapted for portable electronic equipment, Cases adapted for electronic equipment; cases, holders and carriers adapted for mobile phones, tablet computers, e-book readers, personal electronic devices and parts and accessories for all the aforesaid, bags, cases and carriers adapted or shaped to contain cameras, video cameras, mp3 players, hand held computers tablets, personal digital assistants, electronic organizers, electronic notepads, satellite navigation systems, tablet computers, e-books, LCD Televisions, TV wall mounting bracket, Audio and stereo equipment; electrical, audio and video cables; amplifiers, keyboard anti-static mats; data transmitters and receivers; print selector switches; auto data switches; network adapter cards; power surge protection bars; computer systems racks and stands;

computer anti-static products, namely, anti-static table-top strips and wrist straps; portable hard disks; data and audio/video converters; data line boosters; line drivers; CPU Adapters; data and audio/video signal boosters; data and audio/video splitter switches; power adapters to provide power to data devices; video splitters; data couplers; transceivers; Power Supplies; Computer Cases; I/O Cards/computer expansion cards and Adapters; Fans and Coolers; Removable Drive Drawers/Mobile Racks; Drive Cases and Enclosures; Drive Mounting Brackets; data storage; Internal PC Speakers; Serial ATA I/O cards; computer cables; hard disk drive enclosures; computer batteries; power supplies; digital display interface adapters, cables, switches, mount and changer; Display Port adapters, cables, switches, mount and changer; sound cards and adapters; storage controller cards; expansion slot conversion and extension; drive converters and adapters and duplicators; flash media card readers and adapters; hard drive docks and drawers and enclosures; laptop docking stations and shelves; wall mount racks and cabinets; rack mount products; mobile hard disk drive mobile racks; keyboard video mouse data Switches; keyboard video mouse switch Cables; keyboard video mouse data switch Extenders; computer Racks and Cabinets; USB and Firewire Cables and Adapters; USB and Firewire Cards; USB and Firewire Hubs; USB and Firewire Card Readers; USB and Firewire Extenders; USB Cables; Networking Cables; Video/Monitor Cables; Internal PC Cables; I/O card Back Plates; Audio/Video and computer Game Cables; Multiple Data Port Extension Cables; External Power Cables; Printer Cables; Keyboard/Mouse Cables; Serial/Parallel Peripheral Cables; Modem Cables; Data/computer interface Gender Changers and Adapters; Telephone Cables/Adapters; SCSI Cables; SCSI Terminators; Data Switches/Switchboxes; Data Bulk Wire and Connectors; Flat Panel Monitor Cables; Structured Data Wiring; Ethernet Network Interface Cards; Wireless Network Adapters; Ethernet Network Switches; Ethernet Media Converters; Routers; Ethernet Print Servers; Networking Cables; Video/AV Switches; Video Splitters; Video Extenders; Audio/Video Cables and Adapters; Ethernet extenders; LCD Rackmount Consoles, Electric cables; electronic cables; mains cables, computer cables; audio cables, audio-visual cables, television cables, video cables; extension leads for electrical and/or electronic apparatus and/or instruments; electric leads, all for use with computer apparatus and/or instruments, audio apparatus and/or instruments, audio-visual apparatus and/or instruments, television apparatus and/or instruments, visual display and/or visual

monitoring apparatus and/or instruments, video apparatus and/or instruments; electricity connectors, electric connector boxes, sockets, units; connectors for joining electrical and/or electronic apparatus and/or instruments; parts, fittings and accessories for all the foregoing, Apparatus for recording, transmission or reproduction of sound or images; audio video cables; charging devices and cables; computers, cables peripheral devices and protective cases for portable computers; data processing equipment; headphones and speaker systems; magnetic data carriers, recording discs; mobile phone parts, accessories, protective cases; photographic, cinematographic, optical equipment; wireless audio video products including wireless receiving apparatus; accessories, parts & fittings for the aforesaid goods, Telecommunications apparatus and instruments and parts, fittings, components and accessories therefor; parts, accessories and components for mobile phones, portable computers, digital tablets, graphic tablets, tablet computers, and for portable electronic devices; input devices, styli, cases, case protectors, keypad protectors, keyboard protectors, screen protectors, storage cards, sim cards and memory cards, all adapted for mobile phones, portable computers, digital tablets, graphic tablets, tablet computers, portable electronic devices, and for portable communications and computing equipment and apparatus., car radio FM transmitters; car DVD players; portable televisions; DAB radios; headphones; personal stereo speaker apparatus, adaptors, cases adapted for personal stereos; radars; modems; computer peripheral devices; electrical adaptors; electric cables and leads; keyboards; computer mice; readers [data processing equipment]; memory devices; printers; connecting elements for communication networks; sound carriers; cases adapted for storing discs; video cards; encoded or magnetic graphic cards; USB hubs and cards, Cases for mobile phones, Audio video cables for transmission or reproduction of sound and/or images, including adaptors and connectors, splitters, switches, digital apparatus for the transmission or reproduction of sound, audio speakers, loud speakers, ground loops, microphones, microphone shields; apparatus, instruments and materials for transmitting and/or receiving and/or recording sound and/or images including parts and fittings; apparatus for recording, transmission, processing and reproduction of sound, images or data, security cameras, computers and laptops, scanners, anti-static straps, computer diagnostic apparatus, cooling fans for computers and laptops, computer keyboards and keypads, graphics tablets, hard drives, hard drive adaptors and converters, hard

drive cases, memory cards, memory sticks, computer memory, memory card readers, monitors, mouse, mouse pads, printers, USB cup warmers, USB expansion hubs, PC remote controllers, USB adaptors, USB cables, USB converters, USB connectors, USB cooling fridges, webcams; wifi internet dongles, Ethernet adaptors, network adaptors; transmitters, radio transmitters, wireless transmitters, audio transmitters; cable tidies, digital photo frames; receivers; Ethernet adaptors, controllers, repeaters, switches, transceivers, network switches, modems, routers and hubs, USB Ethernet LAN network adaptors, cables for the transmission of internet data; mobile phones, portable media devices and music players; protective cases and protective screen film for mobile phones, tablets, laptops, e-readers, portable electronic listening devices and music players, MP3/MP4/MPS players; styli or styluses for use with mobile phones, personal digital assistants and other touch screen electronic equipment; holders and mounts for mobile phones, personal digital assistants (PDAs), electronic organisers, laptops, satellite navigation equipment, fittings and repair tools for mobile phones; data transfer and/or charging cables for use with mobile phones, batteries and rechargeable batteries, batteries with integrated docking for mobile electronic devices, portable communication devices, and portable media players; batteries, battery chargers and solar battery chargers; for use as external power sources for mobile electronic devices, portable communication devices, mobile phones and portable media players; cell phone battery chargers, electrical cells and batteries, external power sources with integrated housing and electrical connector for mobile electronic devices, portable communication devices, mobile phones and portable media players; mobile telephone batteries, namely external battery packs with integrated docking for mobile telephones; cameras, digital cameras, digital video cameras and photographic accessories, digital camera replacement parts, remote shutter equipment, cables, cases, waterproof cases; Measuring and/or weighing apparatus; weighing machines; digital calipers, digital multimeter, testing leads and cables, measuring or testing machines and instruments, tally counters, electrical circuit testers, voltage testers, water testers, cable detectors; alarms, battery terminals and terminal clips; compasses; fans, solar cooling fans; electrical plugs and switches; electronic metronomes; laser pointers, laser pens; megaphones; pedometers; radios, solar radios; remote control units for TV; satellite receivers, dishes, trackers and other apparatus; sim card cutters, cloners and readers; spirit level indicators; telephones;

telephone/fax/modem surge protection cables; televisions; transmitters, radio transmitters, wireless transmitters, audio transmitters; tyre pressure gauges; projectors; video cassette tape head cleaners; laser replacement parts; waterproof cases and bags; water timers; whistles, whistle key finders; data transfer cables; optical sensors; cards bearing electronically recorded data, protective covers, protective sheeting, protective articles, and self-adhesive transparent surface protectors, all made of plastics, synthetic rubber, or of elastomeric materials; covers made of plastics or of silicones for protecting or insulating electronic components or devices; self-adhesive transparent protecting film screen protector for mobile phones tablet computer pda, other than for household or stationery use; Mobile telephone batteries; Mobile telephones; Leather cases for mobile phones; Cases adapted for mobile phones.