

O/0973/23

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3748966

BY BENJAMIN ACOLATSE

TO REGISTER THE TRADE MARK:

PROFESSOR PAWS

IN CLASSES 3, 9, 14, 16, 25, 32, 33, 38 AND 41

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 433629

BY PAUL TITLEY

BACKGROUND AND PLEADINGS

1. On 28 January 2022, Benjamin Acolatse (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 18 February 2022. Registration is sought for goods and services in Classes 3, 9, 14, 16, 25, 32, 33, 38 and 41 (see annex for the full list of goods and services).

2. On 18 May 2022, Paul Titley (“the opponent”) filed a notice of opposition. The opposition was brought under sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 (“the Act”) and was directed at some of the goods and services in the application (as underlined in the Annex to this decision).

3. On 12 May 2023, the applicant filed a TM21B requesting a limitation to the Class 9 goods claimed in the application. On 28 June 2023, having reviewed the limitation the opponent confirmed its intention to continue with the opposition.

4. The opponent relies upon UKTM no. 3318582 for the trade marks ‘PROFESSOR PAWS’ and ‘Professor Paws’ (series of two), which were applied for on 18 June 2018 and entered in the register on 7 September 2018. For the purpose of these proceedings the opponent relies upon some of the goods for which the mark is registered.¹

5. The opponent claims that the marks are identical and that the goods and services covered by the marks are either identical or similar, resulting in a likelihood of confusion, including a likelihood of association between the marks.

6. The applicant filed a defence and counterstatement admitting identity between the marks but denying that all the goods and services are identical or similar.

7. The applicant is represented by Beck Greener LLP and the opponent is represented by Appleyard Lees IP LLP.

¹ See goods and services comparison.

8. Neither party filed evidence. Neither party requested a hearing, and only the applicant filed submissions in lieu of a hearing. This decision is taken following a careful review of the papers.

RELEVANCE OF EU LAW

9. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon 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.

DECISION

Section 5(1) and 5(2)(a)

10. Section 5(1) of the Act states that:

“A trade mark shall not be registered if because if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier mark is protected.”

11. Section 5(2)(a) states that:

“A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, [...]

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

12. 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.”

13. Given the respective filing dates, the opponent’s registration is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

14. 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 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; and

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.

Identity of the marks

15. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union (“CJEU”) held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

16. The marks to be compared are as follows:

Opponent’s marks (Series of two)	Applicant’s mark
PROFESSOR PAWS Professor Paws	PROFESSOR PAWS

17. It is self-evident that the marks are identical, as acknowledged by the applicant in its defence.

Comparison of goods and services

18. For the purposes of my assessment under section 5(1), the matter will only proceed if I find identity between the parties’ goods and services. For any goods and services that are not identical, the opposition based on section 5(1) must fail but may, however, proceed under section 5(2)(a).

19. 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.”

20. When making the comparison, all relevant factors relating to the goods and 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.”

21. 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.

22. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) 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 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.”

23. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

“... 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."

24. The competing goods and services are as follows:

Applicant's goods and services:

Class 9 Apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting, retrieving and reproducing music, reproductions of sound and/or video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); sound storage media, image storage media and data storage media, all being pre-recorded; downloadable music MP3; computer apparatus; computer software; computer programs; multimedia software namely CD-ROMs, DVD-ROMs bearing recorded music and music videos; digital media; for recorded music and music videos computer software for access to databases relating to music, entertainers, performers, entertainment products, entertainment services and music-related products; computer software for securing digital content; computer programs for managing communications and data exchange relating to music, audio and visual data; multimedia software for downloading music, audio and visual data; computer software for online trading; CD recorders and players; DVD recorder and players; CDs and DVDs bearing recorded music and music videos; audio music tapes (all being sold together with booklets); pre-recorded vinyl music records; sound and/or video recording on corresponding recording carriers; gramophone records; sound and/or video cassettes; cassettes for the storage of, or containing, tapes for or bearing musical sound or video recordings; magnetic tapes, discs, and magnetic wires, all for musical sound or video recording; encoded membership cards; electronic handheld devices for the wireless receipt and/or transmission of data; digital audio and video devices; head cleaning tapes; audio cassette recorders and players, video cassette recorders and players, compact discs players, digital versatile discs recorders and players, digital audio tape recorders and players; photographic and cinematographic apparatus and instruments; television and radio apparatus; microphones; coin-operated juke boxes; coin or counter-feed sound or video reproduction apparatus; unexposed photographic transparencies; parts and

fittings for all the aforesaid goods; Pre-recorded CDs featuring music; pre-recorded and downloadable videos featuring musical performances and musical recordings; downloadable ring tones, graphics, music, images and videos via a global computer network and wireless devices; video and/or musical sound recordings; films; video games.

Class 16 Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; artists' materials; printers type and printers blocks; instructional and teaching materials; wrapping and packaging materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web, Stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.

Class 41 Entertainment; sporting and cultural activities; production of television and radio programs; providing online entertainment; entertainment services; record production, video production, radio entertainment production and distribution; publication of books and magazines in relation to music and entertainment; entertainment in the nature of live concerts and performances; musical and audiovisual entertainment services; production, distribution and publishing of music and audiovisual material; fan clubs; entertainment in the nature of live concerts and performances by artists and groups; providing digital music and audiovisual material (not downloadable) from the Internet; entertainment services, namely personal appearances by groups, artists and celebrities; entertainment services in the nature of music and audiovisual material rendered by groups and artists through the medium of television, radio, cable, satellite and Internet programmes, shows, films, videos and DVDs; entertainment services rendered by groups and artists including recording performances; entertainment services, namely, providing a web site featuring performances, videos, related film clips, photographs, and other multimedia materials; entertainment services namely live, televised and movie appearances by a professional entertainers; conducting entertainment exhibitions in the nature of live music and entertainment events; sporting and cultural activities; production of television and radio programs; distribution of television and radio programs for others;

production and publishing of music; providing online entertainment, namely providing sound and video recordings in the field of music and music based entertainment; entertainment services, namely providing online non-downloadable pre-recorded musical sound and video recordings via a global computer network; fan clubs; development and dissemination of educational materials of others in the field of music and entertainment; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; production of motion picture films; distribution of motion picture films; television program syndication; entertainment in the nature of ongoing television programs in the field of music and entertainment; entertainment, namely a continuing music and entertainment show distributed over television, satellite, audio, and video media; publication of books and magazines in relation to music and entertainment; entertainment in the nature of ongoing radio programs; entertainment in the nature of live concerts and performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by musical artists; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped for later broadcast; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing on-line reviews of music, musical artists and music videos; entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services namely live, televised and movie appearances by a professional entertainer; conducting entertainment exhibitions in the nature of music festivals; entertainment services, namely, conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; and publishing of web magazines in relation to music and entertainment; distribution of music; distribution of musical sound recordings and video recordings; preparing audio-visual displays in the field of music, Entertainment services; entertainment services in the nature of live musical performances; providing a website featuring musical performances and videos of the same, related video clips and other related musical multi-media materials, information on a musical performer; television programmes featuring variety

entertainment and/or musical performances broadcast and/or screened over the Internet, television, cable and/or satellite; musical entertainment services; sound recording and video entertainment services; concerts, musical and video performances; presentation, production and performance of shows, musical shows, concerts, videos and radio and television programmes.

Opponent's goods:

Class 16 Paper and cardboard; printed matter; books; photographs; pictures; posters; stickers; magazines; stationery and office requisites; calendars; Instructional and teaching materials.

25. With regard to the similarity of the goods and services, in its written submissions the opponent submits:

“It is noted that the preliminary indication found a likelihood of confusion for a number of goods, namely:

Class 16: “Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; instructional and teaching materials; wrapping and packaging materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web, Stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.”

Class 41: “publication of books and magazines in relation to music and entertainment” (and as repeated later in the specification).

It is submitted that the preliminary indication is correct in that respect.

For the remaining goods and services it is submitted that there is also a likelihood of confusion.

A number of class 9 goods are closely related to and effectively equivalent to class 16 goods and are simply presented in an alternative medium. For example, “reproductions of sound and/or video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites)” encompasses for example digital books, magazines and other publications as do “sound and/or video recording on corresponding recording carriers” and “video and/or sound recordings; films; video games” and they are thus similar to the corresponding books, magazines and other publications in class 16.

Similarly, a number of further class 41 services are closely related to and effectively equivalent to class 16 goods. For example, “providing digital music and audiovisual material (not downloadable) from the Internet” encompasses for example non downloadable digital books, magazines and they are thus similar to the corresponding books, magazines and other publications in class

Similarly, services such as “production, distribution and publishing of music and audiovisual material” and “providing online entertainment, namely providing sound and video recordings in the field of music and music based entertainment” are closely related. Also closely related are services such as: “entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing on-line reviews of music, musical artists and music videos; entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network” and “publishing of web magazines in relation to music and entertainment”.

Also, for example “artists’ materials” in class 16 are closely related to “stationery and office requisites” and to “paper and cardboard”.

26. With regard to the similarity of the goods and services, the applicant submits:²

² Written submissions in Lieu of a hearing.

“The Tribunal issued a preliminary indication on 27 October 2022 stating that the Opposition should succeed only in respect of the following goods and services:

Class 16 Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; instructional and teaching materials; wrapping and packaging materials; stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.

Class 41 Publication of books and magazines in relation to music and entertainment.

The Applicant agrees that this is the maximum extent to which the Opposition could succeed.

The Opponent disagrees with the preliminary view. It brings no evidence to support its case but merely asserts that in addition, the following terms of the Application are sufficiently similar to give rise to a likelihood of confusion:

"reproductions of sound and/or video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites)"

The Opponent claims that this term would encompass digital books and magazines. This is not understood. The term in question is limited to electronic and digital reproductions of sound and video. These are neither identical or similar to the printed books and magazines listed in the Opponent's registration.

Similar considerations arise in the Opponent's claims in respect of:

"sound and/or video recording on corresponding recording carriers"

"video and/or sound recordings; films;"

"video games"

The Opponent goes on to claim that providing "digital music" is also similar to printed books and magazines. Again this is not understood. Digital music means non-downloadable music. This has a different nature, purpose and trade channels.

Similar comments apply to providing "audio visual material (not downloadable) from the Internet". Books and magazines are not properly described as audio-visual materials. What is meant by this term is, of course, video recordings and films. Those again are dissimilar to the printed books and magazines asserted by the Opponent.

Such comments apply equally to the Opponent's claims in respect of "production, distribution and publishing of music" and "production, distribution and publishing of music audio visual material". Music publishing is a specialized business and has nothing to do with books or magazines. Again such activities have a different nature and purpose and not provided by the same businesses or divisions. The same applies to the publishing of videos and films, that is, "audio-visual" content.

The Opponent also claims, though without any argument or support, that the following class 41 services are similar to printed books and magazines:

"entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; "

"entertainment services, namely, providing on-line reviews of music, musical artists and music videos;"

"entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network"

Again, this is not understood. These services plainly have nothing to do with the sale of books, magazines or the other materials listed in the Opponent's registration.

As to "publishing of web magazines in relation to music and entertainment, publishing is a specialist activity, offered to third party professionals whereas the class 16 goods asserted by the Opponent are ordinary consumer goods. Again they are dissimilar.

Lastly, the Opponent claims that "artist materials" in class 16 of the Application are similar to the "stationery" listed in his Registration. Again this is wrong. The usual meaning of stationery is requisites for use in writing and the organization of printed documentation, not artistic projects or activities. As to paper and cardboard while this may be used by artists they are not "materials" in the normal meaning of the term artists materials. The goods again are different.

In view of the foregoing, the maximum extent to which the opposition could succeed is in respect as set out in the preliminary indication. The Opposition should be disposed of accordingly."

Class 9 of the contested application

Media for recording, reproducing, carrying, storing, and transmitting reproductions of sound in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); sound recording on corresponding recording carriers; sound storage media, all being pre-recorded

27. In its submissions, as previously noted, the opponent submits that several of the applicant's Class 9 goods are closely related to *publications* and *books* contained in Class 16 of the earlier right. On balance, I agree with the opponent's viewpoint in terms of the above listed goods. These are goods with a specific purpose that could feasibly include *audio books*, being recordings on cassettes or CDs of a reading of a book,

such as a novel. Consequently, the goods share a similar purpose, and the users may overlap. Further, these goods may be in competition. Whilst the nature and method of use of the goods clearly differ, there may be an overlap in trade channels. Consequently, I consider the goods and services to be similar to a low degree.

Apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting, retrieving and reproducing music, reproductions of video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); image storage media and data storage media, all being pre-recorded; downloadable music MP3; computer apparatus; computer software; computer programs; multimedia software namely CD-ROMs, DVD-ROMs bearing recorded music and music videos; digital media; for recorded music and music videos computer software for access to databases relating to music, entertainers, performers, entertainment products, entertainment services and music-related products; computer software for securing digital content; computer programs for managing communications and data exchange relating to music, audio and visual data; multimedia software for downloading music, audio and visual data; computer software for online trading; CD recorders and players; DVD recorder and players; CDs and DVDs bearing recorded music and music videos; audio music tapes (all being sold together with booklets); pre-recorded vinyl music records; video recording on corresponding recording carriers; gramophone records; sound and/or video cassettes; cassettes for the storage of, or containing, tapes for or bearing musical sound or video recordings; magnetic tapes, discs, and magnetic wires, all for musical sound or video recording; encoded membership cards; electronic handheld devices for the wireless receipt and/or transmission of data; digital audio and video devices; head cleaning tapes; audio cassette recorders and players, video cassette recorders and players, compact discs players, digital versatile discs recorders and players, digital audio tape recorders and players; photographic and cinematographic apparatus and instruments; television and radio apparatus; microphones; coin-operated juke boxes; coin or counter-feed sound or video reproduction apparatus; unexposed photographic transparencies; parts and fittings for all the aforesaid goods; Pre-recorded CDs featuring music; pre-recorded and downloadable videos featuring musical performances and musical recordings; downloadable ring tones, graphics, music,

images and videos via a global computer network and wireless devices; video and/or musical sound recordings; films; video games

28. The goods for which the opponent's mark is registered purely relate to *paper and cardboard; printed matter; books; photographs; pictures; posters; stickers; magazines; stationery and office requisites; calendars; Instructional and teaching materials* in Class 16. I find that the respective nature, methods of use and intended purpose of the above contested goods and the opponent's goods are different. Furthermore, it is not obvious to me that there would be any convergence of trade channels, nor do I have any evidence to suggest such an overlap. The goods at issue are not in competition with each other, nor are they complementary. Overall, I find that the above contested goods are dissimilar to all the opponent's goods.

Class 16 of the contested application

29. Whilst it is noted that some of the terms in the applicant's Class 16 specification are followed by "*including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and world wide web*", this will have no impact upon my analysis as the opponent's specification is not limited.

Books, magazines, stationery; instructional and teaching materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web; stationery, printed matter, books, magazines, stickers, photographs, posters

30. With the exception of *parts and fittings for all the aforesaid goods*, the above contested goods all have direct equivalents in the opponent's specification and are therefore identical due to their identical or near-identical wording. With regards to the applicant's *parts and fittings for all the aforesaid goods*, I will proceed on the basis that these goods are at least similar to the opponent's *books, magazines, stationery; instructional and teaching materials*, given their obvious overlap in trade channels, user, methods of use, purpose and that they are complementary to each other.

Publications; fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web; prints, albums, cards

31. With the exception of *parts and fittings for all the aforesaid goods*, the above contested goods are included in the broad term *printed matter* contained in the opponent's goods and therefore are considered identical in line with the principle set out in *Meric*. With regards to the applicant's *parts and fittings for all the aforesaid goods*, I will proceed on the basis that these goods are at least similar to the opponent's *printed matter*, given their obvious overlap in trade channels, user, methods of use, purpose and that they are complementary to each other.

Artists' materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web

32. Broadly speaking, the above relate to materials used in, for example, arts and crafts, drawing, etching, painting or writing, etc. The opponent's goods contain the term *stationery*, which as a broad term includes, amongst other things, paper, pens and pencils. Therefore, with the exception of *parts and fittings for all the aforesaid goods*, I find that there is a clear overlap between the respective goods, and as such find them to be identical in line with the principle set out in *Meric*. However, if I am wrong, then the opponent's *stationery* is similar to a high degree to the above contested goods on the basis that the contested goods share a similar nature, purpose, channels of trade and users. With regards to the applicant's *parts and fittings for all the aforesaid goods*, I will proceed on the basis that these goods are at least similar to the opponent's *stationery*, given their obvious overlap in trade channels, user, methods of use, purpose and that they are complementary to each other.

Wrapping and packaging materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web

33. With the exception of *parts and fittings for all the aforesaid goods*, the above contested goods include as a broad term the opponent's *paper and cardboard* and therefore these goods are considered identical in line with the principle set out in *Meric*. With regards to the applicant's *parts and fittings for all the aforesaid goods*, I will proceed on the basis that these goods are at least similar to the opponent's *paper and cardboard*, given their obvious overlap in trade channels, user, methods of use, purpose and that they are complementary to each other.

Printers type and printers blocks; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web

34. In general, the above contested goods are very specific in nature, and are likely to be targeted towards a particular consumer, for example, those within the printing industry. As such, I consider that these goods and all the opponent's goods differ in nature, method of use and intended purpose. Overall, I find the goods at issue to be dissimilar.

Class 41 of the contested application

Publication of books and magazines in relation to music and entertainment; and publishing of web magazines in relation to music and entertainment

35. The above contested services involve the publication of books and magazines. Whilst I note that these services are not included in the opponent's specification, *books* and *magazines* in Class 16 are included. Although the nature, purpose and method of use of the contested services is different to the opponent's *books* and *magazines*, I find that there is likely to be an overlap in trade channels and user. Furthermore, there is complementarity between the goods and services. Overall, I find that the goods and services at issue to be similar to at least a low degree.

Development and dissemination of educational materials of others in the field of music and entertainment

36. These services are likely to overlap in trade channels and user with *instructional and teaching material* contained in the opponent's specification. Furthermore, I find that there is complementarity between the goods and services. Therefore, although the nature, purpose and method of use of the contested services is different to the opponent's goods, I find that the goods and services are similar to at least a low degree.

Entertainment; sporting and cultural activities; production of television and radio programs; providing online entertainment; entertainment services; record production, video production, radio entertainment production and distribution; entertainment in the nature of live concerts and performances; musical and audiovisual entertainment services; production, distribution and publishing of music and audiovisual material; fan clubs; entertainment in the nature of live concerts and performances by artists and groups; providing digital music and audiovisual material (not downloadable) from the Internet; entertainment services, namely personal appearances by groups, artists and celebrities; entertainment services in the nature of music and audiovisual material rendered by groups and artists through the medium of television, radio, cable, satellite and Internet programmes, shows, films, videos and DVDs; entertainment services rendered by groups and artists including recording performances; entertainment services, namely, providing a web site featuring performances, videos, related film clips, photographs, and other multimedia materials; entertainment services namely live, televised and movie appearances by a professional entertainers; conducting entertainment exhibitions in the nature of live music and entertainment events; sporting and cultural activities; production of television and radio programs; distribution of television and radio programs for others; production and publishing of music; providing online entertainment, namely providing sound and video recordings in the field of music and music based entertainment; entertainment services, namely providing online non-downloadable pre-recorded musical sound and video recordings via a global computer network; fan clubs; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; production of motion picture films; distribution of motion picture films;

television program syndication; entertainment in the nature of ongoing television programs in the field of music and entertainment; entertainment, namely a continuing music and entertainment show distributed over television, satellite, audio, and video media; entertainment in the nature of ongoing radio programs; entertainment in the nature of live concerts and performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by musical artists; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped for later broadcast; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing on-line reviews of music, musical artists and music videos; entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services namely live, televised and movie appearances by a professional entertainer; conducting entertainment exhibitions in the nature of music festivals; entertainment services, namely, conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; distribution of music; distribution of musical sound recordings and video recordings; preparing audio-visual displays in the field of music, Entertainment services; entertainment services in the nature of live musical performances; providing a website featuring musical performances and videos of the same, related video clips and other related musical multi-media materials, information on a musical performer; television programmes featuring variety entertainment and/or musical performances broadcast and/or screened over the Internet, television, cable and/or satellite; musical entertainment services; sound recording and video entertainment services; concerts, musical and video performances; presentation, production and performance of shows, musical shows, concerts, videos and radio and television programmes

37. I do not find any obvious similarity between the applicant's remaining Class 41 services and any of the opponent's Class 16 goods. The respective nature, methods of use and intended purpose of the goods and services at issue are different. The

goods and services are not in competition with each other, nor are they complementary. Moreover, they do not coincide in producers or distribution channels.

Summary

38. As section 5(1) of the Act requires that the goods and services at issue be identical, the opposition under this ground will therefore fail in respect of those goods and services that I have found to be only similar (and not identical).

39. The opposition under section 5(1) succeeds in respect of the following goods only:

Class 16 Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; artists' materials; instructional and teaching materials; wrapping and packaging materials; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web, stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.

40. As the section 5(1) ground of opposition is only partially successful, I will now turn to consider the global assessment in relation to the section 5(2)(a) ground of opposition which only requires the goods and services to be similar. For those goods and services that I have found to be dissimilar, there can be no likelihood of confusion under section 5(2)(a) and the opposition must fail under section 5(1).

The average consumer and the nature of the purchasing act

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

42. 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.”

43. The average consumer of the goods and services at issue is likely to include members of the general public as well as business and professional users. The average consumer is likely to take into consideration various factors when selecting the goods and services at issue, but I would not expect the degree of attention to be at the highest end of the scale. Overall, I find that a medium degree of attention is likely to be paid during the purchase of the goods and services. However, I acknowledge that professional users may pay a slightly higher degree of attention. The goods and services are all likely to be sought out primarily by eye, including via websites, for example, and so I would expect the purchase to be mainly visual. However, I bear in mind that the goods and services may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

Distinctive character of the earlier mark

44. In *Lloyd Schuhfabrik Meyer*, 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 Alternberger* [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).”

45. Registered trade marks possess varying degree of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, 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.

46. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to its mark. Consequently, I have only the inherent position to consider.

47. The opponent’s registration consists of two recognisable dictionary words, namely ‘PROFESSOR PAWS / Professor Paws’. The word *professor* will be perceived as reference to *a university academic*; the word *paws* will be perceived as reference to *the feet of an animal such as a cat or dog*, etc. However, when combined, the words appear fanciful suggesting, for example, an animal with human characteristics. I am of the view that the words *Professor Paws* are not directly descriptive, nor are they clearly allusive in terms of the goods at issue. Accordingly, I consider the earlier marks to be inherently distinctive to a medium degree.

Likelihood of confusion

48. 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 goods 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 goods may be offset by a greater degree of similarity between the marks and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

49. I have found the marks to be identical. I have found the opponent's registration to be inherently distinctive to a medium degree. I have found that the average consumer of the goods and services will include members of the general public, as well as business or professional users, who will purchase the goods and services predominantly by visual means, although I do not discount an aural component. I have concluded that a medium degree of attention will be paid during the purchasing process for the majority of the goods and services, although I recognise that it may be slightly higher for professional users. I have found the goods and services to vary from being identical to dissimilar.

50. Given that the marks are identical, there is nothing to assist the average consumer in distinguishing between them. Consequently, I consider that there is a likelihood of direct confusion where the marks are used on goods and services that are similar to a low degree or higher. For those goods and services that I have found to be dissimilar, there can be no likelihood of confusion.

CONCLUSION

51. For the goods I found to be identical, the opposition succeeds under section 5(1); for those goods and services with which I found similarity, the opposition succeeds under section 5(2)(a).

52. Accordingly, the opposition partially succeeds in relation to the following goods and services:

Class 9 Media for recording, reproducing, carrying, storing, and transmitting reproductions of sound in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); sound recording on corresponding recording carriers; sound storage media, all being pre-recorded.

Class 16 Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; artists' materials; instructional and teaching materials; wrapping and packaging materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web; stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.

Class 41 Publication of books and magazines in relation to music and entertainment; development and dissemination of educational materials of others in the field of music and entertainment; and publishing of web magazines in relation to music and entertainment.

53. The application can proceed to registration for the following goods and services in relation to which the opposition was unsuccessful or against which the opposition was not directed:

Class 3 Perfumes and related personal care products; fragrances, perfumes; eau de toilettes; body lotions, creams, oils, gels and splashes; shower creams, lotions

and gels; scented soaps; fragrance sachets; sachet-like eye pillows containing fragrances; cosmetics and make-up; lipsticks, lip balms and lip glosses; face powder and body powder.

Class 9 Apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting, retrieving and reproducing music, reproductions of video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); image storage media and data storage media, all being pre-recorded; downloadable music MP3; computer apparatus; computer software; computer programs; multimedia software namely CD-ROMs, DVD-ROMs bearing recorded music and music videos; digital media; for recorded music and music videos computer software for access to databases relating to music, entertainers, performers, entertainment products, entertainment services and music-related products; computer software for securing digital content; computer programs for managing communications and data exchange relating to music, audio and visual data; multimedia software for downloading music, audio and visual data; computer software for online trading; CD recorders and players; DVD recorder and players; CDs and DVDs bearing recorded music and music videos; audio music tapes (all being sold together with booklets); pre-recorded vinyl music records; video recording on corresponding recording carriers; gramophone records; sound and/or video cassettes; cassettes for the storage of, or containing, tapes for or bearing musical sound or video recordings; magnetic tapes, discs, and magnetic wires, all for musical sound or video recording; encoded membership cards; electronic handheld devices for the wireless receipt and/or transmission of data; digital audio and video devices; head cleaning tapes; audio cassette recorders and players, video cassette recorders and players, compact discs players, digital versatile discs recorders and players, digital audio tape recorders and players; photographic and cinematographic apparatus and instruments; television and radio apparatus; microphones; coin-operated juke boxes; coin or counter-feed sound or video reproduction apparatus; unexposed photographic transparencies; parts and fittings for all the aforesaid goods; Pre-recorded CDs featuring music; pre-recorded and downloadable videos featuring musical performances and musical recordings; downloadable ring tones, graphics, music,

images and videos via a global computer network and wireless devices; video and/or musical sound recordings; films; video games.

Class 14 Jewellery; precious stones; horological and chronometric instruments; costume jewellery; necklaces, bracelets, earrings, rings, pendants, charms; jewellery chains; keychains as jewellery [trinkets or fobs]; presentation boxes for jewellery; jewellery boxes.

Class 16 Printers type and printers blocks; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web.

Class 25 Clothing; headwear; bathing suits; bandannas; belts; footwear; vests; gloves; hoodies; hats; caps; jackets; pyjamas; scarves; shorts; shirts; visors; ear muffs; sweat shirts; sweat pants; sweat jackets; sweaters; T-shirts; tank tops; socks; tops; underwear; wrist bands; children's clothing; overalls; ties; bustiers; robes; skirts; gowns; Halloween costumes; jumpers.

Class 32 Beverages (Non-alcoholic -).

Class 33 Alcoholic beverages [except beers].

Class 38 Video, audio and television streaming services; Telecommunications services; chat room services; portal services; e-mail services; providing user access to the Internet; radio and television broadcasting; broadcasting services; Providing access to digital music web sites on the Internet; providing access to MP3 websites on the Internet; delivery of digital music by telecommunications; transmission of music, sounds, images, text and information, all relating to music, entertainers, performers, entertainment product, entertainment services and musicrelated products by telecommunication networks, by online delivery and by way of the internet and the world wide web; consultancy, advisory and information services relating to the aforesaid services; Sound, television and radio broadcasting of music, entertainment, concerts and videos via the Internet; radio and television broadcasting services; communication services; telecommunication services; delivery of digital music by

telecommunications; providing access to digital music websites on the Internet; providing access to MP3 websites on the Internet; providing access to sound, video and data recordings and to electronic publications on the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communication networks; electronic bulletin board services; providing computer bulletin boards in the fields of music, entertainment, video and television; providing on-line bulletin boards for the transmission of messages among computer users concerning music, entertainment, concerts, videos, radio and television programs; communication services, namely matching users for the transfer of music, video and audio recordings via communication networks; provision of telecommunication connections to electronic communication networks for transmission or reception of audio, video or multimedia content; video broadcasting; broadcasting pre-recorded videos featuring music, concerts and entertainment; radio, film and television broadcasting services; cable television broadcasting services; satellite transmissions; broadcasting of television programmes, theatre shows, theatrical performances, sound and video recordings, DVDs and CD ROMs; broadcasting of sound, film, theatre, audio, data and video recordings on compact discs, records, tapes, video tapes, laser discs, DVDs, CDs and CD ROMs; broadcasting of cinematographic films, motion pictures, radio programmes, television programmes, theatre shows and theatrical performances; streaming of video content via a global computer network; audio broadcasting; subscription audio broadcasting via a global computer network; advisory and consultancy services relating to all the aforesaid; provision of access to multi-media information and interactive multimedia services; providing access to mobile telephone ring tones via a wireless network; providing access to digital music of all styles, types and genres and spoken audio material of all styles, types and genres via websites on the internet or any other communications network; delivery of digital music of all styles, types and genres and spoken audio material of all styles, types and genres by communications; transmission of information relating to music, podcasts and rss feeds; digital audio broadcasts; networking of sound and/or visual recordings; providing online blogs, discussion groups, chat rooms and electronic bulletin boards; providing access to an internet discussion website; transmission of radio and television programmes; information, advisory and consultancy services in relation to the aforesaid services.

Class 41 Entertainment; sporting and cultural activities; production of television and radio programs; providing online entertainment; entertainment services; record production, video production, radio entertainment production and distribution; entertainment in the nature of live concerts and performances; musical and audiovisual entertainment services; production, distribution and publishing of music and audiovisual material; fan clubs; entertainment in the nature of live concerts and performances by artists and groups; providing digital music and audiovisual material (not downloadable) from the Internet; entertainment services, namely personal appearances by groups, artists and celebrities; entertainment services in the nature of music and audiovisual material rendered by groups and artists through the medium of television, radio, cable, satellite and Internet programmes, shows, films, videos and DVDs; entertainment services rendered by groups and artists including recording performances; entertainment services, namely, providing a web site featuring performances, videos, related film clips, photographs, and other multimedia materials; entertainment services namely live, televised and movie appearances by a professional entertainers; conducting entertainment exhibitions in the nature of live music and entertainment events; sporting and cultural activities; production of television and radio programs; distribution of television and radio programs for others; production and publishing of music; providing online entertainment, namely providing sound and video recordings in the field of music and music based entertainment; entertainment services, namely providing online non-downloadable pre-recorded musical sound and video recordings via a global computer network; fan clubs; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; production of motion picture films; distribution of motion picture films; television program syndication; entertainment in the nature of ongoing television programs in the field of music and entertainment; entertainment, namely a continuing music and entertainment show distributed over television, satellite, audio, and video media; entertainment in the nature of ongoing radio programs; entertainment in the nature of live concerts and performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by musical artists; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped

for later broadcast; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing on-line reviews of music, musical artists and music videos; entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services namely live, televised and movie appearances by a professional entertainer; conducting entertainment exhibitions in the nature of music festivals; entertainment services, namely, conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; distribution of music; distribution of musical sound recordings and video recordings; preparing audio-visual displays in the field of music, Entertainment services; entertainment services in the nature of live musical performances; providing a website featuring musical performances and videos of the same, related video clips and other related musical multi-media materials, information on a musical performer; television programmes featuring variety entertainment and/or musical performances broadcast and/or screened over the Internet, television, cable and/or satellite; musical entertainment services; sound recording and video entertainment services; concerts, musical and video performances; presentation, production and performance of shows, musical shows, concerts, videos and radio and television programmes.

Costs

54. The applicant has enjoyed the greater degree of success and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. However, I have made what I consider to be an appropriate reduction on the basis that this is only a partial success. In the circumstances, I award the applicant the sum of £550, calculated as follows:

Considering the Notice of opposition and filing a counterstatement	£250
Written submissions in lieu of a hearing	£300

Total

£550

55. I therefore order Paul Titley to pay Benjamin Acolatse the sum of £550. This should be paid within twenty-one days of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the appeal proceedings.

Dated this 12th day of October 2023

Sam Congreve

For the Registrar

Annex

Application No. 3748966 – List of goods and services following limitation in Class 9.³
The contested goods and services are underlined.

Class 3 Perfumes and related personal care products; fragrances, perfumes; eau de toilettes; body lotions, creams, oils, gels and splashes; shower creams, lotions and gels; scented soaps; fragrance sachets; sachet-like eye pillows containing fragrances; cosmetics and make-up; lipsticks, lip balms and lip glosses; face powder and body powder.

Class 9 Apparatus, instruments and media for recording, reproducing, carrying, storing, processing, manipulating, transmitting, broadcasting, retrieving and reproducing music, reproductions of sound and/or video in electronic and digital form, all supplied by means of multimedia, remote computers or on-line from databases or from facilities provided on the internet (including websites); sound storage media, image storage media and data storage media, all being pre-recorded; downloadable music MP3; computer apparatus; computer software; computer programs; multimedia software namely CD-ROMs, DVD-ROMs bearing recorded music and music videos; digital media; for recorded music and music videos computer software for access to databases relating to music, entertainers, performers, entertainment products, entertainment services and music-related products; computer software for securing digital content; computer programs for managing communications and data exchange relating to music, audio and visual data; multimedia software for downloading music, audio and visual data; computer software for online trading; CD recorders and players; DVD recorder and players; CDs and DVDs bearing recorded music and music videos; audio music tapes (all being sold together with booklets); pre-recorded vinyl music records; sound and/or video recording on corresponding recording carriers; gramophone records; sound and/or video cassettes; cassettes for the storage of, or containing, tapes for or bearing musical sound or video recordings; magnetic tapes, discs, and magnetic wires, all for musical sound or video recording; encoded membership cards; electronic handheld devices for the wireless receipt and/or

³ TM21B – dated 12/05/2023

transmission of data; digital audio and video devices; head cleaning tapes; audio cassette recorders and players, video cassette recorders and players, compact discs players, digital versatile discs recorders and players, digital audio tape recorders and players; photographic and cinematographic apparatus and instruments; television and radio apparatus; microphones; coin-operated juke boxes; coin or counter-feed sound or video reproduction apparatus; unexposed photographic transparencies; parts and fittings for all the aforesaid goods; Pre-recorded CDs featuring music; pre-recorded and downloadable videos featuring musical performances and musical recordings; downloadable ring tones, graphics, music, images and videos via a global computer network and wireless devices; video and/or musical sound recordings; films; video games.

Class 14 Jewellery; precious stones; horological and chronometric instruments; costume jewellery; necklaces, bracelets, earrings, rings, pendants, charms; jewellery chains; keychains as jewellery [trinkets or fobs]; presentation boxes for jewellery; jewellery boxes.

Class 16 Publications; books, magazines, fanzines, newsletters, comics, newspapers; postcards, greetings cards and gift tags; stationery; artists' materials; printers type and printers blocks; instructional and teaching materials; wrapping and packaging materials; parts and fittings for all the aforesaid goods; including all the aforesaid goods provided by telecommunications networks, by online delivery and by way of the internet and the world wide web, Stationery, printed matter, books, magazines, stickers, photographs, posters, prints, albums, cards.

Class 25 Clothing; headwear; bathing suits; bandannas; belts; footwear; vests; gloves; hoodies; hats; caps; jackets; pyjamas; scarves; shorts; shirts; visors; ear muffs; sweat shirts; sweat pants; sweat jackets; sweaters; T-shirts; tank tops; socks; tops; underwear; wrist bands; children's clothing; overalls; ties; bustiers; robes; skirts; gowns; Halloween costumes; jumpers.

Class 32 Beverages (Non-alcoholic -).

Class 33 Alcoholic beverages [except beers].

Class 38 Video, audio and television streaming services; Telecommunications services; chat room services; portal services; e-mail services; providing user access to the Internet; radio and television broadcasting; broadcasting services; Providing access to digital music web sites on the Internet; providing access to MP3 websites on the Internet; delivery of digital music by telecommunications; transmission of music, sounds, images, text and information, all relating to music, entertainers, performers, entertainment product, entertainment services and musicrelated products by telecommunication networks, by online delivery and by way of the internet and the world wide web; consultancy, advisory and information services relating to the aforesaid services; Sound, television and radio broadcasting of music, entertainment, concerts and videos via the Internet; radio and television broadcasting services; communication services; telecommunication services; delivery of digital music by telecommunications; providing access to digital music websites on the Internet; providing access to MP3 websites on the Internet; providing access to sound, video and data recordings and to electronic publications on the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communication networks; electronic bulletin board services; providing computer bulletin boards in the fields of music, entertainment, video and television; providing on-line bulletin boards for the transmission of messages among computer users concerning music, entertainment, concerts, videos, radio and television programs; communication services, namely matching users for the transfer of music, video and audio recordings via communication networks; provision of telecommunication connections to electronic communication networks for transmission or reception of audio, video or multimedia content; video broadcasting; broadcasting pre-recorded videos featuring music, concerts and entertainment; radio, film and television broadcasting services; cable television broadcasting services; satellite transmissions; broadcasting of television programmes, theatre shows, theatrical performances, sound and video recordings, DVDs and CD ROMs; broadcasting of sound, film, theatre, audio, data and video recordings on compact discs, records, tapes, video tapes, laser discs, DVDs, CDs and CD ROMs; broadcasting of cinematographic films, motion pictures, radio programmes, television programmes, theatre shows and theatrical performances; streaming of video content via a global computer network; audio broadcasting; subscription audio broadcasting via a global computer network; advisory and consultancy services relating to all the aforesaid; provision of access to

multi-media information and interactive multimedia services; providing access to mobile telephone ring tones via a wireless network; providing access to digital music of all styles, types and genres and spoken audio material of all styles, types and genres via websites on the internet or any other communications network; delivery of digital music of all styles, types and genres and spoken audio material of all styles, types and genres by communications; transmission of information relating to music, podcasts and rss feeds; digital audio broadcasts; networking of sound and/or visual recordings; providing online blogs, discussion groups, chat rooms and electronic bulletin boards; providing access to an internet discussion website; transmission of radio and television programmes; information, advisory and consultancy services in relation to the aforesaid services.

Class 41 Entertainment; sporting and cultural activities; production of television and radio programs; providing online entertainment; entertainment services; record production, video production, radio entertainment production and distribution; publication of books and magazines in relation to music and entertainment; entertainment in the nature of live concerts and performances; musical and audiovisual entertainment services; production, distribution and publishing of music and audiovisual material; fan clubs; entertainment in the nature of live concerts and performances by artists and groups; providing digital music and audiovisual material (not downloadable) from the Internet; entertainment services, namely personal appearances by groups, artists and celebrities; entertainment services in the nature of music and audiovisual material rendered by groups and artists through the medium of television, radio, cable, satellite and Internet programmes, shows, films, videos and DVDs; entertainment services rendered by groups and artists including recording performances; entertainment services, namely, providing a web site featuring performances, videos, related film clips, photographs, and other multimedia materials; entertainment services namely live, televised and movie appearances by a professional entertainers; conducting entertainment exhibitions in the nature of live music and entertainment events; sporting and cultural activities; production of television and radio programs; distribution of television and radio programs for others; production and publishing of music; providing online entertainment, namely providing sound and video recordings in the field of music and music based entertainment; entertainment services, namely providing online non-downloadable pre-recorded

musical sound and video recordings via a global computer network; fan clubs; development and dissemination of educational materials of others in the field of music and entertainment; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; production of motion picture films; distribution of motion picture films; television program syndication; entertainment in the nature of ongoing television programs in the field of music and entertainment; entertainment, namely a continuing music and entertainment show distributed over television, satellite, audio, and video media; publication of books and magazines in relation to music and entertainment; entertainment in the nature of ongoing radio programs; entertainment in the nature of live concerts and performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by musical artists; educational and entertainment services, namely, production and presentation of television shows, sports events, fashion shows, game shows, music shows, award shows and comedy shows before live audiences which are all broadcast live or taped for later broadcast; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing on-line reviews of music, musical artists and music videos; entertainment services, namely, providing pre-recorded music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services namely live, televised and movie appearances by a professional entertainer; conducting entertainment exhibitions in the nature of music festivals; entertainment services, namely, conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; and publishing of web magazines in relation to music and entertainment; distribution of music; distribution of musical sound recordings and video recordings; preparing audio-visual displays in the field of music, Entertainment services; entertainment services in the nature of live musical performances; providing a website featuring musical performances and videos of the same, related video clips and other related musical multi-media materials, information on a musical performer; television programmes featuring variety entertainment and/or musical performances broadcast and/or screened over the Internet, television, cable and/or satellite; musical entertainment services; sound recording and video entertainment services; concerts, musical and video

performances; presentation, production and performance of shows, musical shows, concerts, videos and radio and television programmes.