

BL O/0633/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL TRADE MARK REGISTRATION No.
WO0000001831847 DESIGNATING THE UK
BY HICLUB, INC.
FOR THE FOLLOWING TRADE MARK:

GRAVITY

IN CLASSES 9, 35, 28, 41, 42 AND 45

-AND-

THE OPPOSITION THERETO UNDER No. 454948
BY GRAVITY FITNESS LIMITED

Background and pleadings

1. HiClub, Inc. (“**the Applicant**”) is the holder of the international trade mark registration shown on the cover page of this decision. On 20 August 2024, the Applicant applied to protect the registration in the UK, claiming a priority date of 16 August 2024.¹ The application was accepted and published in the Trade Marks Journal on 28 March 2025, in respect of a variety of goods and services in Classes 9, 35, 28, 41, 42 and 45. These are set out in full at Annex 1 of this decision.

2. On 27 June 2026, GRAVITY FITNESS LIMITED (“**the Opponent**”) partially opposed the application under sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 (“**the Act**”).² In its notice of opposition, the Opponent specified that the opposition is directed only at the following services:

Class 41:

Organization of competitions for education or entertainment; Arranging and conducting of exhibitions for entertainment purposes; Arranging and conducting of concerts; **Entertainment services**; Rental of sports equipment, except vehicles; Games equipment rental; Toy rental; Virtual reality game services provided on-line from a computer network; **Virtual reality arcade services**; Providing amusement facilities; Rental of amusement machines and apparatus; Rental of game machines and apparatus.

3. The Opponent relies on its UK trade mark registration number 3725542 for the word mark GRAVITY, which was filed on 25 November 2021 and became registered on 4 March 2022. It is registered for the following services, all of which the Opponent relies upon:

Class 41

Provision of sporting facilities; club sporting facilities (provision of -); provision of recreational areas; conducting classes in exercise; conducting classes in weight reduction; conducting fitness classes; entertainment services provided

¹ Priority is claimed from the Applicant’s Japanese trade mark number 2024-088789.

² The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

for children; entertainment services relating to sport; gym activity classes; provision of gymnasium facilities; provision of sports facilities; provision of facilities for group exercise; gymnasium services; hire of equipment for games; hire of equipment for sports; physical education facilities (provision of -); instruction courses relating to physical fitness; instruction courses relating to sporting activities; Instruction in gymnastics; sporting activities; tuition in gymnastics; provision of keep fit facilities; leisure park services; organisation of events for cultural, entertainment and sporting purposes; organisation of games; organisation of group recreational activities; organisation of parties; party planning services; organisation of recreational activities; organisation of recreational competitions; organisation of sporting activities and competitions; physical fitness centres (operation of -); physical fitness instruction for adults and children; physical fitness training services; providing facilities for sporting events, sports and athletic competitions and awards programmes; providing recreational areas in the nature of play areas for children; rental of apparatus for the playing of games; rental of sports or exercise equipment; services for the organisation of sports events; sports coaching; supervision of physical exercise; tuition in physical fitness; aerobic and dance facilities; arrangement of sports competitions; arranging for students to participate in recreational activities; arranging group recreational activities; arranging of games; **entertainment services**; children's entertainment services; trampolining park facilities; bowling centre facilities; soft play facilities; inflatable play facilities; golf courses; providing obstacle courses; provision of darts facilities; amusement arcades; **virtual reality** and augmented reality **arcade services**; electronic games services; provision of go-karting facilities; provision of climbing facilities; provision of aerial adventures; provision of zip wire course facilities; provision of high-wire rope-bridge course facilities; provision of ping pong facilities; provision of shuffleboard facilities; provision of pinball facilities; provision of corporate hospitality services; educational events in relation to fitness; provision of conference services relating to fitness.

4. By virtue of its earlier filing date, the trade mark upon which the Opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act.

5. Under both grounds, the Opponent claims that the competing marks are identical. It claims that the competing services are identical for the purposes of section 5(1), or similar for the purposes of section 5(2)(a). Under section 5(2)(a), the Opponent claims that this gives rise to a likelihood of confusion. In particular, the Opponent claims that the contested services are:

“identical and highly similar to, inter alia, the Class 41 services protected by the Opponent’s earlier registration:

- Organisation of recreational competitions; Organisation of sporting activities and competitions; Organisation of events for cultural, entertainment and sporting purposes; Organisation of group recreational activities; Organisation of parties; Provision of corporate hospitality services; Educational events in relation to fitness;
- Entertainment services; Provision of conference services relating to fitness;
- Rental of sports or exercise equipment;
- Hire of equipment for games; Organisation of games; Rental of apparatus for the playing of games;
- Virtual reality and augmented reality arcade services;
- Amusement arcades.”

6. The Applicant filed a defence and counterstatement. It admits that the marks are identical. For the purposes of section 5(1), it also admits that its applied-for terms “*entertainment services*” and “*virtual reality arcade services*” appear identically in the Opponent’s specification; I have indicated those terms in bold in the competing specifications set out above for ease of reference. It denies that any of the remaining contested Class 41 services are identical or similar to the Opponent’s services. Accordingly, the Applicant’s admission under section 5(1) is limited to the identity of the marks and those two services – consequently, the opposition under Section 5(1) is successful in relation to those two terms. Under section 5(2)(a), the Applicant’s admission is limited to the identity of the marks; it denies similarity between the services and, consequently, any likelihood of confusion.

7. Neither party filed evidence nor submissions during the evidence rounds. A hearing was not requested, and neither party elected to file submissions in lieu of a hearing. I therefore make this decision following a careful consideration of the papers before me.³

8. The Opponent is represented by Irwin Mitchell LLP and the Applicant is represented by Serjeants LLP.

Preliminary issue

9. Although the Opponent listed the opposed Class 41 services in its notice of opposition, it omitted the limitation to which they are all subject, namely:

“all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.”

10. The Applicant appears not to have noticed the omission as no mention of it was made in its counterstatement. I must nevertheless proceed on the basis that the contested services are subject to that limitation. However, as I explain later in this decision, it does not affect the Applicant’s admission of identity in respect of “*entertainment services*” and “*virtual reality arcade services*”.

DECISION

Legislation and Case Law

11. Sections 5(1) and 5(2)(a) of the Act state:

5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

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

³ These consist of the Opponent’s Form TM7 and Statement of Grounds, and the Applicant’s Form TM8 and Counterstatement.

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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.

Identity of the marks

12. Both marks consist solely of the word GRAVITY in capital letters. Their identity is self-evident and is admitted by the Applicant.

Comparison of services

13. In the table below I have included only the Opponent's services which it has identified as being "*identical and highly similar*"⁴ to the contested services.

Opponent's services	Applicant's services
Class 41 Organisation of recreational competitions; Organisation of sporting activities and competitions; Organisation of events for cultural, entertainment and sporting purposes; Organisation of group recreational activities; Organisation of parties; Provision of corporate hospitality services; Educational events in relation to fitness; Entertainment services; Provision of conference services relating to fitness; Rental of sports or exercise equipment; Hire of equipment for games; Organisation of games; Rental of apparatus for the playing of	Class 41 Organization of competitions for education or entertainment; Arranging and conducting of exhibitions for entertainment purposes; Arranging and conducting of concerts; Entertainment services; Rental of sports equipment, except vehicles; Games equipment rental; Toy rental; Virtual reality game services provided on-line from a computer network; Virtual reality arcade services; Providing amusement facilities; Rental of amusement machines and apparatus; Rental of game machines and apparatus; <u><i>all of the aforesaid only in relation to services</i></u>

⁴ See paragraph 5 of this decision.

games; Virtual reality and augmented reality arcade services; Amusement arcades.	<u><i>provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.</i></u>
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14. As I have already noted, the contested terms are subject to a limitation, which I have underlined in the table above for ease of reference. The limitation narrows the scope of the applied-for terms to a specific sub-category of services but does not materially alter them. For example, “*entertainment services*” remain entertainment services, albeit restricted to those provided via social media platforms, or in connection with social media platforms, in the field of dating and messaging services relating to dating. I proceed with the comparison with this in mind.

15. Identity between the Opponent’s “*entertainment services; virtual reality [...] arcade services*” and the Applicant’s “*entertainment services; virtual reality arcade services*” has been admitted. Even taking the Applicant’s limitation into account, the competing services remain identical as the contested service still forms a sub-category within the Opponent’s broader term. They are therefore identical according to the principle established by the General Court in *Gérard Meric v OHIM*,⁵ (“*Meric*”), namely that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa (this principle applies equally to services).

16. My findings in relation to the remainder of the contested services are set out below, bearing in mind that each is subject to the limitation.

Organization of competitions for education or entertainment

17. I compare the above with the Opponent’s “*organisation of recreational competitions*”. An educational activity such as a ‘competition organised for education’ may be recreational, and a ‘competition organised for entertainment’ is plainly recreational. The Opponent’s term therefore encompasses the contested service. Accordingly, even taking the limitation into account, the contested service remains a

⁵ Case T- 133/05

sub-category of the Opponent's broader term and is therefore identical to it under the principle outlined in *Meric*.

Arranging and conducting of exhibitions for entertainment purposes; Arranging and conducting of concerts

18. The above are both forms of entertainment services. Although they are subject to a limitation, they nevertheless remain wholly encompassed by the Opponent's broader term "*entertainment services*". They are therefore identical to that term according to the principle outlined in *Meric*.

Rental of sports equipment, except vehicles

19. I compare the above with the Opponent's "*rental of sports or exercise equipment*". The limitation does not materially alter the purpose of the contested services, which remain services for the rental of sports equipment. Consequently, even taking the limitation into account, they remain wholly encompassed by the Opponent's broader term and are therefore identical to it under the principle outlined in *Meric*.

Games equipment rental

20. I compare the above with the Opponent's "*hire of equipment for games*" and "*rental of apparatus for the playing of games*." The contested services are for the rental of games equipment and, notwithstanding the limitation, remain a sub-category of the Opponent's broader term. They are therefore identical under the principle outlined in *Meric*.

Toy rental

21. A toy is an object used for entertainment. It is a broad term which may include toys which are themselves games, or apparatus used for playing games. For example, a ball may be a toy and may also be used to play a variety of games. On that basis, I compare the above contested term with the Opponent's "*hire of equipment for games*" and "*rental of apparatus for the playing of games*". Notwithstanding the limitation, the Applicant's term remains a sub-category of the Opponent's broader terms. They are therefore identical under the principle outlined in *Meric*.

Virtual reality game services provided on-line from a computer network

22. The above is a form of entertainment service. Although it is subject to a limitation, it nevertheless remains wholly encompassed by the Opponent's broader term "*entertainment services*". The competing terms are therefore identical according to the principle outlined in *Meric*.

Providing amusement facilities

23. The Opponent's "*amusement arcades*" are facilities provided for amusement. Even taking the limitation into account, the contested service is identical to the Opponent's "*amusement arcades*" under the *Meric* principle because the contested service still forms a sub-category within the Opponent's broader term.

24. In the alternative, the contested (limited) service forms a sub-category of the Opponent's broader term "*entertainment services*" and is identical to those earlier services on the principle outlined in *Meric*.

Rental of amusement machines and apparatus; Rental of game machines and apparatus.

25. The term "*amusement machines and apparatus*" is synonymous with "*game machines and apparatus*". Ultimately, both refer to equipment and apparatus for playing arcade games and/or video games. Even though the limitation has narrowed the contested terms, it has not changed what the services actually are. Consequently, even accounting for the limitation, the contested terms are identical to the Opponent's "*hire of equipment for games*" and "*rental of apparatus for the playing of games*" under the *Meric* principle.

26. In conclusion, although the limitation is somewhat artificial, particularly when applied to some of the more tangible services, such as the rental of physical items including games, game machines and apparatus, for the reasons given above, it does not prevent the contested services from being identical to the Opponent's services under the *Meric* principle. I have therefore found that all of the contested services are identical to the Opponent's services.

Finding under section 5(1)

27. As the contested mark and the contested services are identical to the Opponent's earlier right, the opposition based upon section 5(1) of the Act succeeds in its entirety. There is therefore no need for me to additionally consider the Opponent's position under section 5(2)(a) of the Act.

OUTCOME

28. The partial opposition under section 5(1) of the Act is successful. Subject to any appeal, the UK designation of international trade mark registration number WO0000001831847 shall be refused protection in the UK in respect of the services set out below. It can proceed to being granted protection in respect of all remaining goods and services not subject to the opposition, namely those set out in Annex 2 to this decision.

Class 41

Organization of competitions for education or entertainment; Arranging and conducting of exhibitions for entertainment purposes; Arranging and conducting of concerts; Entertainment services; Rental of sports equipment, except vehicles; Games equipment rental; Toy rental; Virtual reality game services provided on-line from a computer network; Virtual reality arcade services; Providing amusement facilities; Rental of amusement machines and apparatus; Rental of game machines and apparatus; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.

COSTS

29. The Opponent has been successful and is therefore entitled to an award of costs based on the contributory scale set out in Tribunal Practice Notice 1/2023. In the circumstances I award the Opponent the sum of £350 as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Official fee	£100
Preparing the Statement of Grounds and considering the Counterstatement	£250
TOTAL	£350

30. I therefore order HiClub, Inc. to pay GRAVITY FITNESS LIMITED the sum of **£350**. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 21st day of July 2026

Daniela Ferrari
For the Registrar

Annex 1

Goods and services for which protection is sought

The services shown in **bold** are the ones that have been opposed.

Class 9:	Computer software applications, downloadable; computer peripheral devices; holograms; computer software, recorded; computer programs, downloadable; computer game software; interactive touch screen terminals; smartphones; loudspeakers; sound transmitting apparatus; headphones; remote control apparatus; accumulators [batteries]; monitors [computer hardware]; scanners [data processing equipment]; electronic face recognition device; navigational instruments; wristwatch type smartphone; monitoring device with monitor; chips [integrated circuits]; video screens; game programs for arcade video game machines; telecommunication machines and apparatus; electronic control apparatus; simulators for the steering and control of vehicles; sports training simulators; virtual reality headsets; projection apparatus; stereoscopes; downloadable image files; downloadable music files; exposed cinematographic films of animated movies; wearable activity trackers; spectacles [eyeglasses and goggles]; rangefinder for camera; lens for photographic machinery; surveying apparatus and instruments; optical lenses; optical apparatus and instruments; alarm sensors; distance sensors; optical sensors; position sensors; position measurement sensors; game programs for home video game machines; measuring or testing machines and instruments; electronic publications; virtual reality headsets adapted for use in playing video games; headsets for virtual reality games; virtual reality game software; virtual reality goggles; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 35:	Auctioneering; import-export agency services; publicity material rental; providing commercial information and advice for consumers in the choice of products and services; retail or wholesale services for computers and computer peripherals; retail services for computer software; retail or wholesale services of electronic computer programs and electronic machines, apparatus and their parts; retail or wholesale services of downloadable computer programs, via internet; marketing services; publicity and promotional services; publicity and sales promotion relating to goods and services; marketing and promotional activities relating to business administration and business management; advertising and publicity services; conducting of commercial events; public relations; media relations services; dissemination of advertising, marketing and publicity materials; provision of space on web sites for advertising goods and services; provision of market research information; providing information concerning commercial sales; arranging commercial transactions, for others, via on-line shops; brand

	management services; brand consultancy services; conducting virtual trade show exhibitions on-line; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 38:	Telecommunication; computer aided transmission of messages and images; streaming of data; providing internet chatrooms; providing online forums; rental of telecommunication equipment including telephones and facsimile apparatus; providing access to electronic communications networks, to the internet and to extranets; providing virtual private network (VPN) services; broadcasting services; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 41:	Teaching; providing online electronic publications, not downloadable; production of videotape film in the field of education, culture, entertainment or sports [not for movies or television programs and not for advertising or publicity]; production of radio programs; operation of video and audio equipment for production of radio and television programs; providing facilities for movies, shows, plays, music or educational training; organization of competitions for education or entertainment ; providing online music, not downloadable; providing online videos, not downloadable; game services provided online from a computer network; entertainment services; rental of sports equipment, except vehicles; games equipment rental; toy rental; arranging and conducting of exhibitions for entertainment purposes; arranging and conducting of concerts; virtual reality game services provided on-line from a computer network; virtual reality arcade services ; video production services; arranging, conducting and organization of seminars; arranging and planning of movies, shows, plays or musical performances; movie theatre presentations or movie film production and distribution; presentation of live show performances; presentation of musical performances; production of radio or television programs; providing amusement facilities ; rental of television sets; rental of radio sets; rental of records or sound-recorded magnetic tapes; rental of image-recorded magnetic tapes; rental of amusement machines and apparatus; rental of game machines and apparatus; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 42:	Computer software design, computer programming, or maintenance of computer software; design and development of computer game software and virtual reality software; technological advice relating to computers, automobiles and industrial machines; rental of computers; providing computer programs on data networks; information relating to cloud computing; software as a service [SaaS]; information technology

	[IT] consultancy; technical research; research and development of new products for others; industrial design; technical consultancy relating to the design of computer hardware, software and computer peripherals; design and development of computer hardware and software for computer games; design, development and maintenance of computer game software and virtual reality software; design and development of virtual reality software; providing virtual computer systems through cloud computing; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 45:	Online social networking services; matchmaking services; licensing of computer software [legal services]; internet-based social introduction services; social introduction agency services; consultancy relating to the licensing of computer software; licensing of databases [legal services]; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.

Annex 2

Goods and services for which protection may be granted

Class 9:	Computer software applications, downloadable; computer peripheral devices; holograms; computer software, recorded; computer programs, downloadable; computer game software; interactive touch screen terminals; smartphones; loudspeakers; sound transmitting apparatus; headphones; remote control apparatus; accumulators [batteries]; monitors [computer hardware]; scanners [data processing equipment]; electronic face recognition device; navigational instruments; wristwatch type smartphone; monitoring device with monitor; chips [integrated circuits]; video screens; game programs for arcade video game machines; telecommunication machines and apparatus; electronic control apparatus; simulators for the steering and control of vehicles; sports training simulators; virtual reality headsets; projection apparatus; stereoscopes; downloadable image files; downloadable music files; exposed cinematographic films of animated movies; wearable activity trackers; spectacles [eyeglasses and goggles]; rangefinder for camera; lens for photographic machinery; surveying apparatus and instruments; optical lenses; optical apparatus and instruments; alarm sensors; distance sensors; optical sensors; position sensors; position measurement sensors; game programs for home video game machines; measuring or testing machines and instruments; electronic publications; virtual reality headsets adapted for use in playing video games; headsets for virtual reality games; virtual reality game software; virtual reality goggles; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 35:	Auctioneering; import-export agency services; publicity material rental; providing commercial information and advice for consumers in the choice of products and services; retail or wholesale services for computers and computer peripherals; retail services for computer software; retail or wholesale services of electronic computer programs and electronic machines, apparatus and their parts; retail or wholesale services of downloadable computer programs, via internet; marketing services; publicity and promotional services; publicity and sales promotion relating to goods and services; marketing and promotional activities relating to business administration and business management; advertising and publicity services; conducting of commercial events; public relations; media relations services; dissemination of advertising, marketing and publicity materials; provision of space on web sites for advertising goods and services; provision of market research information; providing information concerning commercial sales; arranging commercial transactions, for others, via on-line shops; brand management services; brand consultancy services; conducting virtual trade show exhibitions on-line; all of the aforesaid only in relation to services provided via social media platforms or in connection with social

	media platforms in the field of dating and messaging services in relation to dating.
Class 38:	Telecommunication; computer aided transmission of messages and images; streaming of data; providing internet chatrooms; providing online forums; rental of telecommunication equipment including telephones and facsimile apparatus; providing access to electronic communications networks, to the internet and to extranets; providing virtual private network (VPN) services; broadcasting services; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 41:	Teaching; providing online electronic publications, not downloadable; production of videotape film in the field of education, culture, entertainment or sports [not for movies or television programs and not for advertising or publicity]; production of radio programs; operation of video and audio equipment for production of radio and television programs; providing facilities for movies, shows, plays, music or educational training; providing online music, not downloadable; providing online videos, not downloadable; game services provided online from a computer network; video production services; arranging, conducting and organization of seminars; arranging and planning of movies, shows, plays or musical performances; movie theatre presentations or movie film production and distribution; presentation of live show performances; presentation of musical performances; production of radio or television programs; rental of television sets; rental of radio sets; rental of records or sound-recorded magnetic tapes; rental of image-recorded magnetic tapes; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
Class 42:	Computer software design, computer programming, or maintenance of computer software; design and development of computer game software and virtual reality software; technological advice relating to computers, automobiles and industrial machines; rental of computers; providing computer programs on data networks; information relating to cloud computing; software as a service [SaaS]; information technology [IT] consultancy; technical research; research and development of new products for others; industrial design; technical consultancy relating to the design of computer hardware, software and computer peripherals; design and development of computer hardware and software for computer games; design, development and maintenance of computer game software and virtual reality software; design and development of virtual reality software; providing virtual computer systems through cloud computing; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.

Class 45:	Online social networking services; matchmaking services; licensing of computer software [legal services]; internet-based social introduction services; social introduction agency services; consultancy relating to the licensing of computer software; licensing of databases [legal services]; all of the aforesaid only in relation to services provided via social media platforms or in connection with social media platforms in the field of dating and messaging services in relation to dating.
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