

O/0842/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003774097

BY REAL CLOUD LTD

TO REGISTER THE TRADE MARK:

AIRBRICK

IN CLASSES 35, 36 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 435296 BY

AIRBNB, INC.

BACKGROUND AND PLEADINGS

1. On 5 April 2022, Real Cloud Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 29 April 2022 and registration is sought for the following services:¹

Class 35 Advertising services relating to the sale and purchase of real estate property; real estate marketing.

Class 36 Rental of property; online property rental and real estate management; real estate property services, including over a global computer network or the Internet; renting of houses, apartments and flats; financial evaluation of real estate; Real-estate valuations; valuation services; appraisal of property and real estate; mortgage advisory and administration services; mortgage and loan brokering and loan advice.

Class 42 Creating and providing 3D computer models, architectural models and virtual tours of real estate; cloud computing services relating to the field of property rental and real estate; artificial intelligence software development relating to property rental portals; Software as a Service, Platform as a Service relating to property rental portal and real estate.

2. On 29 July 2022, the application was opposed by Airbnb, Inc. (“the opponent”) based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following trade marks:

AIRBNB

UKTM no. 3375119

Filing date 13 February 2019; registration date 31 May 2019

Relying upon some goods and services for which the earlier mark is registered, as set out in the Annex to this decision.

¹ The applicant’s specification was restricted following the filing of a TM21B on the 10 August 2022.

("the First Earlier Mark")

AIRBNB

UKTM no. 909376468²

Filing date 15 September 2010; registration date 1 March 2011

Relying upon some goods and services for which the earlier mark is registered, as set out in the Annex to this decision.

Priority date: 26 April 2010 (USA)

("the Second Earlier Mark")

3. Under section 5(2)(b), the opponent claims that the earlier marks enjoy a high degree of enhanced distinctive character and that the applicant's mark is similar to the earlier marks, and that the application covers identical or similar services, resulting in a likelihood of confusion.

4. Under section 5(3), the opponent claims a reputation for all of the goods and services listed in the Annex to this decision. The opponent claims that use of the applicant's mark would take unfair advantage of, and/or be detrimental to, the distinctive character and/or repute of the earlier marks.

5. The applicant filed a counterstatement denying the grounds of opposition and putting the opponent to proof of use of the Second Earlier Mark.

6. The applicant is represented by Dynham Limited and the opponent is represented by D Young & Co LLP.

7. Only the opponent filed evidence. Neither party requested a hearing, and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

² 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 dates.

EVIDENCE AND SUBMISSIONS

8. The opponent filed evidence in the form of the witness statement of Meredith Pavia dated 12 August 2022, which is accompanied by 31 exhibits. Ms Pavia is Lead Counsel, Trademark & Brand Protection for the opponent, a position she has held since 29 November 2021. Paragraphs 20, 23, 32 and 39 of Ms Pavia's witness statement and exhibits 3, 10, 13, 17 and 23 are subject to a confidentiality order.

9. The opponent filed written submissions in lieu dated 11 April 2023.

10. I have taken the evidence and submissions into account in reaching my decision and will refer to them below where necessary.

DECISION

My Approach

11. The First and Second Earlier Marks are identical. I note that the specification of the First Earlier Mark is broader than that of the Second Earlier Mark. Further, the First Earlier Mark is not subject to proof of use, whereas the Second Earlier Mark is. Consequently, the First Earlier Mark clearly represents the opponent's best case. I will conduct my assessment on the basis of the First Earlier Mark in the first instance, returning to the Second Earlier Mark only if it is necessary to do so.

Section 5(2)(b)

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

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

(a)...

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

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

13. Section 5A of the Act is as follows:

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

14. Given its earlier filing date, the First Earlier Mark qualifies as an earlier trade mark for the purposes of section 6 of the Act. As the First Earlier Mark had not completed its registration process more than 5 years before the application date of the mark in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services identified.

15. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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 will wrongly 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

16. I note that the applicant has submitted that the parties are actually operating within different markets. Whilst that may be the case in practice, the similarity of the goods and services must be assessed on a notional basis, taking into account the full breadth of the parties' specifications.

17. The full list of the goods and services relied upon by the opponent are set out in the Annex to this decision. However, I have included only those terms that I consider represent the opponent's best case in the table below. With that in mind, the competing services are as follows:

Opponent's services	Applicant's services
<p><u>Class 35</u> Advertising and promotion services and related consulting.</p>	<p><u>Class 35</u> Advertising services relating to the sale and purchase of real estate property; real estate marketing.</p>
<p><u>Class 36</u> Real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network; real estate affairs; financial affairs; monetary affairs.</p>	<p><u>Class 36</u> Rental of property; online property rental and real estate management; real estate property services, including over a global computer network or the Internet; renting of houses, apartments and flats; financial evaluation of real estate; Real-estate valuations; valuation services; appraisal of property and real estate; mortgage advisory and administration services;</p>
<p><u>Class 42</u> Software as a service (SAAS) services featuring software that allows users of</p>	

<p>mobile phones, portable media players, handheld computers and related mobile devices to list [...] real property and services for rent or sale and receive suggested improvements to their listing advertisements; design and development of computer [...] software; software as a service (SAAS) services; platform as a service (PAAS) services.</p>	<p>mortgage and loan brokering and loan advice.</p> <p><u>Class 42</u></p> <p>Creating and providing 3D computer models, architectural models and virtual tours of real estate; cloud computing services relating to the field of property rental and real estate; artificial intelligence software development relating to property rental portals; Software as a Service, Platform as a Service relating to property rental portal and real estate.</p>
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18. When making the comparison, all relevant factors relating to the services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

19. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(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.

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for 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.”

Class 35

Advertising services relating to the sale and purchase of real estate property.

21. This term is identical on the principle outlined in *Meric* to “advertising and promotion services and related consulting” in the specification of the First Earlier Mark because the opponent’s services are not limited in any way and so could include advertising relating to the sale and purchase of real estate property.

Real estate marketing.

22. In my view, advertising is a key part of this service and so it is identical on the principle outlined in *Merix* to “advertising and promotion services and related consulting”. However, even if I am wrong in that finding, the services overlap in purpose, nature, method of use, user and trade channels and will be highly similar.

Class 36

Rental of property; online property rental and real estate management; real estate property services, including over a global computer network or the Internet; renting of houses, apartments and flats.

23. I consider these terms to be identical on the principle outlined in *Merix* to “real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network” in the specification of the First Earlier Mark.

Financial evaluation of real estate; Real-estate valuations; valuation services; appraisal of property and real estate.

24. In my view, these terms are identical on the principle outlined in *Merix* to “real estate affairs” in the specification of the First Earlier Mark.

Mortgage advisory and administration services; mortgage and loan brokering and loan advice.

25. These services are identical on the principle outlined in *Merix* to “financial affairs” and “monetary affairs” in the specification of the First Earlier Mark.

Class 42

Creating and providing 3D computer models, architectural models and virtual tours of real estate; cloud computing services relating to the field of property rental and real estate.

26. These services overlap in trade channels with “software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list [...] real property and services for rent or sale and receive suggested improvements to their listing advertisements” in the specification of the First Earlier Mark, because businesses that specialise in software/computing services relating to tours/listings of real estate are likely to offer a whole range of services in that regard. The users will clearly overlap. The purpose of the services is also likely to overlap, although the nature and method of use may differ. I consider it likely that there will be a degree of competition. Consequently, I consider these services to be similar to at least a medium degree.

Artificial intelligence software development relating to property rental portals.

27. I consider these services to be identical on the principle outlined in *Meric* to “design and development of computer [...] software” in the specification of the First Earlier Mark. If I am wrong in this finding then they will overlap in trade channels, user and purpose and will be in competition. Consequently, they will be similar to at least a medium degree.

Software as a Service, Platform as a Service relating to property rental portal and real estate.

28. These services are identical on the principle outlined in *Meric* to “software as a service (SAAS) services” and “platform as a service (PAAS) services” in the specifications of the First Earlier Mark.

The goods/services for which the opponent has enhanced distinctiveness

29. For reasons that will become apparent later in my decision, I also consider it necessary to assess the similarity of the applicant's services with "a platform through which users can book and list temporary accommodation and experiences" (whether this be in the form of a good i.e. an app or a service i.e. hosted via a website). In my view, there is at least a low degree of similarity with all of the services in the application by virtue of there being shared trade channels and users, with all being linked (or potentially linked) to accommodation in some way. In some instances, the similarity will clearly be higher, such as for example, "platform as a service relating to property rental portal and real estate" and "rental of property".

The average consumer and the nature of the purchasing act

30. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

31. The average consumer for the goods and services will be either a member of the general public or a business user. The cost and frequency of purchase is likely to vary. However, I recognise that where a user is selecting the goods and services in relation to the rental/purchase of property they are likely to be paying a high degree of attention. I will carry out my assessment on that basis.

32. The purchasing process for the goods and services is likely to involve the perusal of signage on physical premises, websites and advertisements. Consequently, visual considerations will dominate the purchasing process. However, given that word-of-mouth recommendations may play a part, I do not discount an aural component to the purchase.

Comparison of trade marks

33. It is clear from *Sabel* that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade 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.”

34. 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.

35. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
AIRBNB	AIRBRICK

36. The parties marks consist of the words AIRBNB and AIRBRICK respectively. There are no other elements to contribute to the overall impression, which lies in the words themselves.

37. Visually, the marks overlap to the extent that they begin with the letters AIRB-. They differ in their endings – NB in the First Earlier Mark and -RICK in the applicant's mark. As noted in the opponent's submissions, I bear in mind that the beginnings of marks tend to make more of an impact than the ends.³ Consequently, I consider the marks to be visually similar to between a medium and high degree.

38. Aurally, the First Earlier Mark is likely to be pronounced AIR-BEE-NNN-BEE. The applicant's mark is likely to be pronounced AIR-BRIK. The first syllable is identical, and there is some similarity in the second syllable resulting from both beginning with the letter "B". However, as the applicant notes, there is a substantial difference between the way in which "BRICK" and "BNB" are likely to be pronounced. Consequently, I consider the marks to be aurally similar to between a low and medium degree.

39. Conceptually, the word AIR will be given its ordinary dictionary meaning, which will be the same for both marks. The term BNB in the First Earlier Mark is likely to be recognised as referring to a type of temporary accommodation, being bed and breakfast. The word BRICK in the applicant's mark will be given its ordinary dictionary meaning, which is clearly different. However, I bear in mind that the marks as wholes do not have a clear and graspable concept.

³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

42. The First Earlier Mark consists of the word AIRBNB. The letters “BNB” are likely to be seen as referring to a type of accommodation, being bed and breakfast.

However, the mark as a whole has no identifiable concept. In my view, it is inherently distinctive to a medium (or average) degree.

43. The opponent has pleaded that the distinctiveness of the First Earlier Mark has been enhanced through use. In this regard, I note the following from the opponent's evidence:

- a) The opponent operates a platform through which users can book and list temporary accommodation and experiences. The opponent generates income by commission from each booking made through the platform.
- b) Sample invoices for UK bookings have been provided.⁴
- c) Since the AIRBNB brand was founded over 7million listings have been posted worldwide, spanning over 100,000 cities in more than 220 countries and regions.
- d) By July 2016, AIRBNB had celebrated its 100millionth guest, and by April 2017, 1.2million people were staying at an AIRBNB listed property per night.
- e) In the UK alone, AIRBNB has received over 7million guest arrivals.
- f) Travel experiences have been available via the AIRBNB platform since November 2016 and during 2017 the booking of experiences increased by 2500%.
- g) Sample invoices for UK experience bookings have been provided.⁵
- h) The AIRBNB platform is operated in the UK via the website www.airbnb.co.uk and the app.

⁴ Confidential exhibit 17

⁵ Confidential exhibit 17

- i) By 2022, the value of the AIRBNB brand was estimated to be over \$13billion.⁶
- j) For the EMEA region, in 2020, the Gross Booking Value (“GBV”) was in excess of \$6million and in 2021 was in excess of \$14million.
- k) The opponent’s advertising expenditure has been broken down to the UK, France, the Netherlands and Germany (as a group) and, whilst the exact figures are confidential, I note that the figures are significant.
- l) The opponent has engaged in various marketing activities in the UK including sponsoring the Manor F1 Team, partnering with the Natural History Museum and British Airways, partnering the Birmingham 2022 Commonwealth Games (in May) and collaborating with Waterstones.⁷
- m) The opponent has been a Worldwide Olympic Partner since 2019.
- n) AIRBNB was listed as number 12 in the UK’s Top 20 “Cool Brands” for 2016/2017.⁸
- o) AIRBNB has won various awards including being listed in UK Marketing Week as having one of the best marketing campaigns of 2021.

44. I accept that there are issues with the opponent’s evidence; in particular, the lack of specificity with regard to the UK market (which is the relevant market for enhanced distinctiveness). However, I must take the evidence as a whole into account. In my view, it would be unrealistic to conclude that the opponent’s mark has not acquired enhanced distinctiveness through use. Given the extent of the marketing activities undertaken, the number of UK guests, and the GBV for the EMEA region (even if only a proportion of this relates to the UK market), I consider that the distinctiveness of the First Earlier Mark has been enhanced to a reasonably high degree through use in

⁶ Exhibit 16

⁷ Exhibit 20

⁸ Exhibit 26

relation to a platform through which users can book and list temporary accommodation and experiences (whether as an application or as a service provided via a website).

Likelihood of confusion

45. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is necessary to keep in mind the distinctive character of the First Earlier Mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade mark and must instead rely upon the imperfect picture of them that he has retained in his mind.

46. I have found as follows:

- a) The services vary from being identical to similar to a medium degree.
- b) The average consumer is a member of the general public or a business user and I will carry out my comparison on the basis of a high degree of attention being paid.
- c) The purchasing process will be predominantly visual, although I do not discount an aural component.
- d) The marks are visually similar to between a medium and high degree, aurally similar to between a low and medium degree.

- e) The word AIR will have the same meaning in both marks, although the BNB/BRICK elements are points of conceptual difference. However, when taken as a whole, neither mark has clear and graspable meaning.
- f) The earlier mark is inherently distinctive to a medium (or average) degree which has been enhanced through use to a reasonably high degree through use in relation to a platform through which users can book and list temporary accommodation and experiences (whether as an application or as a service provided via a website). I have found the services for which the opponent has established enhanced distinctiveness to be similar to the applicant's specification to at least a low degree.

47. I recognise that the ending of each mark differs. However, given the identity/similarity of the goods and services, I consider it likely that they will be mistakenly recalled or misremembered as each other, particularly given the enhanced distinctiveness of the opponent's mark. For those consumers who are familiar with the opponent's reputation, the average consumer is likely to see what he expects to see when confronted with a similar mark.⁹ In my view, there is a likelihood of direct confusion.

48. If the average consumer identifies the differences between the marks, I consider it likely that, given the enhanced distinctiveness of the opponent's mark, they will conclude that the common presence of the word AIR and a suffix beginning with the letter B indicates goods and services that originate from the same or economically linked undertakings. I consider there to be a likelihood of indirect confusion.

Section 5(3)

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

"5(3) A trade mark which -

⁹ *Kennedy Fried Chicken*, Case BL O/227/04

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

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

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

51. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors, Case 252/07, Intel, Case C-408/01, Adidas-Salomon, Case C-487/07, L’Oreal v Bellure and Case C-323/09, Marks and Spencer v Interflora and Case C383/12P, Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

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

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

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

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

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

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

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

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is

clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

52. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the First Earlier mark and the applicant's mark are similar. Secondly, the opponent must show that the First Earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the First Earlier mark being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage pleaded will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

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

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

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

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

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

54. In determining whether the opponent has demonstrated a reputation for the services relied upon, it is necessary for me to consider whether the First Earlier Mark will be known by a significant part of the public concerned with those goods/services. In reaching this decision, I must take all of the evidence into account including "the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it".

55. I have summarised the opponent's evidence of use above. For the same reasons, I am satisfied that the opponent has demonstrated a reasonably strong reputation in relation to a platform through which users can book and list temporary accommodation and experiences.

Link

56. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

The marks are visually similar to between a medium and high degree, aurally similar to between a low and medium degree.

The word AIR will have the same meaning in both marks, although the BNB/BRICK elements are points of conceptual difference. However, when taken as a whole, neither mark has clear and graspable meaning.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

All of the goods and services in the applicant's specification are related in some way to temporary accommodation and the opponent's reputation is for a platform through which users can book and list temporary accommodation and experiences. Consequently, I consider them to be similar to at least a low degree.

The relevant public is a member of the general public or a business user.

The strength of the earlier mark's reputation

The First Earlier mark has a reasonably strong reputation.

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

The First Earlier mark is inherently distinctive to a medium (or average) degree, which has been enhanced through use to a reasonably high degree in relation to a platform through which users can book and list temporary accommodation and experiences.

Whether there is a likelihood of confusion

I have found there to be a likelihood of direct and/or indirect confusion.

57. Taking all of the above factors into account, particularly the visual similarity of the marks (bearing in mind the predominantly visual purchasing process), the strength of the opponent's reputation and the similarity of the goods and services, I consider that the relevant public will make a link between the marks.

58. For the avoidance of doubt, I would still have found there to be a link even if I am wrong in my finding that there is a likelihood of confusion due to the weight of the other factors listed above.

Damage

59. I must now consider whether any of the types of damage pleaded will arise.

Unfair advantage

60. In its Notice of opposition, the opponent submits as follows:

“Unfair advantage is taken by the Applicant as a result of the use of a closely similar sign. Taking unfair advantage of a trade mark includes “free-riding” on the coattails of the earlier mark which has a reputation. In the present case, the trade marks are similar and the Opponent’s Mark has a huge reputation. Therefore the positive image of the Opponent’s Mark would be transferred to the services designated under the Applicant’s Mark. The Opponent submits that the Applicant’s Mark immediately calls the Opponent’s Mark to the mind of the average consumer. The significant reputation of the Opponent’s Mark means that consumers will recognise the Opponent’s Mark as denoting high quality goods and services in the UK. If registered, the Applicant’s Mark will unfairly benefit from the power of attraction that the Opponent’s Mark enjoys, and will unfairly exploit this reputation without the Applicant having made the associated investment, or paying any financial compensation to the Opponent.”

61. I bear in mind that unfair advantage has no effect on the consumers of the earlier marks’ goods and services. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to buy the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark.

62. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

“80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

63. To the extent that the relevant public believe that the services of the applicant originate from the opponent, there will clearly be unfair advantage. However, even if they do not consider that the services originate from the same undertaking, I consider that the applicant will still gain an unfair advantage. This is because the applicant will gain from being instantly more familiar to the relevant public and, given the similarity of the services, will benefit from the opponent's marketing efforts without incurring the costs itself. Consequently, I consider that damage is made out.

64. As the opponent has been successful in demonstrating unfair advantage, I do not consider it necessary to assess the other claimed heads of damage.

65. The opposition based upon section 5(3) succeeds.

CONCLUSION

66. The opposition succeeds in its entirety and the application is refused.

COSTS

67. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£1,950**, calculated as follows:

Preparing a Notice of opposition and considering the counterstatement	£350
Preparing evidence	£1,000
Written submissions	£400
Official fee	£200
Total	£1,950

68. I therefore order Real Cloud Ltd to pay Airbnb, Inc. the sum of **£1,950**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 6th day of September 2023

S WILSON

For the Registrar

ANNEX

The First Earlier Mark

Class 9

Computer application messaging software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to communicate with each other; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows messaging among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to plan, announce, invite others to attend and evaluate real world meetings and events; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to solicit each other to perform a wide range of personal and customised services, housekeeping, cooking and related services, personalised travel, itinerary and private tour and activity services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to manage, organise, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software management tools to permit users to arrange for temporary lodging check-in help; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to receive suggested improvements to their listing advertisements; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that permits listers of goods, real property and services for rent or sale to arrange for professional photographs of the listed goods, property and services;

computer application software; computer application software for mobile phones, portable media players, handheld computers and related mobile devices; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software to facilitate the sale of goods and services by others via a computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to make and receive payments for the rental, purchase and sale of goods and services; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to provide travel reviews and recommendations for local attractions; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows vehicle owners and users to list, arrange and reserve shared vehicles and rides; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list, arrange and reserve temporary parking of vehicles at residences and businesses; computer application software for mobile phones, portable media players, handheld computers

and related mobile devices, namely, software that allows users to list and book car sharing, ride sharing and temporary parking; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to access information and listing of peer-to-peer transportation; computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer hardware; computer peripherals; computer software; computer software for mobile devices; fire-extinguishing apparatus; downloadable connected software platform; software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and the booking of temporary accommodations in the fields of travel, lodging, dining, and entertainment; application programming interface (API) software.

Class 35

Providing online business directories; providing online business directories featuring temporary accommodations; providing online business directories featuring temporary lodging; providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organisations, service providers, and other resources using a global computer network; advertising and promotion services and related consulting; preparation of custom or non-custom advertising for businesses for dissemination via the web; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet websites; providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and

advertisement services; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others; online trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing consumer product and service information via the Internet; providing an online business information directory on the Internet; computerised database management; classified listings for rentals of a wide-variety of consumer and business goods; business management; business administration; office functions; business consulting and management services; business consulting and management services in the nature of arranging, organising, advising about and providing various services, including photography services and cleaning services; consulting services for owners of rental properties, namely assisting property owners to better advertise their property over the internet and to create their rental listings in order to maximise interest.

Class 36

Real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network; providing reviews and feedback about listers and renters of real estate, from virtual communities and from social networking sites; electronic commerce payment services, namely, processing payments for the purchase of goods and services via an electronic communications network; providing purchase protection services in the field of online trading of goods and services by others via a global computer network; insurance; financial affairs; monetary affairs; real estate affairs; consulting services, namely, rental property consulting services.

Class 38

Providing online interactive bulletin board for transmission of messages among computer users concerning listing, rental and leasing of real estate; electronic mail service; providing online electronic bulletin boards for transmission of messages

among computer users concerning rankings, ratings, reviews, referrals, and recommendations relating to business organisations and service providers; telecommunications services, namely, the electronic transmission of data and information; providing an online, interactive bulletin board for the transmission of messages among computer users concerning hobbies, collectibles, trading, and the sale of goods and services via a global communications network; providing online forums and discussion groups for transmission of messages among computer users; electronic mail subscription services; and electronic transmission of images; telecommunications.

Class 42

Providing an online interactive website featuring the listing and rental of temporary lodging; providing online computer database and online searchable databases featuring information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate; Providing an online interactive website obtaining users comments concerning business organisations, service providers, and other resources; providing a website featuring the ratings, reviews and recommendations for commercial purposes posted by users; providing a website featuring the ratings, reviews and recommendations of lodging, accommodations, travel, dining, and entertainment-related establishments for commercial purposes posted by users; providing online computer databases and online searchable databases featuring classified listings and want ads; Providing a social networking website; providing a social networking website for entertainment purposes; providing online and offline social networking and introduction services; computer services, namely, providing online computer databases and online searchable databases featuring consumer information on a wide variety of topics of general interest to the consuming public; providing online computer database and online searchable databases featuring rental and leasing advertisements for housing, apartments, condominiums, townhouses, real estate and commercial real estate; Computer services, namely, hosting online web facilities for others for organising and conducting online meetings, gatherings, and interactive discussions; computer services in the nature of customised web pages featuring user-defined information, personal profiles and information; computer services, namely, remote management of electronic messaging systems for others; computer services, namely, remote

management of electronic messaging systems for others that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of non-downloadable, web-based, and cloud-based software; providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; providing temporary use of web-based messaging software applications that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; providing temporary use of a web-based software application for identifying and defining the scope and components of projects; providing temporary use of a web-based software application for providing an online marketplace for buyers and sellers of goods and/or services on a global computer network; providing temporary use of a web-based software application for providing a two-way system for users of an online marketplace to evaluate and provide feedback regarding parties they have interacted with via the online marketplace; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and evaluate real world meetings and events; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform a wide range of personal and customised services, housekeeping, cooking and related services, personalised travel, itinerary and private tour and activity services; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles and for locking and unlocking lodgings homes and vehicles; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organise, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check-in help; providing

temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; providing temporary use of web-based computer application software for mobile phones, portable media players, handheld computers and related mobile devices, namely, software that allows users to list of goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; providing temporary use of web-based software application that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to make payments for the purchases of goods and services; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld

computers and related mobile devices to provide travel reviews and recommendations for local attractions; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; providing temporary use of web-based software application that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate; software as a service (SAAS) services; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to communicate with each other; software as a service (SAAS) services featuring messaging software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to send and receive messages among guests of lodging accommodations owned and hosted by others and among the hosts who list lodging accommodations for rent and sale; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to plan, announce, invite others to attend and evaluate real world meetings and events; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to solicit each other to perform a wide range of personal and customised services, housekeeping, cooking and related services, personalised travel, itinerary and private tour and activity services; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for the remote exchange of keys to lodgings, homes and vehicles

and for locking and unlocking lodgings homes and vehicles; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to manage, organise, calendar and share with others travel bookings, activity dates, photographs, opinions and preferences; software as a service (SAAS) services featuring software management tools that allows users of mobile phones, portable media players, handheld computers and related mobile devices to arrange for temporary lodging check-in help; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and receive suggested improvements to their listing advertisements; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list goods, real property and services for rent or sale and arrange for professional photographs of the listed goods, property and services; software as a service (SAAS) services featuring software that facilitates use of the internet by users of mobile phones, portable media players, handheld computers and related mobile devices; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to facilitate the sale of goods and services via computer network and to provide evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and rent temporary lodging, access information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate and rental and leasing advertisements for the foregoing; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide reviews and feedback about listers and renters of real estate, temporary lodging, transportation, sharing of vehicles and rides and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to make payments for the purchases of goods and services;

software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to search for travel, transportation, temporary accommodation, vehicle and ride sharing and temporary vehicle parking listings, travel information and related topics and for making reservations and bookings for transportation, temporary accommodations, vehicle and ride sharing and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to provide travel reviews and recommendations for local attractions; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve shared vehicles and rides; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list, arrange and reserve temporary parking of vehicles at residences and businesses; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to list and book car sharing, ride sharing and temporary parking; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to access information and listings of peer-to-peer transportation; software as a service (SAAS) services featuring software that allows users of mobile phones, portable media players, handheld computers and related mobile devices to engage in social networking featuring travel, transportation, temporary lodging, shared vehicles and rides, temporary parking and the rental and listing of real estate; scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; platform as a service (PAAS) services; providing an online non-downloadable, web-based and cloud-based software platform; providing an online non-downloadable, web-based, and cloud-based connected software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and bookings in the fields of travel, lodging, dining, and entertainment; application service provider featuring application programming interface (API) software.

Class 43

Arranging temporary housing accommodations; providing online reservation services for temporary lodging; travel agency services, namely, making reservations and bookings for lodging; providing temporary lodging information via the Internet; services for providing food and drink; temporary accommodation; providing travel information over global computer networks, namely, providing search services for lodging; providing information in the fields of lodging and dining; social and collaborative lodging and dining.

The Second Earlier Mark

Class 35

Providing online business directories featuring temporary lodging; providing an online interactive website obtaining users comments concerning business organizations, service providers, and other resources; providing information, namely, compilations, rankings, ratings, reviews, referrals and recommendations relating to business organizations, service providers, and other resources using a global computer network; advertising and promotion services and related consulting; preparation of custom or non-custom advertising for businesses for dissemination via the web; dissemination of advertising for others via a global communications network; online advertising services for others, namely, providing advertising space on internet web sites; providing a searchable online advertising guide featuring the goods and services of online vendors; providing a searchable online evaluation database for buyers and sellers; advertising and advertisement services; customer loyalty services and customer club services for commercial, promotional and advertising purposes; promoting the goods and services of others; on-line trading services to facilitate the sale of goods and services by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods and services, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and advertisement services; on-line trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith; advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing consumer product and service information via the

Internet; providing an online business information directory on the Internet; computerized database management; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads; classified listings for rentals of a wide-variety of consumer and business goods; computer services, namely, providing on-line computer databases and on-line searchable databases featuring consumer information on a wide variety of topics of general interest to the consuming public; business management; business administration; office functions; providing online computer database and online searchable databases featuring rental and leasing advertisements for housing, apartments, condominiums, townhouses, real estate and commercial real estate.

Class 36

Providing an online interactive website featuring the listing and rental of temporary lodging; providing online computer database and online searchable databases featuring information, listings and announcements about housing, apartments, condominiums, townhouses, real estate, commercial real estate; real estate listing, rental and leasing services for residential housing, apartments, rooms in homes, sublets, vacation homes, cabins and villas and office space in commercial properties on a global computer network; providing reviews and feedback about listers and renters of real estate, form virtual communities and from social networking sites; electronic commerce payment services, namely, processing payments for the purchase of goods and services via an electronic communications network; providing purchase protection services in the field of on-line trading of goods and services by others via a global computer network; Insurance; financial affairs; monetary affairs; real estate affairs.

Class 38

Providing online interactive bulletin board for transmission of messages among computer users concerning listing, rental and leasing of real estate; electronic mail service; providing online electronic bulletin boards for transmission of messages among computer users concerning rankings, ratings, reviews, referrals, and recommendations relating to business organizations and service providers; telecommunications services, namely, the electronic transmission of data and information; providing an online, interactive bulletin board for the transmission of

messages among computer users concerning hobbies, collectibles, trading, and the sale of goods and services via a global communications network; providing on-line forums and discussion groups for transmission of messages among computer users; electronic mail subscription services; and electronic transmission of images; telecommunications.

Class 42

Computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

Class 43

Arranging temporary housing accommodations; providing online reservation services for temporary lodging; travel agency services, namely, making reservations and bookings for lodging; providing temporary lodging information via the Internet; services for providing food and drink; temporary accommodation; providing travel information over global computer networks, namely, providing search services for lodging.