

O/0768/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003695480
BY LG ELECTRONICS INC. TO REGISTER THE FOLLOWING TRADE MARK:**

Home Ring

IN CLASSES 7, 9, 11 AND 38

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 431109 BY AMAZON EUROPE CORE S.à.r.l.**

Background and Pleadings

1. On 15 September 2021, LG Electronics Inc., ('the Applicant'), filed an application to register the following trade mark:

Home Ring

2. The application was published for opposition purposes in the Trade Marks Journal on 19 November 2021. The Applicant claims priority from 19 November 2019 from its European Trade Mark 018154797. Registration is sought in respect of the following goods and services:

Class 7:	<i>Electric washing machines; Automatic dishwashers; Electric vacuum cleaners; Hoses for electric vacuum cleaners; Bags for electric vacuum cleaners; Stick type vacuum cleaners; Robotic cleaners for household purposes; Electric rotary blowers; Compressed air pumps; Electric rotary compressors; Compressors for refrigerators; Spin driers (not heated); Electric mixers for household purposes; Robotic vacuum cleaners; Electric food processors; Steam cleaners for household purposes; Hand-held vacuum cleaners; Electric vacuum cleaners for bedding; Housekeeping robots for household purpose; Robots for personal use, namely, robots for cleaning.</i>
Class 9:	<i>Smartphones; Television receivers; Monitors for computers; Commercial monitors; Laptop computers; Convertible computers; Wearable computers; Computers; Sensors; Apparatus for recording, transmission or reproduction of sound or images; Application software; Downloadable computer software; Audio receivers; Tablet computers; Settop boxes; Cameras; Wearable smartphones; Projectors; Network monitoring cameras namely for surveillance; Digital signage; Portable communications apparatus; LED Displays for mobile phones and televisions; LED screen displays; LED display panels; OLED display panels; Headsets for</i>

	<p><i>smartphones; Wireless headsets; Headphones for smartphones; Earphones for smartphones; Audio speakers for home theaters; Audio-Video receivers for home theaters; Electronics security system for home network; Home automation devices; Home network devices.</i></p>
Class 11:	<p><i>Air conditioners; Hot air apparatus, namely, hot-air space heating apparatus; Humidifiers; Electric dehumidifier for household use; Electric ranges; Water purifiers for household purposes; Water ionizers for household purposes; Membrane apparatus in the nature of filters for purifying water; Solar thermal collectors (heating); Air purifiers; Ventilation (air-conditioning) apparatus for heating; Light Emitting Diode (LED) lighting; Gas ranges; Electric kitchen ovens; Apparatus or installations for cooking; Electric refrigerators; Electric clothes dryers; Electric clothes management machines for drying clothes for household purpose; Electric clothing management machines having the functions of deodorizing, sterilizing and steaming garments for household purposes; Electric clothes drying machines with sterilization, deodorization and crease-resistant treatment functions for household purpose; Ventilation hoods; Ventilation hoods for ovens; Sinks.</i></p>
Class 38:	<p><i>Communications by fiber optic networks; Data communication services; Wireless broadband communication services; Value added network (communications) services; Remote screen communication services; Rental of telecommunication equipment; Communication by computer terminals; News agencies; Cellular telephone communication; Cable television broadcasting; Operation of broadband telecommunication networks for others; Audio teleconferencing; Network audio and videoconferencing services; Providing facilities and equipment for video conferencing; Providing telephone conferencing services; Local and long distance transmission of voice, data, graphics by means of telephone,</i></p>

	<i>telegraphic, cable, and satellite transmissions; Video teleconferencing; Web audio and video conferencing services; Wireless electronic transmission of voice signals, data, facsimiles, images and information.</i>
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3. On 17 February 2022, the application was opposed by Amazon Europe Core S.à.r.l. ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The Opposition is directed against all of the goods and services in respect of which the Applicant seeks registration of its mark. The Opponent relies on the following two earlier registrations, relying upon all of its goods and services:

i) UK00915850654¹

RING

Filing date: 20 September 2016

Date of entry in register: 19 September 2017

Registered for the following goods and services:

Class 9:	<i>Consumer electronic products, namely, motion sensors and monitoring equipment for security and surveillance; motion sensors and monitoring equipment; electronic wireless LAN enabled motion sensors and monitoring equipment; speakers; wireless local area network enabled speakers; customizable electronic speakers; wireless communication devices; safety, security and protection apparatus, devices and equipment; digital sensor devices; remote monitoring apparatus, devices and equipment; computer software; computer application software; none of the aforementioned goods are intended for or relate to Switchgear, Electricity</i>
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¹ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EUTM. As a result of the opponent having an EUTM being protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law and retains its original filing date.

	<p><i>transformers, Switchgear for protecting transformers, Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, Substations in sheet metal and concrete, Protective relays, Substations for sectionalizing electrical power grids, Switch-disconnectors and full circuit breakers equipped for measuring, monitoring and communication, Gas monitors and temperature monitors for electrical power grids, current transformers, Equipment and apparatus for indicating voltage and ground fault, Satellite stations, Series satellite stations, Branching and switch cabinets, Distribution transformers, Voltage and/or current regulators, Controllers and Control systems, Cabinets for apparatus and Electricity cabinets, Electricity conduits and cabling, Electric couplings, Power packs [transformers], Power units [transformers].</i></p>
<p>Class 35:</p>	<p><i>Retail services and wholesale services relating to consumer electronic products, namely, motion sensors and monitoring equipment for security and surveillance, motion sensors and monitoring equipment, electronic wireless LAN enabled motion sensors and monitoring equipment, speakers, wireless local area network enabled speakers, customizable electronic speakers; retail services and wholesale services relating to wireless communication devices, safety, security and protection apparatus, devices and equipment; retail services and wholesale services relating to digital sensor devices; retail services and wholesale services relating to remote monitoring apparatus, devices and equipment, computer software and computer application software, none of the aforementioned services are intended for or relate to Switchgear, Electricity transformers, Switchgear for protecting transformers,</i></p>

	<p><i>Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, Substations in sheet metal and concrete, Protective relays, Substations for sectionalizing electrical power grids, Switch-disconnectors and full circuit breakers equipped for measuring, monitoring and communication, Gas monitors and temperature monitors for electrical power grids, current transformers, Equipment and apparatus for indicating voltage and ground fault, Satellite stations, Series satellite stations, Branching and switch cabinets, Distribution transformers, Voltage and/or current regulators, Controllers and Control systems, Cabinets for apparatus and Electricity cabinets, Electricity conduits and cabling, Electric couplings, Power packs [transformers], Power units [transformers].</i></p>
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ii) UK00003329561

RING

Filing date: 6 August 2018

Date of entry in register: 30 October 2020

Priority date: 27 February 2018

Priority country: Jamaica

Registered for the following goods and services:

<p>Class 9:</p>	<p><i>Devices and software for use to connect and control internet of things (IoT) devices; devices for home and environmental monitoring, control, and automation; security surveillance apparatus; alarm monitoring systems; devices and computer software that allow the sharing and transmission of data and information between devices for the purposes of facilitating home and environmental monitoring, control, and automation; data processing equipment; intercommunication</i></p>
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apparatus; home automation control devices; stand-alone voice controlled information devices; anti-intrusion and anti-theft warning apparatus and devices; theft prevention installations; security control apparatus; photographic apparatus and instruments; optical apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; computer hardware and software for processing, reproducing, synchronizing, recording, organizing, downloading, uploading, transmitting, streaming, receiving, playing and viewing images, audio, video and data files; communication devices for voice, data, or image transmission; voice and data transmitters and receivers; computer software; doorbells, electronic locks, motion sensors, alarms, alarm sensors, alarm systems, sensors and detectors, and speakers; video monitors; security cameras; video cameras for monitoring the interior and exterior of residences and commercial buildings, and wireless controllers to remote monitoring, control, and automation; video streaming devices, video recording, and video receiving devices; cameras; webcams; apparatus and devices providing night vision; alarm system and camera mounts and stands; environmental hazard detectors, namely, devices that detect and record the presence of water, humidity levels, heat, temperature, movement, motion, and sound; closed circuit television apparatus and cameras; pet and baby monitors, pet viewing units; parts, fittings and accessories for all the aforesaid goods; security software; computer software and software applications for home and environmental monitoring, control, and automation; software and software applications permitting users to identify and communicate with persons at their door; software development kits (SDKs) consisting of computer software for the development, use, and interoperability of

APIs that are used by electronic devices, systems, and interchanges that exchange data via communications networks and the internet and that connect with cloud-based data storage and exchange services; software development kits (SDKs) comprising of software development tools and software for use as an application programming interface (API) for creating software and applications related to internet connected consumer electronic devices; software development kits (SDKs) comprising of software development tools and software for use as an application programming interface (API) for creating software and applications related to theft-prevention and security systems, and home and business surveillance systems; voice command and recognition software; computer software used for controlling stand-alone voice controlled information and personal assistant devices; computer software for remote monitoring and analysis; Electronic control systems for machines; Software for monitoring and controlling communication between computers and automated machine systems; electronic video surveillance products, namely, electronic components of security systems; navigation software for use with smart, autonomous vehicles and mobile machines for use in connection with internet of things (IoT) enabled devices; software for use in tracking and monitoring position and range of smart, autonomous vehicles and mobile machines for use in connection with internet of things (IoT) enabled devices; electronic systems, equipment and instruments, namely behavior engine software, positioning engine software, positioning sensors and dynamic intelligent software and sensors for use in connection with internet of things (IoT) enabled devices; Automated self contained electronic surveillance devices that can be deployed to gather evidence or intelligence; wearable activity trackers;

	<p><i>wearable cameras; wearable computers in the nature of smartwatches; wearable computers in the nature of smartglasses; wearable video display monitors; light switches; lighting controls; light diodes; vehicle camera mount; Communications headsets for use with mobile phones, communication radios, intercom systems, or other communications network transceivers; none of the foregoing for vehicle or transportation related use except for any of the aforesaid goods that are consumer electronic goods designed for use in connection with vehicles as an extension of a security or automation system for dwellings and commercial buildings.</i></p>
<p>Class 11:</p>	<p><i>Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Floodlights, spotlights, wall lights; light bulbs; LED light bulbs; lighting fixtures; lighting fixtures with motion detection; battery powered lighting fixtures; electric lighting fixtures, namely, power failure backup safety lighting; sconce lighting fixtures; lanterns for lighting; lighting systems, namely, led (light emitting diode) modules, power supplies and wiring; lighting apparatus, namely, lighting installations; ceiling lights; ceiling light fittings; electric night lights; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED lighting fixtures for indoor and outdoor lighting applications; lights for illuminating stairs, doors and other portions of buildings; portable battery-operated lights that can be placed on surfaces where other light sources are unavailable; portable utility lights; solar light fixtures, namely, indoor and outdoor solar powered lighting units and fixtures; spot lights; wall lights; fixtures for incandescent light bulbs; lighting fixtures for use in parking</i></p>

	<i>decks and garages; lighting fixtures for use in parking lots and walkways; electrical magnifying light fixtures; miniature light bulbs; lighting fixtures that integrate natural daylight and fluorescent lighting into the fixture; lighting for cabinets, pantries, work spaces, sheds, shelving units, and cupboards; security lights; power outage lighting systems; none of the foregoing for vehicle or transportation use.</i>
Class 35:	<i>Online retail store services; data processing; data management; collection of data; database and file management; services comprising the recording, transcription, compilation and analysis of video and audio; compilation and systemization of data into computer databases; data searches in computerized files for others; subscriptions to telecommunications database services; promoting consumer awareness of safety and crime prevention; Retail store services in the fields of consumer electronics, general consumer merchandise, security and surveillance equipment, and audiovisual equipment; retail store services featuring a wide variety of consumer goods of others.</i>
Class 38:	<i>Electronic communication services; transmission of data, audio, video and multimedia files; transmission of messages, voice, data, video, and images through a global communications network; broadcasting services; video communication services; video telephone services; data communication services; data streaming; providing voice communication services over the Internet; consultancy and advisory services relating to the aforesaid services.</i>
Class 41:	<i>Audio and video recording services; subscription video recording services; electronic library services for the supply</i>

	<i>of electronic information (including archive information) in the form of audio and/or video information; consultancy and advisory services relating to the aforesaid services.</i>
Class 42:	<i>Platform as a service (PAAS) featuring computer software platforms for use with home and environmental monitoring, control, and automation systems; software as a service (SAAS) services featuring computer software for use with home and environmental monitoring, control, and automation systems; application service provider featuring application programming interface (API) software for home and environmental monitoring, control, and automation; Platform as a service (PAAS)featuring computer software for use to connect and control internet of things (lot) electronic devices; Software as a service (SaaS) featuring computer software for connecting, operating, integrating, controlling, and managing networked consumer electronic devices; Platform as a service (PAAS) featuring computer software for use to connect and control internet of things (lot) electronic devices; Software as a service (SaaS) featuring computer software for connecting, operating, integrating, controlling, and managing networked consumer electronic devices; application service provider (ASP) services featuring software for controlling, integrating, operating, connecting, and managing voice controlled information devices, namely, cloud-connected and voice-controlled smart consumer electronic devices; security and anti-theft software applications; software applications permitting users to identify and communicate with persons at their door; voice command software applications; computer services, namely, providing an internet site featuring technology for use in home and environmental monitoring, control, and automation systems; computer services, namely, providing an internet portal featuring technology</i>

	<p><i>enabling users to remotely interact with home and environmental monitoring, control, and automation systems; providing online non-downloadable software for recording, viewing, storing, sharing and analyzing online audio and video; providing temporary use of on-line non-downloadable software for the management and transmission of data; design and development of computer hardware and software; hosting a website for the electronic storage of data; monitoring of computer systems by remote access; installation, maintenance and repair of computer software; cloud recording and storage services; electronic storage of electronic media, namely, images, text, audio, and video data; providing an online non-downloadable internet-based application featuring technology enabling users to share videos; providing an on-line network environment that features technology that enables users to share data; providing temporary use of online non-downloadable software for recording, viewing, storing, sharing, and analyzing data; information technology support services; provision of technical support; providing a website featuring information about safety and crime prevention; consultancy and advisory services relating to the aforesaid services; none of the aforesaid software services being in relation to vehicles or transportation related use except for software services used in connection with consumer electronic goods designed for use in connection with vehicles as an extension of a security or automation system for dwellings and commercial buildings.</i></p>
Class 45:	<p><i>Home security monitoring services; consultancy, advisory and information services relating to home security monitoring; electronic monitoring and security services for residential and commercial properties; providing information</i></p>

	<i>about safety and crime prevention; consultancy, advisory and information services relating to home security monitoring; monitoring of camera systems by remote access.</i>
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4. The Opponent claims that:

- the Applicant's mark is highly similar to each of the Opponent's two earlier marks;
 - the dominant and distinctive element of both parties' marks is the word 'RING';
 - the Applicant's goods and services are identical and/or similar to the Opponent's goods and services under each of the Opponent's earlier registrations;
- and
- that there is a likelihood of confusion between the parties' marks.

5. The Applicant filed a Defence and Counterstatement in which it:

- denies that the parties' marks are similar;
 - denies that the dominant and distinctive element of both parties' marks is the word 'RING';
 - denies that the respective goods or service are identical and/or similar and argues that any identity and/or similarity that might be found between the goods or services would be 'offset by the overall differences in the marks themselves';²
- and
- that there is no likelihood of confusion between the parties' marks.

6. The Opponent is represented by Page, White & Farrer Limited. The Applicant is represented by Edwin Coe LLP. Both parties have filed evidence. The Opponent filed written submissions during the evidence round. A hearing was neither requested nor thought necessary. Only the Applicant has filed written submissions in lieu of a hearing. I will not summarise the parties' submissions here, but I confirm that I have read them and will refer to them where necessary

² Applicant's Counterstatement, para [9].

in my decision. The following decision has been made after careful consideration of the papers before me.

Preliminary Issue

7. The Applicant has adduced evidence at Exhibit TB10 comprising four press releases/articles in which Ring products are mentioned. Ms Byrne states in her witness statement³ that 'not all publicity around RING products has been positive'. The Applicant appears to have adduced these press releases in an effort to underline potential disadvantages of the Opponent's goods. While this is noted, the merits or demerits of particular goods falling under the specification in respect of which the Opponent's mark is registered are not relevant to the assessment of whether there is a likelihood of confusion between the parties' marks. The relevant law is set out below at [32].

Opponent's evidence

8. The Opponent's evidence comes from Claire Lehr, Partner at Edwin Coe LLP, representing the Opponent. Ms Lehr's Witness Statement is dated 17 August 2022. There are 6 Exhibits: CL1 – CL6. Although the Opponent is not required to adduce evidence to demonstrate use of the earlier marks relied upon, the Opponent has voluntarily adduced evidence of how its RING marks have been used to address the Applicant's request that the Opponent prove its claims 'regarding the business conducted under the mark RING'.⁴ Whilst the Opponent is not obliged to demonstrate whether, or the extent to which, it has used its mark, where evidence of its use has been provided, it can, in some circumstances, be relevant to the assessment of whether or not the mark enjoys an enhanced level of distinctiveness through use.
9. Exhibit CL1 - comprises twelve UK press releases from the Opponent's website '<http://en-uk.ring.com/>' dated between June 2019 and December 2021 promoting products under the RING mark. Products promoted include, *inter alia*: 'Ring Door View Cam' (video doorbells); 'Ring Indoor Cam'; 'Ring Stick Up Cam'; 'Ring

³ Witness Statement of J Byrne, para [15].

⁴ Witness Statement of C Lehr, para [3].

Alarm'; 'Ring Security Cameras'; 'Ring Chime'; 'Chime Pro'; 'Floodlight Cam Wired Pro'; 'Ring Video doorbell'. It is noted that ten out of the twelve press releases are dated after 19 November 2019, the priority date of the applied-for mark and, therefore, the date at which the likelihood of confusion between the parties' marks must be assessed. Three press releases are dated before the relevant date:

- 15 July 2016 - The Ring blog, press release 'Ring Officially Launches in the UK';
- 18 June 2019 - Press release launching Ring Door View Cam (Ring's fifth video doorbell);
- 25 September 2019 – Press release announcing the release of the company's 'third generation Ring Stick Up Cam' as well as its 'first ever indoor-only camera'.

These press releases show that the Opponent held out its products for sale in the UK market via the following outlets, as well as directly from its website Ring.com: Amazon; Currys; PC World; Argos; Screwfix (online only).

10. Although the remaining nine press releases relate to dates after the relevant date, such evidence can, in certain circumstances, shed light upon the state of affairs preceding it.

11. Exhibit CL2 – comprises an article from The Telegraph newspaper, dated 28 February 2018, titled 'Amazon invests in hi-tech doorbells with \$1bn Ring deal'. According to the article, 'Ring' was launched in 2012, sells video doorbells and home security cameras, and its products have been installed in over 100,000 homes in the UK. The evidence has been adduced to seek to demonstrate that business conducted under the mark 'Ring' includes business in the UK market.

12. Exhibit CL3 – comprises eight articles, published in the UK, together with a blog post on ring.com, chronicling the use of Ring products in relation to crime prevention initiatives:⁵

⁵ Witness Statement of C. Lehr, paragraph [12].

- a. Article on securedbydesign.com dated 17 October 2017;
- b. Article on ipswichstar.co.uk dated 23 July 2018;
- c. Article on crimestoppers-uk.org dated March 2019;
- d. Article on ourwatch.org.uk dated June 2019;
- e. Article on London.gov.uk dated 19 June 2019;
- f. Blog post on ring.com dated 8 July 2019;
- g. Article on realhomes.com dated 28 September 2019;
- h. Article on hrnd.co.uk dated 10 June 2021; and
- i. Article on westbridgfordwire.com dated 9 August 2021.

13. In short, these articles demonstrate that 'Ring' has been the preferred choice of home security product in various crime prevention/reduction initiatives set up by various UK Police forces. I note that: items a) to g) are dated before the relevant date; items h) and i) are dated after the relevant date.

14. Exhibit CL4 – comprises a number of reviews/advertising features for products sold under the 'ring' mark in the UK. One of the articles is dated before the relevant date; 11 January 2019, an article by 'Which?', the consumer watchdog, titled 'The smart tech to look out for in 2019' in which the 'Ring Door View Cam' is featured. The first sentence of the review of the 'Ring' product reads 'Ring practically invented the smart doorbell market'.

15. The remaining reviews/articles were published after the relevant date, and include:

- a '5*' review from the magazine 'Real Homes', dated 18 August 2020;
- a feature from T3.com titled 'T3 Awards 2020 week is a wrap!' in which the best products in various categories are identified. 'Ring Video Doorbell 3 Plus' and 'Ring Stick Up Camera' appear on the shortlist for the category 'Best Smart Security';
- an article in 'Real Homes', titled 'Real Homes Awards 2020 in which the 'Ring Doorbell 3 Plus' is cited as one of the best video doorbells.

16. Exhibit CL5 – comprises an article from The Telegraph newspaper, dated 13 October 2021, titled 'Inside the Ring doorbell revolution: how the tiny device changed Britain' in which the sale of 'Ring' to Amazon for £730million in 2019 is referenced.

17. Exhibit CL6 - comprises archived webpages from en-uk.ring.com showing product listings, delivery, returns and customer support information, all dated June 2021.

Applicant's evidence

18. The Applicant's evidence comes from Taryn Jennifer Byrne, Trademark attorney of Taryn Jennifer Byrne, representing the Applicant. Ms Byrne's Witness Statement is dated 16 November 2022. There are 10 Exhibits: TB1 – TB10.

19. Exhibit TB1 – comprises online dictionary definitions of the word 'ring'.

20. Exhibit TB2 - comprises a Notice of grounds for the refusal of application for a European trade mark, dated 14 October 2016, in respect of the Opponent's 'RING' mark, from the EUIPO by reason of the mark's descriptiveness and lack of distinctive character.

21. Exhibit TB3 – comprises correspondence, dated 27 January 2017, from the Opponent to the EUIPO responding to the refusal of its application for the 'RING' mark.

22. Exhibit TB4 – comprises the General Court decision, dated 19 December 2019, according to which the Opponent's 'RING' mark was partially refused registration by the EUIPO for certain class 9 goods on the grounds of descriptiveness and lack of distinctive character.

23. Exhibit TB5 - comprises an extract from the Opponent's website headed 'The Ring story' describing, in the words of its inventor, Jamie Siminoff, how the idea for the Opponent's 'video doorbell' came about. It is not clear what the Applicant is seeking to demonstrate by adducing this.

24. Exhibit TB6 – comprises an extract from Wikipedia for the word 'doorbell'. The Applicant has adduced this evidence to demonstrate that since doorbells were invented in 1817, they have typically been associated with a ringing sound to support its argument that the majority of consumers will describe the act of

pushing a doorbell as 'ringing the doorbell'.⁶ This evidence is therefore presumably intended to demonstrate that the word 'Ring' has some level of descriptiveness for doorbells.

25. Exhibit TB7 - comprises a document compiled by the Applicant showing examples of marks featuring the word element 'ring'. The brands referred to include:

- 'Ring' for dashcams; memory cards; lamps and torches; battery chargers;
- 'LumiRing' for access control systems e.g. for religious buildings, parking facilities e.g. barriers; (US company with partners in other countries, but products can be purchased through partners);
- 'DORO RingPlus' for telephone ring amplifiers and strobe products;
- 'RingCentral' for communications solutions and services;
- 'Ring Telecom Ltd' for telecommunication products and services, including phone systems, mobile, broadband, business lines and calls;
- 'RingUK Intercom' for intercom systems.

26. Exhibit TB8 - comprises a printout of some Google search results showing, inter alia, that the UK population was 66.46 million in 2018. The Applicant appears to have adduced this exhibit in response to the Opponent's filing of Exhibit CL2 in which the Telegraph article states that RING products are installed in more than 100,000 British homes. The Applicant argues that this figure is unimpressive given the population of the UK.

27. Exhibit TB9 – comprises an undated screenshot of a web page from 'Secured By Design' which appears to list companies which supply CCTV. Six companies are listed, including Ring.com.

28. Exhibit TB10 has been addressed as a preliminary issue.

Decision

Section 5(2)(b) of the Act and related case law

⁶ Witness Statement of T J Byrne, para [9].

29. Section 5(2)(b) of the Act 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.”

30. In accordance with section 6 of the Act, the Opponent’s marks are earlier marks:

- i) UK00915850654 is an earlier mark by virtue of its filing date (20 September 2016);
- ii) UK00003329561 is an earlier mark by virtue of its priority date (27 February 2018; priority country: Jamaica);

both of which fell before the priority date of the Applicant’s mark (19 November 2019).

31. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is not engaged because both of the Opponent’s earlier marks had been registered for less than 5 years on the date on from which the Applicant claims priority for its mark. The Opponent is therefore entitled to rely upon all of the goods and services that it seeks to rely upon.

32. The following principles are derived from the decisions of the Court of Justice of the European Union⁷ (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95; *Canon*

⁷ 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

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 C120/04; *Shake di L. Laudato & C. Sas v OHIM*, Case C-334/05P; and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may 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

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 case-law of EU courts.

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.

Comparison of goods and services

33. Section 60A of the Act provides:

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

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

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

(2) In subsection (1), the 'Nice Classification' means the system of classification under the Nice Agreement Concerning the International Classification of Goods

and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.

34. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the parties' goods and services must be taken into account:

"[23] 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".

35. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281⁸, identified the following factors for assessing similarity of the respective goods and services:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and, in particular, whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

⁸ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

36. Goods (or services) may be grouped together for the purposes of assessment, as Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, said in *Separode Trade Mark* BL O-399-10:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

37. In making an assessment between the competing goods and services, I bear in mind the decision of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05:

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

38. In construing the terms used in the parties’ specifications, I will follow the guidance of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49].

Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant

language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

Class 7

39. The Opponent has argued that all of the Applicant's goods in class 7 are similar to the Opponent's goods in class 11 for its earlier registration UK00003329561, setting out where it claims that the similarity lies. However, it has not provided any reasoning as to why it considers the particular goods that it has identified to be similar.⁹ The earlier marks are identical and so the same assessment on likelihood of confusion will apply. Consequently, I will select the Opponent's best case from the specifications of each of the earlier marks based upon the Opponent's submissions.

Applicant's goods: *Electric washing machines*

40. The Opponent argues that these goods are similar to the Opponent's *Apparatus for sanitary purposes* in class 11.¹⁰ The purpose of the Applicant's goods is to wash clothing, bedding and other 'machine-washable' textile goods as an alternative to washing the clothing by hand. The reference to 'sanitary purposes' in the Opponent's term, in my view, relates to goods connected with the supply of hot and cold water and/or disposal of waste water. This term will therefore encompass apparatus relating to goods such as toilets, sinks, showers, bidets etc (e.g. plumbing pipes/connectors, taps). The parties' goods will overlap in purpose only to the broad extent that the Opponent's goods cover items which may also be used for washing, such as sinks/washbasins. The overlap will only be partial because many goods encompassed by the Opponent's term will not be intended to wash clothing etc. Users will, to my mind, overlap in certain instances e.g. a user of a washing machine might also purchase replacement pipes/connectors. Trade channels will be distinct; the same undertaking is unlikely be responsible for both

⁹ Opponent's Statement of Grounds, continuation sheet, (unpaginated).

sinks/washbasins/plumbing pipes and electric washing machines. The goods will differ greatly in terms of physical nature and methods of use. I do not find the parties' goods to be in competition; an average consumer would unlikely deliberate over whether to purchase an *electric washing machine* rather than a sink/washbasin, for example. I do not find complementarity, either; although plumbing pipes/connectors are necessary to enable a washing machine to function, the average consumer is unlikely to presume both to originate from the same undertaking. I find the parties' goods to have a low level of similarity.

Applicant's goods: *Automatic dishwashers*

41. The Opponent argues that these goods are similar to the Opponent's *sanitary purposes* in class 11. The purpose of the Applicant's goods is to wash dishes without the need for manual labour in the act of washing. The parties' goods will overlap in purpose only to the broad extent that the Opponent's goods cover items which can also be used in which to wash dishes, such as sinks/washbasins. My comments in the above comparison at [40] also apply here. I find the Applicant's dishwashers to have a low level of similarity with the Opponent's goods.

Applicant's goods: *Electric vacuum cleaners; Hoses for electric vacuum cleaners; Bags for electric vacuum cleaners; Stick type vacuum cleaners; Robotic cleaners for household purposes; Robotic vacuum cleaners; Hand-held vacuum cleaners; Electric vacuum cleaners for bedding.*

42. The Opponent argues that these goods are similar to the Opponent's *Apparatus for sanitary purposes* in class 11. The Applicant's goods are, or encompass, goods intended to vacuum clean i.e. remove dust and debris from floors and furnishings by way of suction, or parts of accessories for vacuum cleaners. As already noted, the Opponent's goods cover apparatus related to the supply of hot and cold water and/or disposal of waste water. The parties' goods therefore diverge in terms of their specific purposes. Users will overlap; both parties' goods typically being purchased by the general public. Trade channels will be distinct; the same undertaking would unlikely be responsible for both sinks/washbasins/plumbing pipes etc and vacuum cleaners and their parts or accessories. The goods will differ

in physical nature and methods of use. There is no competitive relationship between the parties' goods, neither being substitutable for the other. I do not find complementarity, either; neither party's good is necessary or important for the other and the average consumer would unlikely presume both to originate from the same undertaking. I find the parties' goods to be dissimilar. I do not consider that comparison with other of the Opponent's goods would improve the Opponent's position.

Applicant's goods: *Housekeeping robots for household purpose; Robots for personal use, namely, robots for cleaning.*

43. The Opponent argues that these goods are similar to the Opponent's *Apparatus for sanitary purposes* in class 11. The Applicant's goods are intended to perform cleaning tasks autonomously i.e. without the operator undertaking the task. The parties' goods therefore differ in purpose. My comments above regarding different users, trade channels, physical natures and methods of use, as well as absence of competition or complementarity, also apply here. I find the parties' goods to be dissimilar. I do not consider that comparison with other of the Opponent's goods would improve the Opponent's position.

Applicant's goods: *Compressed air pumps; Electric rotary compressors;*

44. The Opponent argues that these goods are similar to the Opponent's *Apparatus for refrigerating, ventilating, purposes* in class 11. It is my understanding that the Applicant's *compressed air pumps* and *electric rotary compressors* are pieces of apparatus that power machinery or equipment by way of compressing air. I find that the Applicant's goods in class 7 could be used as component parts for refrigeration apparatus or machines. To the extent that the Applicant's goods are intended as components of refrigeration systems, the parties' goods will overlap in their ultimate purpose, both being goods used for refrigeration. The specific purposes will differ, though; the Opponent's goods being refrigeration systems as opposed to their components. User and trade channel overlap are possible. A user of a refrigerator might have a compressor/pump replaced as part of a service that they have engaged, but they would unlikely be the direct purchaser

of the replacement parts. The parties' goods will differ in terms of their physical natures and methods of use. I do not find the parties' goods to be competitive, neither being substitutable for the other. I find complementarity; the Applicant's goods are necessary or useful for refrigeration systems, and the average consumer might presume both refrigerators and their component parts to originate from the same undertaking. I find the goods to have a low level of similarity.

Applicant's goods: *Electric rotary blowers*

45. I compare the Applicant's goods to the Opponent's *Apparatus for ventilating purposes*.¹¹ I understand that *electric rotary blowers* are machines which increase the velocity of air in order to move, *inter alia*, gases or dust, for example, and that they can be used in ventilation systems. To the extent that the Applicant's goods are intended as components of ventilation systems, the parties' goods will overlap in their ultimate purpose, both being goods used for ventilation. The specific purposes will differ, though; the Opponent's goods being ventilation systems as opposed to components. My comments above at [44] concerning users, trade channels, physical natures and methods of use, and whether the goods are competitive or complementary, also apply here. I find the goods to have a low level of similarity.

Applicant's goods: *Compressors for refrigerators*

46. I compare these goods to the Opponent's *Apparatus for refrigerating, purposes*. The purposes of the parties' goods will converge to the extent that both are ultimately involved in refrigeration. However, the specific purposes will differ in that the Applicant's goods are intended as components of refrigeration systems rather than directly providing the refrigeration. My comments above at [44] concerning users, trade channels, physical natures and methods of use, and whether the goods are competitive or complementary, also apply here. I find the goods to have a low level of similarity.

¹¹ The NICE classification system explicitly states that class 7 does not include apparatus for refrigerators.

Applicant's goods: *Spin driers (not heated)*

47. I compare these goods to the Opponent's *Apparatus for drying purposes*. The Applicant's *spin driers* are, to my mind, intended to remove moisture from clothing, bedlinen and other textiles to either enable the items to dry quicker naturally or reduce the time needed for tumble-drying. I find that the Opponent's class 11 term will encompass goods intended for drying including, *inter alia*: heated air driers (i.e. heated racks upon which to dry laundry); hair driers; dehumidifiers. The parties' goods will coincide in purpose where the Opponent's term covers air driers for laundry. Users will overlap; both parties' goods will be purchased by the general public. Trade channels overlap is, in my view, unlikely, although not impossible; the same undertaking might produce both *spin driers (not heated)* and heated air driers for laundry, for example, both being electrical goods for drying. Methods of use will differ; air driers are typically racks or frames, either heated or unheated, upon which the laundry is draped, whereas the Applicant's driers work by spinning the wet items to remove moisture. The parties' goods will differ in terms of physical nature. I consider the parties' goods to be in competition; one might deliberate over whether to purchase an unheated *spin drier* over one of the Applicant's air driers. I do not consider the parties' goods to be complementary, neither good being necessary or important for the other. I find the parties' goods to be similar to a medium degree.

Applicant's goods: *Electric mixers for household purposes; Electric food processors*

48. The Opponent has argued that these goods are similar to the Opponent's *Apparatus for cooking purposes* in class 11. The Applicant's goods, to my mind, are used in cooking/food preparation for, *inter alia*: chopping, mixing or blending. I note that the Nice classification system for Class 11 goods does not include electric food mixers/processors. Broadly speaking, class 11 covers cooking apparatus with an integrated heat source (for example: ovens, fryers, coffee percolators) and explicitly excludes 'cooking utensils that do not have an integrated heat source'. Although both parties' goods will be used for cooking, the specific purposes of the respective goods will differ; the Opponent's goods

involve the application of heat whereas the Applicant's goods are used to chop/mix/blend, as the case may be. Methods of use will also therefore differ. Users will overlap; both parties' goods will be purchased by those intending to cook or prepare food. Trade channels will also overlap; the same undertaking might provide both food processors/mixers as well as fryers, for example. The goods will differ in physical nature. The goods are neither competitive nor complementary: neither good is substitutable for the other; and neither goods is necessary or important for the other. I find the parties' goods to be similar to a medium degree.

Applicant's goods: *Steam cleaners for household purposes*

49. The Opponent has argued that these goods are similar to the Opponent's *Apparatus for steam generating purposes* in class 11. The Applicant's goods are typically used to steam carpets in order to clean them. I note that class 11 of the Nice classification system does not cover steam cleaners. I find that the Opponent's term encompasses apparatus such as, *inter alia*, 'fabric steamers' which, I understand, are used to remove creases and wrinkles from clothing, for example. The goods will overlap in purpose only to the broad extent that both are intended to generate steam for household uses. Users will likely overlap; both goods being purchased by the general public. Trade channel overlap is unlikely, but not impossible. Methods of use will be similar to the extent that the piece of apparatus will likely be 'run over' the item to be steamed. I find the parties' goods and to be similar to a low degree.

Class 9

50. The Opponent has argued that all of the Applicant's class 9 goods are identical and/or similar to the class 9 goods for which its two earlier rights are registered.¹² I set out in the following table which respective goods I find to be identical, either by virtue of identically or synonymously-worded terms, or according to the principle in 'Meric':

¹² Opponent's Statement of Grounds, continuation sheet, (unpaginated).

Opponent's earlier mark UK00915850654:	Opponent's earlier mark UK00003329561:	Applicant's mark:
Class 9: <i>wireless communication devices</i>	Class 9: <i>Devices and software for use to connect and control internet of things (IoT) devices;</i>	Class 9: <i>Smartphones;</i> <i>Wearable smartphones;</i> <i>Portable communications apparatus;</i> <i>Laptop computers;</i> <i>Tablet computers;</i> <i>Convertible computers;</i> ¹³
<i>wireless communication devices</i>	<i>wearable computers in the nature of smartwatches; wearable computers in the nature of smartglasses</i>	<i>Wearable computers</i>
<i>computer software</i>	<i>computer software for processing, reproducing, synchronizing, recording, organizing, downloading, uploading, transmitting, streaming, receiving, playing and viewing images, audio, video and data files</i>	<i>Downloadable computer software</i>
<i>computer application software</i>		<i>Application software</i>

¹³ I understand that a 'convertible computer' is a device that can be used as a laptop or a tablet.

<i>motion sensors</i>		<i>Sensors</i>
<i>Consumer electronic products, namely, motion sensors and monitoring equipment for security and surveillance</i>	<i>security surveillance apparatus</i>	<i>Network monitoring cameras namely for surveillance; Electronics security system for home network</i>
<i>monitoring equipment</i>		<i>Monitors for computers; Commercial monitors;</i>
<i>speakers</i>		<i>Audio speakers for home theaters</i>
	<i>computer hardware for reproducing, recording, transmitting and viewing images, audio, video and data files</i>	<i>Apparatus for recording, transmission or reproduction of sound or images; Computers</i>
	<i>apparatus for recording, transmission or reproduction of sound or images;</i>	<i>Television receivers; Audio receivers; Audio-Video receivers for home theaters; Earphones for smartphones; Projectors; Digital signage; LED Displays for mobile phones and televisions; LED screen displays; LED display panels; OLED display panels</i>

	<i>devices for home and environmental monitoring, control, and automation; home automation control devices</i>	<i>Home automation devices;</i>
	<i>Cameras</i>	<i>Cameras</i>
	<i>computer hardware for downloading, transmitting, streaming images, audio, video and data files</i>	<i>Settop boxes¹⁴</i>
	<i>Devices for use to connect and control internet of things (IoT) devices</i>	<i>Home network devices¹⁵</i>
	<i>Communications headsets for use with mobile phones, communication radios, intercom systems, or other communications network transceivers</i>	<i>Headsets for smartphones; Wireless headsets Headphones for smartphones</i>

¹⁴ I understand that set top boxes are devices to enable video content to be downloaded and viewed from the internet.

¹⁵ I understand that these include modems, routers and repeaters etc. to enable devices to be connected to the internet.

I find all of the Applicant's class 9 goods to be identical to the Opponent's goods.

Class 11

51. The Opponent has argued that all of the Applicant's class 11 goods are encompassed by the Opponent's broader class 11 term *Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes* under its earlier registration UK00003329561.¹⁶ I agree with the Opponent's argument and set out below where the 'Merix' identity lies:

Opponent's earlier mark UK00003329561:	Applicant's mark:
<i>Apparatus for ventilating purposes</i>	<i>Air conditioners; Air purifiers; Ventilation (air-conditioning) apparatus for heating; Ventilation hoods; Ventilation hoods for ovens</i>
<i>Apparatus for steam generating purposes</i>	<i>Humidifiers; Electric clothing management machines having the functions of deodorizing, sterilizing and steaming garments for household purposes</i>
<i>Apparatus for heating purposes</i>	<i>Hot air apparatus, namely, hot-air space heating apparatus; Solar thermal collectors (heating)</i>
<i>Apparatus for cooking purposes</i>	<i>Electric ranges; Gas ranges; Electric kitchen ovens;</i>

¹⁶ Opponent's Statement of Grounds, continuation sheet, (unpaginated).

	<i>Apparatus or installations for cooking</i>
<i>Apparatus for water supply and sanitary purposes</i>	<i>Water purifiers for household purposes; Water ionizers for household purposes; Membrane apparatus in the nature of filters for purifying water; Sinks.</i>
<i>Apparatus for drying purposes</i>	<i>Electric dehumidifier for household use; Electric clothes dryers; Electric clothes management machines for drying clothes for household purpose; Electric clothes drying machines with sterilization, deodorization and crease-resistant treatment functions for household purpose</i>
<i>Apparatus for lighting purposes</i>	<i>Light Emitting Diode (LED) lighting</i>
<i>Apparatus for refrigerating purposes</i>	<i>Electric refrigerators</i>

I find all of the Applicant's class 11 goods to be identical to the Opponent's goods.

Class 38

52. The Opponent has argued that all of the Applicant's Class 38 services are identical and/or similar to the Opponent's class 38 services under its earlier registration UK00003329561. I set out where I find identity, either by virtue of identically or synonymously-worded terms, or according to the principle in 'Meric', as follows:

<p>Opponent's earlier mark UK00003329561:</p>	<p>Applicant's mark:</p>
<p><i>Electronic communication services</i></p>	<p><i>Communications by fiber optic networks;</i> <i>Data communication services;</i> <i>Wireless broadband communication services;</i> <i>Value added network (communications) services;</i> <i>Remote screen communication services;</i> <i>Communication by computer terminals;</i> <i>Cellular telephone communication;</i> <i>Cable television broadcasting;</i> <i>Audio teleconferencing;</i> <i>Network audio and videoconferencing services;</i> <i>Providing facilities and equipment for video conferencing;</i> <i>Providing telephone conferencing services;</i> <i>Local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions;</i> <i>Video teleconferencing;</i> <i>Web audio and video conferencing services;</i> <i>Wireless electronic transmission of voice signals, data, facsimiles, images and information.</i></p>

Applicant's services: *Rental of telecommunication equipment*

53. The Opponent has argued that these services are complementary, and therefore highly similar or similar to the Opponent's *Electronic communication services*.¹⁷ The respective services will coincide in terms of their broad purposes, each service aimed at facilitating communications by electronic means. The specific purposes will, however, be different; the Applicant's services entailing the provision of equipment required to communicate by electronic means. Users will overlap; consumers renting telecommunication equipment will be using it for electronic communications. Trade channels may also be shared; both parties' services may be offered by the same undertaking. I do not find the parties' services to be competitive; neither service being substitutable for the other. I do, however, find complementarity; *electronic communication services* are necessary in order for the rental of telecommunication equipment to be a useful service and the average consumer may presume both services to originate from the same undertaking. I find the parties' services to be similar to a medium to high degree.

Applicant's services: *News agencies*

54. The Opponent has argued that *news agencies* require *electronic communications services* to function and that the parties' respective services are therefore complementary and similar.¹⁸ In my view, the purpose of the Applicant's news agency services is the communication of news to the public, which will, to my mind, often entail the dissemination of news via television or radio broadcasts, which may also be available online, as well as providing news articles. The parties' services differ in terms of their specific purposes; *electronic communications services* facilitate electronic communications whereas news agencies disseminate news. Users will overlap; news often being consumed via electronic means and so, the consumer would be simultaneously accessing both news agency services as well as *electronic communications services*. Trade

¹⁷ The Opponent, in its Statement of Grounds, appears to be comparing the Applicant's services to the term 'Telecommunication services', also. However, given that this term does not appear in the Opponent's specification as registered, it may not rely on this term.

¹⁸ Opponent's Statement of Grounds, continuation sheet, (unpaginated).

channels will unlikely overlap; the same undertaking would unlikely provide the news agency services as well as a telecommunication channel through which the services are provided. I do not find the parties' services to be competitive. I do not find complementarity, either; although *electronic communications services* are often necessary in order for news agency services to be delivered, the average consumer would unlikely presume both to originate from the same undertaking. In the light of the foregoing, I find the parties' services to be services to be similar to a medium to high degree.

Applicant's services: *Operation of broadband telecommunication networks for others*

55. The Opponent has argued that the *operation of broadband telecommunication networks for others* requires *telecommunications services* and so are complementary and therefore highly similar or similar.¹⁹ Applying the guidance set down in *Meric*, the parties' services would be found to be identical. I find the services to be at least highly similar due to, *inter alia*, the overlap in users, trade channels and the nature of the services.

Average consumer and the purchasing act

56. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word "average" denotes that the person is typical. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

Class 7

57. The average consumer of the majority of the parties' goods in class 7 will be the general public. Goods such as blowers, compressors and air pumps will, to my

¹⁹ As above.

mind, be purchased predominantly by the professional public, e.g. as components for other machines or replacement parts to repair appliances. The goods will likely be purchased from physical shops or ordered online. The purchasing act will be primarily visual to the extent that the goods will be inspected (in physical shops) or the product descriptions read online, prior to purchase. In many cases, there will be aural aspect to the purchasing process where questions are asked of retail staff. Many of the goods will be fairly expensive, costing several hundreds of pounds. I consider that both the general and professional public would exercise a measure of care when making their purchases. For the general public, many of the goods will be fairly infrequent purchases, e.g. a washing machine might not require replacement for many years. For the professional public, although purchases will be fairly frequent, the purchaser will likely be fairly attentive when purchasing the relevant goods. Factors considered will include, *inter alia*, whether the goods meet the purchaser's needs or, in the case of blowers, compressors etc, whether the goods are compatible with the appliances for which they are parts. I find that the average consumer, general and professional alike, will pay at higher than medium level of attention when making their purchases.

Class 9

58. I find that the average consumer of many of the relevant class 9 goods will be predominantly the general public. Goods such as projectors, commercial monitors and screen displays and panels will be purchased, for the most part, by the professional public. Goods for surveillance will be purchased by both the general and professional public. The purchasing act will be primarily visual to the extent that the goods will be first encountered in physical shops or online and, in many cases, self-selected by pointing to the goods on display or 'clicking' on the item online. There will be an aural aspect to the purchasing process where requests are made to retail staff. In my view, where a professional purchaser is seeking a surveillance system for a commercial premises, for example, a transaction would likely conclude after discussion of the purchaser's needs with the seller. I find that the level of attention paid will vary depending on the goods purchased. Earphones for smart phones are relatively inexpensive and would, to my mind, likely be purchased with an medium level of attention. I consider that items such as

security/surveillance systems will likely be purchased with a greater level of care, by the general and professional public alike. I find that the average purchasers of these goods will pay a high level of attention during the purchasing act. The remaining goods will likely be purchased with at least a medium level of attention; factors taken into account might include, *inter alia*, compatibility of the goods with existing hardware/software.

Class 11

59. In my view, the average consumer of the following class 11 goods will comprise both the general and professional public:

Air conditioners; Hot air apparatus, namely, hot-air space heating apparatus; Humidifiers; Solar thermal collectors (heating); Air purifiers; Ventilation (air-conditioning) apparatus for heating; Light Emitting Diode (LED) lighting. I consider that the average consumer of the remaining class 11 goods at issue will be predominantly the general public. I am of the view that the purchasing act will, in all cases, be primarily visual. The prospective purchaser will likely see the goods either in a physical shop, showroom or catalogue, or online. There will, in many cases, also be an aural aspect to the purchasing process where the prospective purchaser discusses its requirements with the seller. The goods are fairly expensive and infrequent purchases and I consider that the average consumer, whether general or professional, will be prudent during the purchasing act. I find that both general and professional consumers will pay a fairly high level of attention while making their purchases.

Class 38

60. I find that the relevant class 38 services will, for the most part, be purchased by both the general and professional public. With the exception of the services relating to conferencing, (which will likely be purchased predominantly by the professional public), these services will, in my view, be purchased by both the general and professional public. The purchasing act will be primarily visual to the extent that the services will likely be encountered online. There will likely be an important aural aspect to the purchasing process in many instances. Many prospective

purchasers, particularly professionals, will discuss their needs with the service provider before committing to a transaction. I am of the view that the decision to engage these services would likely be a carefully considered one, particularly in cases where the consumer commits to using the service provider for at least a year. I find that the average professional consumer will pay a high level of attention when purchasing these services. The average general consumer will, to my mind, pay a medium to high level of attention during their purchases.

61. Some similarity between the parties' goods and services is essential in order to find a likelihood of confusion between the parties' marks. In the case of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

'49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity'.

62. The Opposition against the goods that I have found to be dissimilar therefore fails at this point:

Class 7:

Electric vacuum cleaners; Hoses for electric vacuum cleaners; Bags for electric vacuum cleaners; Stick type vacuum cleaners; Robotic cleaners for household purposes; Robotic vacuum cleaners; Hand-held vacuum cleaners; Electric vacuum cleaners for bedding; Housekeeping robots for household purpose; Robots for personal use, namely, robots for cleaning.

Comparison of the marks

Opponent's marks: ²⁰	Applicant's mark:
RING	Home Ring

63. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the 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.”

64. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks, and to give due weight to any other features which are not negligible and, therefore, contribute to the overall impressions created by the marks.

Overall impression of the marks

65. The Opponent's mark is a word mark²¹ comprising the single word element 'RING' in a plain typeface. The overall impression resides in the mark in its entirety.

²⁰ The Opponent's two marks are identical.

²¹ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

66. The Applicant's two earlier marks are identical. They are also word marks in a plain typeface. They comprises two word elements 'Home Ring'. The overall impression resides in the marks in their entirety, with the 'Ring' element being the more distinctive element owing to the fact that this is likely to be seen as indicating goods/services for use in the home.

Visual comparison

67. Both parties' marks are word marks containing the element 'Ring'. The only point of visual difference is the presence of the word 'Home' in the Applicant's mark, which is absent from the Opponent's marks. Both parties' marks are relatively short and I consider that the fact that the Applicant's mark is twice as long as the Opponent's marks will not go unnoticed. I find the marks to have a medium to high level of similarity.

Aural comparison

68. The Opponent's marks will be articulated as 'RING'. The Applicant's mark will be articulated as 'HOME RING', the 'RING' elements of the parties' marks being aurally identical. The only point of aural difference between the parties' marks is the presence of the 'HOME' syllable at the beginning of the Applicant's mark, which is absent from the Opponent's marks. I find the marks to have a high level of similarity.

Conceptual comparison

69. The word 'Ring' will, to my mind, be understood as: either referring to a circular line or loop, or, as the sound or act of making the sound i.e. to 'ring' being the making of a ringing sound. The word 'Home' will be understood as the place and/or dwelling

' [...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

in which one resides. I find that the Opponent's marks 'RING' will likely be perceived by the average consumer as a reference to either a circular line or loop, or, as a verb in the way described above. There is nothing, in my view, which prompts me to find that either of these two meanings is more likely to be perceived by the average consumer than the other. In my view, the idea likely to be conjured in the mind of the average consumer by 'Ring' as a trade mark for the goods and services in respect of which it is registered, is of goods/services which involve some sort of loop or circuit, and/or which involve a ringing sound or system of alert.

70. I am of the view that the 'Ring' element of the Applicant's mark will likely be perceived by the average consumer in the same way, i.e. as either a circular line/loop or as the sound. The Applicant's mark as a whole will, to my mind, be perceived as alluding to goods/services involving some sort of loop/electronic circuit and/or ringing sound or system of alert, specifically intended for home use. I find the parties' marks to be highly conceptually similar.

Distinctive character of the earlier mark

71. *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been

registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

72. Registered trade marks possess varying degrees of inherent distinctive character: perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.

73. The Applicant has adduced Exhibits TB1 – TB4, and TB6 – TB7, to suggest that the Opponent’s ‘Ring’ mark is descriptive and lacks distinctive character. While the material is noted, I must presume that the Opponent’s mark has at least some level of distinctiveness because it is a registered mark. I bear in mind that the Court of Justice of the European Union in *Formula One Licensing BV v OHIM*, Case C-196/11P, found that:

“41.it is not possible to find, with regard to a sign identical to a trade mark protected in a Member State, an absolute ground for refusal, such as the lack of distinctive character, provided by Article 7(1)(b) of Regulation No 40/94 and Article 3(1)(b) of Directives 89/104 and 2008/95. In this respect, it should be noted that the characterisation of a sign as descriptive or generic is equivalent to denying its distinctive character.

42. It is true that, as is clear from paragraph 48 of the judgment under appeal, where an opposition, based on the existence of an earlier national trade mark, is filed against the registration of a Community trade mark, OHIM and, consequently, the General Court, must verify the way in which the relevant public perceives the sign which is identical to the national trade mark in the mark applied for and evaluate, if necessary, the degree of distinctiveness of that sign.

43. However, as the appellant rightly points out, their verification has limits.

44. Their verification may not culminate in a finding of the lack of distinctive character of a sign identical to a registered and protected national trade mark, since such a finding would not be compatible with the coexistence of Community trade marks and national trade marks or with Article 8(1)(b) of Regulation No 40/94, read in conjunction with Article 8(2)(a)(ii).”

74. With respect to the list of examples of marks featuring the word element ‘ring’ at Exhibit TB7, while this is noted, my assessment of the similarity of the parties’ marks and respective specifications is concerned only with the particular marks pertinent to this Opposition. I bear in mind that, In the case of *46 Maras*²², Mr Thomas Mitcheson Q. C. (as he then was), held that:

‘...It is well established that mere evidence of the state of the register is of little assistance in determination of disputes of this nature. Without evidence of use and reputation, the existence of other registrations can have no bearing on the question of the likelihood of confusion.’

75. I recognise, however, that evidence relating to the presence of other marks on the register and/or in use in the marketplace can, in certain circumstances, be relevant to the level of distinctiveness of marks. However, it cannot be discerned from this evidence that the marks are in use in the UK marketplace.

76. ‘Ring’ is a word in the English language with which the average consumer will be very familiar. Although it does not describe the goods or services in respect of which the Opponent’s marks are registered, I consider it to be somewhat allusive for electronic products due to the connotation of an electronic circuit and/or goods whose purpose is to alert the consumer in some way. I find the Opponent’s marks to have a low level of inherent distinctive character.

²² O/112/21 at para [20].

77. I accept that the evidence that is dated before the relevant date indicates that 'Ring' was, at the time, the preferred choice of security product for several crime reduction initiatives organised by the Police services in various areas of the UK. However, I do not consider that the totality of the evidence filed is sufficient to support a finding that, on 19 November 2019, the level of distinctiveness of the mark can be raised above the finding that I have made for the mark's inherent distinctive character, that of a low degree.

Likelihood of confusion

78. Confusion can be direct or indirect. Mr Iain Purvis QC, (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*²³. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*²⁴, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods at issue, leads them to conclude that the goods are the responsibility of the same or an economically linked undertaking.

79. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [32]. When considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods *may* be offset by a lesser degree of similarity between the marks, and vice versa.

80. I have found many of the opposed goods and services to have levels of similarity with the Opponent's goods and services ranging from identical to a low level of

²³ Case BL O/375/10 at [16].

²⁴ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

similarity. However, I am of the view that the net effect of the visual, aural and conceptual differences between the parties' marks is sufficient to prevent the average consumer from mistaking one party's mark for the other. Despite the fact that the Opponent's mark 'Ring' is replicated in its entirety within the Applicant's mark, I consider that the differences that I have identified between the marks will be noticed by the average consumer. Both parties' marks are fairly short, making their difference in length particularly apparent visually and aurally; the Applicant's mark is twice as long as the Opponent's marks, both in terms of the number of characters and syllables. I find that there is no likelihood of direct confusion. I find this to be the case even where a lower level of attention is paid during the purchasing act.

81. I now consider whether there is a likelihood of indirect confusion. I note that in the recent case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

82. I have borne in mind *Whyte and Mackay*²⁵ in which it was held that where an average consumer perceives that a composite mark consists of two or more elements, one of which has a distinctive significance independent of the mark as a whole, confusion may occur as a result of the similarity/identity of that element to the earlier mark. My view is that the addition of the word 'Home' in the Applicant's mark does not alter the inherent distinctive character of the element 'Ring' as it appears in the Opponent's mark. 'Ring' has retained its independent distinctive character.

²⁵ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271.

83. In *L.A. Sugar Limited v Back Beat Inc*²⁶ Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that [my words in parentheses]:

17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] 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)".

84. My view is that the instant case falls within the second of the categories identified above. The word 'Home' is, to my mind, of low inherent distinctive character by virtue of being somewhat descriptive of the goods and services for which protection is sought. The addition of the word 'Home' before the common element 'Ring', in my view, appears consistent with a brand extension or sub-brand, e.g. a line of 'Ring' goods and services especially tailored to the home. I am of the view that the average consumer may presume the parties' marks to originate from the same or economically-related undertakings. I find that there is a likelihood of indirect confusion. I find this to be the case even where the level of similarity between the parties' terms is low.

²⁶ Case BL O/375/10

85. The Opposition has been partially successful.

- Subject to a successful appeal, the Application is allowed in respect of the following goods only:

Class 7:

Electric vacuum cleaners; Hoses for electric vacuum cleaners; Bags for electric vacuum cleaners; Stick type vacuum cleaners; Robotic cleaners for household purposes; Robotic vacuum cleaners; Hand-held vacuum cleaners; Electric vacuum cleaners for bedding; Housekeeping robots for household purpose; Robots for personal use, namely, robots for cleaning.

- The Application is refused for the remainder of the opposed terms.

COSTS

86. The Opponent has enjoyed the greater degree of success and is entitled to a contribution of £800 towards its costs based upon the scale published in Tribunal Practice Notice 2/2016, calculated as follows:

Official fee	£100
Preparation of statement and consideration of Applicant's statement	£250
Preparation of evidence	£100 ²⁷
Submissions in lieu of a hearing	£350
Total:	£800

87. I therefore order LG Electronics Inc., to pay to Amazon Europe Core S.à.r.l. the sum of £800. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

²⁷ I have awarded a sum below the minimum to reflect the fact that the evidence adduced was, in my view, excessive and of limited relevance.

Dated this 11th day of August 2023

N. R. Morris

**For the Registrar,
the Comptroller-General**