

**BLO-178-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3251676  
IN THE NAME OF JK SOLUTIONS  
FOR THE TRADE MARK:**

**KINKEDIN**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 411302  
BY LINKEDIN IRELAND UNLIMITED COMPANY**

## **Background and pleadings**

1. On 21 August 2017, JK Solutions (“the applicant”) applied to register, under number 3251676, the trade mark **KINKEDIN** (“the contested mark”). The application was published for opposition purposes on 6 October 2017 in respect of the following services:

Class 45 Agency services for arranging personal introductions; Computer dating services; Internet based personal introduction services; Internet dating services; Internet-based social networking services; Licensing of rights relating to the use of photographs; Licensing of rights relating to video productions; Video dating services.

2. The application is opposed by LinkedIn Ireland Unlimited Company (“the opponent”).<sup>1</sup> The opposition is based upon ss. 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and is directed against all of the services in the application. Under ss. 5(2)(b) and 5(3), the opponent relies upon the following trade marks and all of the goods and services for which the marks are registered (listed in full in the annexe to this decision):

(i) European Union Trade Mark (“EUTM”) number 8411928 **LINKEDIN** (“the 928 mark”)

Filing date: 7 July 2009

Date of entry in register: 16 March 2010

Registered in classes 9, 35,38, 41, 42 and 45

(ii) EUTM 8411836

**LinkedIn** 

(“the figurative mark”)

Filing date: 7 July 2009

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<sup>1</sup> The notice of opposition was filed in the name of LinkedIn Ireland, which changed its name to LinkedIn Ireland Unlimited Company on 13 June 2018. Nothing turns on this and I will say no more about it.

Date of entry in register: 16 March 2010

Registered in classes 9, 35, 38, 41, 42 and 45

(iii) EUTM 13250841 **LINKEDIN** (“the 841 mark”)

Filing date: 12 September 2014

Date of entry in register: 23 March 2015

Registered in classes 25, 28 and 35

3. The opponent claims under s. 5(2)(b) that the marks are highly similar and that the goods and services are identical or highly similar, which will result in a likelihood of confusion, including the likelihood of association.

4. Under s. 5(3), the opponent claims that its marks have a reputation in the UK such that use of the contested mark would cause the relevant public to believe that there is an economic connection between the applicant and the opponent, where no such connection exists. It claims that use of the contested mark would allow the applicant to take unfair advantage of the reputation which the opponent has built up over many years. The opponent also claims that use of the contested mark would cause detriment to the earlier marks’ reputation. It suggests that the opponent’s reputation will be damaged if the services offered under the contested mark are of inferior quality. It also claims that its reputation would be tarnished “as the ‘kinked’ word may suggest services of a sexual nature”. It further claims that there would be detriment to the distinctive character of the earlier marks.

5. The opponent further claims under s. 5(4)(a) that it has used the sign **LINKEDIN** in the UK since 2003 in respect of the following:

Online business networking services; advertising, marketing and promotion services for businesses; providing information about and making referrals concerning products, services, events and activities; promoting the goods and services of others via computer and communication networks; facilitating

the exchange and sale of services and products of third parties via computer and communication networks; on-line retail store services in the field of digital media; providing online career networking services and information in the fields of employment, recruitment, job resources, and job listings; providing online interactive employment counselling; recruitment and placement services; hosting of exhibitions, conferences and seminars for business purposes; computer services; computer services, namely hosting electronic facilities for others for organising and conducting meetings, events and interactive discussions via the internet or other communications networks; hosting virtual communities for registered users to organise groups, events, participate in discussions, aggregate information and resources, and engage in social, business and community networking; providing personal and social services to meet the needs of individuals; social introduction and networking services; providing information in the field of personal development, namely self-improvement, self-fulfilment, charitable, philanthropic, volunteer, public and community services, and humanitarian activities; licensing of computer software and other technology.

6. The opponent claims that it has a significant goodwill under the sign and that use of the contested mark would amount to a misrepresentation, causing damage to the opponent, particularly if the services provided by the applicant are of an adult and sexual nature.

7. The applicant filed a counterstatement in which it denies all of the grounds of opposition. I note in particular that it denies that the marks are similar, stating that “they are two words with completely separate meanings. Link- means to join together. Kink- means a quirky or unusual sexual practise [sic]”. It also states that “there is NO SIMILARITY in the services offered, the logo, the site, the look etc.”. It appeared to accept that the opponent has a reputation (I will return to this point later) but denied that there would be unfair advantage or any impact on the opponent’s reputation. It further

denied that there would be any misrepresentation and claimed that there is “a very clear difference of business, Logo, website, target market”.

8. Given their filing dates, the opponent’s registered trade marks are earlier trade marks in accordance with s. 6 of the Act. As the 928 mark and the figurative mark had been registered for more than five years at the date on which the contested mark was published, they are, in theory, subject to the proof of use provisions contained in s. 6A of the Act. However, in its counterstatement, the applicant did not request that the opponent provide proof of use. As a consequence, the opponent may rely upon all of the goods and services in its earlier registrations without demonstrating that it has used the marks.

9. Both parties filed evidence. Neither party requested a hearing but the opponent filed written submissions in lieu, which I take into account. The applicant is not professionally represented; the opponent has been represented throughout by Lane IP. This decision is taken following a careful reading of all of the papers.

### **Evidence**

10. I do not intend to produce a self-standing summary of the evidence; rather, I will refer to the relevant material at the appropriate points in this decision. For the present, I record that the opponent’s evidence is provided in two witness statements of Steven Lane, the opponent’s professional representative. The applicant’s evidence is provided by Janine Tooze, the owner of the website and mobile app Kinkedin.one.

### **My approach**

11. The 928 mark represents the opponent’s best case under s. 5(2)(b), as it is a word mark (i.e. there are no figurative components which would reduce the level of visual similarity) and as the goods and services for which the mark is registered are closer to those of the application than the 841 mark. I will, therefore, consider this mark first as, if

the opposition under s. 5(2)(b) fails under this mark, it will also fail where it is based on less similar marks and/or less similar goods and services. It is also convenient, for reasons which will become apparent, for me to focus on the same mark under s. 5(3), considering the other marks only if it becomes necessary.

### **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 – [...]

(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. 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 great degree of similarity between the marks, and vice versa;

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

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

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

(k) if the association between the marks creates a risk that the public 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**

14. Ms Tooze, in her witness statement, stresses that, whilst class 45 “does cover an array of Personal Introductions”, “the Introductions description is obviously generic as each business is different, so can still apply to different TYPES of business”. Whilst Ms Tooze’s point is understandable, it is misconceived. As the opponent was not put to proof, it may rely upon all of the goods and services in its earlier registration. Further, the earlier mark is entitled to protection against a likelihood of confusion with the applicant’s mark based on the “notional” use of the earlier mark across the full width of the specification.<sup>2</sup> Essentially the same applies to the contested mark, where I must consider all of the circumstances in which the mark applied for might be used if it were registered.<sup>3</sup> The effect of this is that when I determine whether the goods and services are similar, I must consider the terms as they appear in the respective specifications, disregarding differences in, for example, the services actually provided or in the parties’ trading styles, unless those differences are apparent from the specifications themselves.

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<sup>2</sup> *Compass Publishing BV v Compass Logistics Ltd* ([2004] RPC 41) at [22]; *Roger Maier v ASOS* ([2015] EWCA Civ 220 at [78] and [84].

<sup>3</sup> *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited* (Case C-533/06).

15. When making the comparison, all relevant factors relating to the goods and services in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

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

16. Guidance on this issue has also come from Jacob J. (as he then was) *British Sugar Plc v James Robertson & Sons Ltd* (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.

17. It is permissible to group terms together in making the comparison if the considerations are similar: *Separode Trade Mark* BL O/399/10.

18. 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 fur 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”.

19. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase”.

20. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

21. The earlier mark is registered for “social introduction and networking services” in class 45. That is a very broad term which, as Ms Tooze appears to recognise, covers a range of services. In my view, it is broad enough to encompass “agency services for arranging personal introductions; computer dating services; internet based personal introduction services; internet dating services; internet-based social networking services; video dating services” in the application. As the above case law indicates, where a term falls within a broader category, the services are to be considered identical. That is the case here. The services are identical on the principle outlined in *Meric*.

22. The closest term in the earlier specification to the applied-for “licensing of rights relating to the use of photographs; licensing of rights relating to video productions” is, in my view, “licensing of computer software and other technology” in class 45. I do not agree with the opponent’s submission that the earlier “other technology” covers photographs and video productions. “Other technology” suggests the technology which would create photographs or video productions, not the use of photographs or the video productions themselves as in the contested specification. Accordingly, whilst both are licensing services they differ in the object of the licensing and, therefore, in their particular purpose. There may be an overlap in the nature of the services and they may be offered by the same providers, thus sharing channels of trade. The users will be the same but there is no real competition (one is not an alternative to the other) and they are not complementary in the sense described in the case law (they are not indispensable or important for one another’s use). They are similar to a medium degree.

23. For the avoidance of doubt, I do not consider that the opponent’s “commercial administration of the licensing of the goods and services of others” in the 841 mark puts the opponent in any better a position. That is an administration service rather than a

licensing service, different in nature and purpose and further removed from the applicant's specification.

24. I do not think that any of the other terms in the earlier specification would improve the opponent's position and I decline to consider them: no other services have been identified by the opponent as presenting a better case than those considered above and if the opposition fails insofar as it is based on the above services, it will also fail in respect of less similar goods and services.

### **The average consumer and the nature of the purchasing act**

25. It is necessary for me to determine both who the average consumer is for the respective parties' services and the manner in which these services are likely to be selected by the average consumer in the course of trade. 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”.

26. I have no submissions from the parties on the identity of the average consumer. Given my findings, above, the relevant consumer is the consumer of the identical or similar services in class 45. The average consumer of the parties' identical personal and social introduction services will be a member of the general public. The average consumer of the respective licensing services is, by contrast, likely to be a professional

engaging those services to protect their own rights or using the services of the parties to obtain permission to use the property at issue.

27. Across both groups, the average consumer is likely to make the selection of the services through primarily visual means, including websites, brochures and advertisements in print and online. I do not rule out that oral recommendations may play a part and that there may, therefore, be an aural component to the purchase.

28. The introduction services are likely to be purchased with a medium degree of attention, as the user will pay some attention to factors such as price, the reach of the site and whether it suits their personal preferences.

29. A professional user of licensing services is likely to be alive to similar factors, such as the cost of the services. However, as a licensing service is essentially a legal service, with potentially long-term implications, the consumer is likely to be fairly careful in the selection, considering, for example, not just price or value for money but also the provider's suitability and experience in the field. The average consumer is, therefore, likely to pay a reasonably high level of attention in selecting these services.

### **Distinctive character of the earlier trade mark**

30. The distinctive character of the earlier marks must be assessed, as the more distinctive the earlier mark, either inherently or through use, the greater the likelihood of confusion (*Sabel* at [24]). In *Lloyd Schuhfabrik*, 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)".

31. Inherently, the mark consists of two ordinary words which are somewhat suggestive in relation to the services themselves but in a slightly unusual combination. It has an average level of inherent distinctive character.

32. The opponent claims that the earlier mark has an enhanced distinctive character through the use which has been made of it. It has filed evidence to support that claim. However, almost all of the evidence is either not dated or dates from after the application date. I note the following points from the evidence:

- The opponent's initial public offering in 2011 was reported by [www.ft.com](http://www.ft.com), by the BBC and *Guardian*;<sup>4</sup>
- The opponent was purchased by Microsoft in 2016 for \$26bn, reported by the BBC, *Business Insider UK* and the *Guardian*;<sup>5</sup>
- In June 2018 (i.e. after the relevant date), [linkedin.com](http://linkedin.com) was ranked 29<sup>th</sup> most popular site in the UK;<sup>6</sup>

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<sup>4</sup> Exhibit SL2 to Lane 1.

<sup>5</sup> SL3

<sup>6</sup> SL7

- The company had a turnover of €134.1million “for the last financial year” (the statement is dated July 2018).<sup>7</sup> It is not made clear where this revenue was generated;
- An article dated 2016 tracks UK membership from 2009 to 2016.<sup>8</sup> It shows steady growth from 3 million members in 2009 to 20 million by January 2016. The latter figure is said to represent 58% of the working population.<sup>9</sup>

33. Although the evidence of press articles and advertising is limited, I note that the opponent is described as “the world’s number one business networking platform” (*Guardian*), a “strange website somewhere between a social media platform and an online repository of CVs” (*Guardian*) and, less complimentary from the *Telegraph*, the “poor cousin of the social media family. The dull networking site struggled to hold its own against its sexier relatives, Instagram, Facebook and Twitter”.<sup>10</sup> The site is most frequently referred to as a business networking site, or variations thereof.<sup>11</sup>

34. The evidence could certainly have been stronger. However, the opponent has shown significant UK membership. Comparisons regarding its success are made with giants like Facebook and Instagram and, whilst its profile appears to be of a lower order, it is still notable. I am mindful that there are references in the evidence to the opponent as a social network or social media company. However, the only evidence dated before the application date are the articles at SL2, SL3 and SL12, and some videos at SL10. The picture which emerges is of the opponent being well known as a business networking site, rather than a social networking site more generally. Indeed, the opponent’s own website describes the business as “the world’s largest professional network on the Internet”, whilst the *Telegraph* article mentioned above records complaints that men are misusing the professional network to solicit women.<sup>12</sup> The mark’s distinctive character has been enhanced in relation to business networking

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<sup>7</sup> Lane 1, §18 and SL11.

<sup>8</sup> SL12, pp. 125-127.

<sup>9</sup> SL12, p. 128

<sup>10</sup> SL12, pp.117, 131, 119.

<sup>11</sup> See, for example, SL2, pp. 34, 39, SL3, pp. 43, 49, SL12, p. 119.

<sup>12</sup> SL12, p. 113, pp. 119-122.

services, where the mark has become distinctive to a reasonably high, though not the highest, degree. The evidence is not sufficient to establish that the distinctiveness of the mark has been enhanced in relation to the other goods and services relied upon.

### **Comparison of trade marks**

35. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) 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.

36. 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”.

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

38. The trade marks to be compared are as follows:

Earlier trade mark	Contested trade mark
LINKEDIN	KINKEDIN

39. The opponent submits that the marks are visually similar to a high degree, aurally similar to a very high degree and conceptually similar because the earlier mark “relates to the idea of linking together, making connections and being part of something. [...] The concept of coming together with something is retained within the [contested mark]”.

40. The earlier mark consists of the word “LINKEDIN”, presented in upper case. Notwithstanding the fact that the words “LINKED” and “IN” are conjoined in the mark, the consumer is likely to perceive those words as components of the mark. Neither dominates the other and the overall impression consists of the string “LINKEDIN”.

41. A similar analysis applies to the contested mark. It consists of the word “KINKEDIN”, presented in upper case. The words “KINKED” and “IN” will be recognised within the mark by the consumer but neither word dominates. The overall impression rests in the combination “KINKEDIN”.

42. The only visual difference between the marks is the different letter at the beginning, “L” and “K” respectively. The remaining seven letters are identical. The rule of thumb is that differences at the beginning of marks tend to have a greater impact on the consumer. Whilst I consider that the general principle applies in the present case, the similarities are such that overall there is a high degree of visual similarity.

43. Both marks comprise dictionary words which will be given their ordinary pronunciation. The only difference is in the first syllable and is attributable to the

different letters “K” and “L” at the beginnings of the marks. They are aurally similar to a high degree.

44. “LINKED” means that two things are connected, physically or otherwise.<sup>13</sup> The word “IN” has a multiplicity of meanings, the precise sense of the word being determined by its context.<sup>14</sup> In my view, the earlier mark will be seen as a phrase “LINKED IN”, with “IN” adding to the idea of a direct or physical connection, conveying the concept of being connected. Where the earlier mark creates a united whole, I do not consider that the same can be said of the later mark. The words “KINKED” and “IN” do not create a unit with a singular meaning, particularly not one easily grasped by the consumer. “KINKED” means that something is twisted or not straight, or that something is unusual or abnormal.<sup>15</sup> I have no doubt that this would include, for the UK consumer, unusual sexual proclivities. These meanings of “KINKED” are likely to be identified by the consumer and are clearly different from that of “LINKED”. As the phrase “KINKEDIN” is neither a known phrase nor one whose meaning is immediately plain, I do not consider that any clear concept will be attributed to the word “IN”, still less one which can be said to be shared with the earlier mark. The marks are conceptually different. If I am not right about that, any conceptual similarity is extremely limited.

### **Likelihood of confusion**

45. When determining whether there is a likelihood of confusion, a global assessment of the competing factors must be made (*Sabel* at [22]). I must consider the various factors from the perspective of the average consumer and decide whether they are likely to be confused. The factors considered above have a degree of interdependency (*Canon* at [17]), so, for example, a high degree of similarity between the marks may be offset by a lower degree of similarity between the services, and vice versa. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity

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<sup>13</sup> <https://www.collinsdictionary.com/dictionary/english/link> [accessed 26 March 2019]

<sup>14</sup> [https://www.collinsdictionary.com/dictionary/english/in\\_1](https://www.collinsdictionary.com/dictionary/english/in_1) [accessed 26 March 2019]

<sup>15</sup> <https://www.collinsdictionary.com/dictionary/english/kink> [accessed 26 March 2019]

to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. The concept of indirect confusion was explained by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10 as follows:

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

47. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls another mark to mind. This is mere association not indirect confusion.

48. The marks share a high degree of visual and aural similarity, which points in the opponent’s favour. The distinctiveness of the earlier mark has not been enhanced in relation to the identical or similar services in class 45 but it is inherently distinctive to a medium degree. The marks are, however, conceptually different. I bear in mind that it

may be the case, though it is not always, that conceptual differences will counteract visual and aural similarities between trade marks.<sup>16</sup>

49. Taking the identical services first, the consumer will be a member of the public paying a medium degree of attention to the selection of the services. Even bearing in mind the high level of visual and aural similarity between the marks, I am satisfied that there will be no direct confusion: the conceptual differences due to the clear message of the earlier mark, contrasted with the meaning offered by “KINKED” in the later mark, are sufficient to preclude the misremembering of one mark for the other, even when imperfect recollection is taken into account.

50. As to indirect confusion, the opponent submits that the later mark would be seen as “a derivative sub-brand which is connected to, affiliated with or endorsed by the Opponent”. I am not persuaded that this would be the case. Although the visual and aural similarity between the marks is undeniable, and their structure is similar, there is no logical step which would cause the consumer to believe that the later mark was a sub-brand of the earlier mark. The absence of a clear conceptual meaning in the later mark undermines the opponent’s claim to a derivative sub-brand, particularly given the obvious meaning of the earlier mark. The earlier mark may be brought to mind but the connection would not be such as to occasion confusion. There is no indirect confusion.

51. The same applies with more force where the services are only similar but will be subject to a higher level of attention in the purchase. For the record, I would consider the same to apply even if there were a very limited degree of conceptual similarity, to the extent outlined at paragraph 44, above, or if the earlier mark benefited from enhanced distinctiveness in relation to the identical services: the conceptual differences outweigh the similarities, which will not give rise to confusion. There is no confusion, whether direct or indirect, for any of the services at issue.

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<sup>16</sup> See, for example, *The Picasso Estate v OHIM*, Case C-361/04 P at [20] and *Nokia Oyj v OHIM*, Case T-460/07.

52. It also follows, as I explained above, that the claim under s. 5(2)(b) based on a mark which is less similar and/or goods and services which are less similar cannot succeed where the mark considered above has failed. The opposition under s. 5(2)(b) is dismissed.

### **Section 5(3)**

53. Section 5(3) states:

“(3) A trade mark which-

(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 (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

54. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. 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.

(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 on 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*).

## Reputation

55. 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".

56. As the earlier mark is an EUTM, I also keep in mind the guidance of the CJEU in *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07 at [20] to [30] and *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC 35 (IPEC) at [69].

57. In its counterstatement, the applicant indicated, in response to the opponent's claim to a reputation, that "I agree the LINKEDIN trademark is synonymous with the Opponent and its 530 million users". In Ms Tooze's witness statement, she elaborated: "I agree the LINKEDIN trademark is synonymous with the Opponent and its 500+ million users, and I believe It is very clear to every adult on the planet that LinkedIn is clearly a business networking and job hunting site. That is not under dispute" [all sic]. I proceed on that basis, though, for the reasons given at paragraph 34, above, I am also satisfied on the evidence that the 928 mark was known in the UK at the relevant date by a commercially significant proportion of the relevant public for online business networking services.

## **Link**

58. My assessment of whether the public will make the required link between the marks must take into account all of the relevant factors. The factors identified in *Intel* are:

*(i) the degree of similarity between the marks*

I have assessed the similarity between the marks at paragraphs 42 to 44, above. I adopt those findings here.

*(ii) 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*

The purpose of “online business networking services” is to connect professional persons, in a business context (e.g. with a view to employing/gaining employment, contracts). The purpose of the contested “agency services for arranging personal introductions; computer dating services; internet based personal introduction services; internet dating services; internet-based social networking services; video dating services” is also related to connecting individuals but with a personal or romantic rather than professional aim. The services may overlap in nature though there is less likely to be a meaningful overlap in channels of trade. The user of a professional networking service may also be the user of a social networking service but there is no real competitive relationship and there is no complementarity. The services are similar to a medium degree.

As to the contested “licensing of rights relating to the use of photographs; licensing of rights relating to video productions”, the purpose, nature, method of use and channels of trade are different from those of the opponent’s services. Users may overlap but at a very superficial level. The services are neither in competition nor complementary. There is no similarity.

*(iii) the strength of the earlier mark’s reputation*

The reputation is a strong one.

*(iv) the degree of the earlier mark's distinctive character, whether inherent or acquired through use*

For online business networking services, the earlier mark has enhanced distinctiveness through use, resulting in a reasonably high level of distinctive character.

*(vi) whether there is a likelihood of confusion*

For the reasons given above, there is no likelihood of confusion in respect of any of the services.

59. I am satisfied, having taken all of the above into account, that there would be a link. The closeness of the marks and their similar structures, despite the conceptual difference, coupled with the level of distinctiveness of the earlier mark are more than sufficient for the earlier to be brought to mind, for all of the contested services.

## **Damage**

### Tarnishing

60. This head of damage was helpfully summarised in *Champagne Louis Roederer v J. Garcia Carrion S.A. et al* as follows:<sup>17</sup>

“89. Detriment to the repute of the mark, also referred to as 'tarnishment' or 'degradation', is caused when the goods or services for which the offending sign is used may be perceived by the public in such a way that the trade mark's power of attraction is reduced. The concept was described by Arnold J in *Red Bull v Sun Mark* [2012] EWHC 1929 (Ch) at [93] where he quoted the relevant passage from Kerly's *Law of Trade Marks and Trade Names* (15th ed) at para 9-131. Detrimental effect occurs where the later mark is

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<sup>17</sup> [2015] EWCA 2760 (Ch)

used for goods or services which provoke a reaction of annoyance or displeasure whether through their intrinsic nature or because of the unpleasant mental association with the goods for which the earlier mark is reputed. It may also occur when the trade mark applied for is used in an unpleasant, obscene or degrading context, or in a context which is not inherently unpleasant but which process to be incompatible with the earlier mark's image. This leads to tarnishment whereby "the reputed mark ceases to convey desirable messages to the public: hence the detriment to its distinctive character".

61. The services applied for by the applicant are not, of themselves, unpleasant or obscene. However, the applicant's evidence is that "kink" means "a quirky or unusual sexual practise [sic]" and that "[in] the case of KINKEDIN (a new, but also internet based company with 2500 followers) the introductions are clearly for sexual introduction only".<sup>18</sup> It appears that the site is a "casual kinky sex site" catering for "kinky or fetish interest".<sup>19</sup> The opponent, by contrast, operates a website for professionals to make connections in the relevant field. I have already indicated that I consider the UK consumer will readily identify a message of unusual sexual tendencies in the mark "KINKEDIN". I recognise that the strength of reaction experienced will vary across different sections of the public and may not be altogether negative. Nevertheless, the image of a sex site is far removed from that which a professional network would want to cultivate and the mental connection between "LINKEDIN" and "KINKEDIN" would, even for those who see the joke, be liable to sully the reputation of the opponent's mark. For those who do not see the joke, the later mark may be seen as making a negative comment about the earlier mark which is liable to debase the image of the opponent as a provider of professional networking services. I consider that this applies equally to all of the contested services, including those for which there is no similarity: the mark itself carries sexual connotations which, once the link is made, are liable to damage the earlier mark's reputation. The opposition succeeds under this head of damage.

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<sup>18</sup> Ms Tooze's witness statement, §§4 and 5.

<sup>19</sup> Tooze, §9 and exhibit 4(d).

## Unfair advantage

62. This head of damage concerns not damage done to the earlier mark but the advantage the later mark will gain because of the link with the earlier mark. The most common example is that the later mark will get a commercial or marketing “leg up” because the owner of the later mark does not need to invest as much effort into making the later mark known, because it already feels familiar or sends a message to consumers as to what they can expect.

63. 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.”

64. The applicant has been silent about its intentions. However, the opponent has filed prints from the applicant's Instagram page which appear to show the landing page with the heading “Kinkedin.one” above the tag line “Like LinkedIn..... nah.... not really”, followed by what the opponent describes as the “smiling face with horns” emoji.<sup>20</sup> The

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<sup>20</sup> Lane 2, §4 and exhibit SL2 to the same, pp. 11-13.

same tag line also appears alongside a photograph of a couple lying on the floor of an office under the heading “SOCIAL NETWORKING”.<sup>21</sup> There is a further image showing a pun on Microsoft, the opponent’s parent company. Whilst this evidence is dated October 2017, which is after the relevant date, it is before proceedings were launched (and, I note, even before a notice of threatened opposition was filed). This leads me to believe that the applicant subjectively intended to exploit the opponent’s reputation in the earlier mark. The advantage sought is unfair for that reason. Even were that not the case, my view is that there remains a non-hypothetical risk of unfair advantage being taken in respect of all the contested services, due to the opponent’s reputation for a successful online network with a large number of subscribers, which will make it instantly familiar and, therefore, easier for the applicant to market its services.

65. The opponent only needs to succeed under one head of damage; it has succeeded under two. I see no need to consider the remaining head of damage under this ground.

66. The opposition under s. 5(3) is successful.

### **Section 5(4)(a)**

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

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

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<sup>21</sup> Lane 2, SL2, p. 14.

68. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, HHJ Clarke, sitting as a Deputy Judge of the High Court stated that:

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

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

69. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, Daniel Alexander Q.C., sitting as the Appointed Person, considered the matter of the relevant date in a passing off case. He said:

“43. In *SWORDERS TM O-212-06* Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”.

70. There is no evidence that the contested mark was in use prior to the date of application. That being the case, the relevant date is 21 August 2017.

71. The House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) provided the following guidance regarding goodwill:

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

72. I am satisfied for the reasons given at paragraph 34, above, that the opponent had a protectable goodwill in respect of business networking services at the relevant date, and that the sign LINKEDIN was distinctive of the opponent's business at that date. However, the case under s. 5(4)(a) falls down at that point. For the reasons given in my finding under s. 5(2)(b), the contested mark is unlikely to be mistaken for the earlier sign and there is no likelihood that “a substantial number” of the opponent's customers or potential customers will be deceived, even bearing in mind the substantial goodwill in respect of business networking services. Consequently, use of the contested mark would not constitute a misrepresentation to the public. The s. 5(4)(a) ground of opposition is dismissed.

## **Conclusion**

73. The opposition has been successful. The application will be refused.

## **Costs**

74. The opponent has been successful and is entitled to an award of costs. Awards of costs are governed by Tribunal Practice Notice (“TPN”) 2/2016. Both parties' evidence

was light, which is taken into account. I award costs to the applicant on the following basis:

Official fee:	£200
Filing the notice of opposition and considering the counterstatement:	£200
Filing evidence and considering the other party's evidence:	£500
Written submissions:	£300
<b>Total:</b>	<b>£1,200</b>

75. I order JK Solutions to pay LinkedIn Ireland Unlimited Company the sum of **£1,200**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**4<sup>th</sup> April 2019**

**Heather Harrison  
For the Registrar  
The Comptroller-General**

## **ANNEXE**

### **EUTM 8411928 and EUTM 8411936**

Class 9: Data, documents, information, video, sound, text and other media or multi-media, all being electronically recorded or downloadable from the Internet, extranets or other communications networks; downloadable electronic publications; computer hardware, apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; data processing equipment; computer software; communications software; magnetic, optical or electronic membership cards; computer games.

Class 35: Telecommunications services, namely electronic transmission of data, messages and information between and among computers, mobile and handheld devices and wired and wireless communication devices; telecommunication services, namely, enabling users to transmit messages, comments, multimedia content, videos, movies, films, and photos, audio content, animation, pictures, images, text, information, and other user-generated content via a global computer network and other computer and communications networks; providing online communications links which transfer users to other websites; providing online forums, chat rooms and electronic bulletin boards for users to post, search, watch, share, critique, rate, and comment on subjects of interest; providing access to computer, electronic and online databases; audio, text, video and multimedia broadcasting services over computer and electronic communications networks, namely uploading, posting, displaying, tagging and electronically transmitting data, audio, and video; providing access to computer databases in the fields of entertainment and education; providing access to computer databases in the field of social networking; providing telecommunication facilities that enable the sharing of blogs, photos, videos, podcasts, and other audio-visual materials; providing telecommunication facilities that enable the creation and updating of personal electronic web pages featuring user-provided content.

Class 38: Telecommunications services, namely electronic transmission of data, messages and information between and among computers, mobile and handheld devices and wired and wireless communication devices; telecommunication services, namely, enabling users to transmit messages, comments, multimedia content, videos, movies, films, and photos, audio content, animation, pictures, images, text, information, and other user-generated content via a global computer network and other computer and communications networks; providing online communications links which transfer users to other websites; providing online forums, chat rooms and electronic bulletin boards for users to post, search, watch, share, critique, rate, and comment on subjects of interest; providing access to computer, electronic and online databases; audio, text, video and multimedia broadcasting services over computer and electronic communications networks, namely uploading, posting, displaying, tagging and electronically transmitting data, audio, and video; providing access to computer databases in the fields of entertainment and education; providing access to computer

databases in the field of social networking; providing telecommunication facilities that enable the sharing of blogs, photos, videos, podcasts, and other audio-visual materials; providing telecommunication facilities that enable the creation and updating of personal electronic web pages featuring user-provided content.

Class 41: Entertainment and education services; disseminating information and providing, sponsoring and hosting seminars, presentations and discussion groups and providing training in the fields of personal development, career development, relationship building, training, recruiting, business consulting, business development, and networking; electronic publishing services for others; electronic and online publishing services; hosting of exhibitions, conferences and seminars and networking events for business, cultural and educational purposes; organising and conducting online educational and training events including virtual meetings and seminars.

Class 42: Computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via the Internet or other communications networks; hosting virtual communities for registered users to organize groups, events, participate in discussions, aggregate information and resources, and engage in social, business and community networking; hosting of digital content online; hosting computer software applications of others; hosting an interactive website and online non-downloadable software for uploading, downloading, posting, showing, displaying, tagging, sharing and transmitting messages, comments, multimedia content, videos, movies, films, photos, audio content, animation, pictures, images, text, information, and other user-generated content; providing a website featuring non-downloadable software in the fields of business networking and marketing, employment, recruiting, advertising, marketing and promotion; providing non-downloadable software enabling users to search, locate and communicate with others via electronic communications networks for networking, for conducting polls and surveys, for tracking online references to businesses, organizations, career and job opportunities, and business topics; providing online computer databases and online searchable databases in the fields of business and professional networking; application service provider services; providing information from searchable indices and databases of information, including text, electronic documents, databases, graphics and audio visual information, by means of global computer information networks or other communications networks; providing temporary use of non-downloadable software; computer services in the nature of customized web pages featuring user-defined information, personal profiles, audio and images; scientific and industrial research; computer programming; computer services, namely, on-line personalized information services; providing the use of software; design and development of computer software for others; creating and maintaining websites that provide an on-line community for advertising and marketing; hosting an online website community for registered users to share information, photos, audio and video content and engage in communication and collaboration between and among themselves, to form groups and to engage in social networking.

Class 45: Providing personal and social services to meet the needs of individuals; social introduction and networking services; providing information in the field of personal development, namely self-improvement, self-fulfillment, charitable, philanthropic, volunteer, public and community services, and humanitarian activities; licensing of computer software and other technology.

## **EUTM 13250841**

Class 25: Clothing; footwear; headgear.

Class 28: Games and playthings; Gymnastic and sporting articles not included in other classes; Decorations for Christmas trees; Air pistols [toys]; Amusement machines, automatic and coin-operated; Apparatus for games; Appliances for gymnastics; Arcade video game machines; Archery implements; Artificial fishing bait; Artificial snow for Christmas trees; Ascenders [mountaineering equipment]; Backgammon games; Bags especially designed for skis and surfboards; Balls for games; Bar-bells; Baseball gloves; Batting gloves [accessories for games]; Bells for Christmas trees; Billiard balls; Billiard cue tips; Billiard cues; Billiard markers; Billiard table cushions; Billiard tables; Bingo cards; Bite indicators [fishing tackle]; Bite sensors [fishing tackle]; Bladders of balls for games; Board games; Bob-sleighs; Body boards; Body-building apparatus; Bowling apparatus and machinery; Bows for archery; Boxing gloves; Building blocks [toys]; Building games; Butterfly nets; Camouflage screens [sports articles]; Candle holders for Christmas trees; Caps for pistols [toys]; Chalk for billiard cues; Checkerboards; Checkers [games]; Chess games; Chessboards; Chips for gambling; Christmas tree stands; Christmas trees of synthetic material; Clay pigeon traps; Clay pigeons [targets]; Climbers' harness; Coin-operated billiard tables; Confetti; Conjuring apparatus; Controllers for game consoles; Cosaques [toy fireworks]; Counters [discs] for games; Creels [fishing traps]; Cricket bags; Cups for dice; Darts; Detonating caps [toys]; Dice; Discuses for sports; Divot repair tools [golf accessories]; Dolls; Dolls' beds; Dolls' clothes; Dolls' feeding bottles; Dolls' houses; Dolls' rooms; Dominoes; Edges of skis; Elbow guards [sports articles]; Electronic targets; Exercisers [expanders]; Fairground ride apparatus; Fencing gloves; Fencing masks; Fencing weapons; Fish hooks; Fishing tackle; Flippers for swimming; Floats for fishing; Flying discs [toys]; Games; Gaming machines for gambling; Gloves for games; Golf bags, with or without wheels; Golf clubs; Golf gloves; Gut for fishing; Gut for rackets; Hang gliders; Harness for sailboards; Harpoon guns [sports articles]; Hockey sticks; Horseshoe games; Hunting game calls; Ice skates; In-line roller skates; Jigsaw puzzles; Kaleidoscopes; Kite reels; Kites; Knee guards [sports articles]; Landing nets for anglers; Lines for fishing; Lures for hunting or fishing; Machines for physical exercises; Mah-jong; Marbles for games; Masts for sailboards; Men's athletic supporters [sports articles]; Mobiles [toys]; Nets for sports; Ninepins; Novelties for parties, dances [party favors, favours]; Ornaments for Christmas trees, except illumination articles and confectionery; Pachinkos; Paintball guns [sports apparatus]; Paintballs [ammunition for paintball guns] [sports apparatus]; Paper party hats; Paragliders; Parlor games; Piñatas; Play balloons; Playing balls; Playing cards; Plush toys; Poles for pole vaulting; Portable games with liquid crystal displays; Practical jokes [novelties]; Protective paddings [parts of sports suits]; Punching bags; Puppets;

Quoits; Rackets; Radio-controlled toy vehicles; Rattles [playthings]; Reels for fishing; Ring games; Rocking horses; Rods for fishing; Roller skates; Rollers for stationary exercise bicycles; Rosin used by athletes; Roulette wheels; Sailboards; Scale model kits [toys]; Scale model vehicles; Scent lures for hunting or fishing; Scooters [toys]; Scrapers for skis; Scratch cards for playing lottery games; Seal skins [coverings for skis]; Shin guards [sports articles]; Shuttlecocks; Skateboards; Skating boots with skates attached; Ski bindings; Skis; Skittles; Sleighs [sports articles]; Slides [playthings]; Sling shots [sports articles]; Slot machines [gaming machines]; Snow globes; Snowboards; Snowshoes; Soap bubbles [toys]; Sole coverings for skis; Spinning tops [toys]; Spring boards [sports articles]; Starting blocks for sports; Stationary exercise bicycles; Strings for rackets; Stuffed toys; Surf boards; Surf skis; Surfboard leashes; Swimming belts; Swimming jackets; Swimming kick boards; Swimming pools [play articles]; Swings; Tables for indoor football; Tables for table tennis; Targets; Teddy bears; Tennis ball throwing apparatus; Tennis nets; Theatrical masks; Toy masks; Toy pistols; Toy vehicles; Toys; Toys for domestic pets; Trampolines; Twirling batons; Video game machines; Water wings; Waterskis; Wax for skis; Weight lifting belts [sports articles].

Class 35: Advertising; Business management; Business administration; Office functions; Accounting; Accounts (Drawing up of statements of -); Administrative processing of purchase orders; Advertising by mail order; Arranging newspaper subscriptions for others; Arranging subscriptions to telecommunication services for others; Auctioneering; Auditing; Bill-posting; Business appraisals; Business consultancy (Professional -); Business information; Business inquiries; Business investigations; Business management and organization consultancy; Business management assistance; Business management consultancy; Business management of hotels; Business management of performing artists; Business management of sports people; Business organization consultancy; Business research; Commercial administration of the licensing of the goods and services of others; Commercial information agencies; Commercial information and advice for consumers [consumer advice shop]; Commercial or industrial management assistance; Compilation of information into computer databases; Compilation of statistics; Cost price analysis; Data search in computer files for others; Demonstration of goods; Direct mail advertising; Dissemination of advertising matter; Distribution of samples; Document reproduction; Economic forecasting; Efficiency experts; Employment agencies; Fashion shows for promotional purposes (Organization of -); File management (Computerized -); Import-export agencies; Invoicing; Layout services for advertising purposes; Management (Advisory services for business -); Marketing; Marketing research; Marketing studies; Modelling for advertising or sales promotion; News clipping services; Office machines and equipment rental; On-line advertising on a computer network; Opinion polling; Organization of exhibitions for commercial or advertising purposes; Organization of trade fairs for commercial or advertising purposes; Outsourcing services [business assistance]; Payroll preparation; Personnel management consultancy; Personnel recruitment; Photocopying services; Presentation of goods on communication media, for retail purposes; Price comparison services; Procurement services for others [purchasing goods and services for other businesses]; Production of advertising films; Psychological

testing for the selection of personnel; Public relations; Publication of publicity texts; Publicity; Publicity agencies; Publicity columns preparation; Publicity material rental; Radio advertising; Relocation services for businesses; Rental of advertising space; Rental of advertising time on communication media; Rental of photocopying machines; Rental of vending machines; Sales promotion for others; Secretarial services; Shop window dressing; Shorthand; Sponsorship search; Systemization of information into computer databases; Tax preparation; Telemarketing services; Telephone answering for unavailable subscribers; Television advertising; Transcription; Typing; Updating of advertising material; Word processing; Writing of publicity texts; Advertising and marketing; advertising services; business data analysis; online advertising and marketing services; promotional services; business networking; business monitoring and consulting services, namely, tracking users and advertising of others to provide strategy, insight, marketing guidance, and for analyzing, understanding and predicting consumer behavior and motivations, and market trends; placing advertisements and promotional displays in electronic sites accessed via computer networks; providing information regarding careers, employment, and job placement; providing market information in relation to consumer products; providing shopping information; compiling and maintaining online directories; providing information regarding organising and conducting volunteer programmes and community service projects; advertising; computerized file management; sales promotion (for others); computer data recording services; systemization of information into computer databases; business information services; providing business information over the internet; retail services connected to the sale of chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics, manures, fire extinguishing compositions, tempering and soldering preparations, chemical substances for preserving foodstuffs, tanning substances, adhesives used in industry, unprocessed plastics in the form of liquids, chips or granules, paints; retail services connected to the sale of varnishes, lacquers, preservatives against rust and against deterioration of wood, colorants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, industrial oils and greases; retail services connected to the sale of lubricants, dust absorbing, wetting and binding compositions, fuels and illuminants, candles and wicks for lighting, combustible fuels and scented candles, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, plasters; retail services connected to the sale of materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, common metals and their alloys, metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores; retail services connected to the sale of unwrought and partly wrought common metals, metallic windows and doors, metallic framed conservatories and machine tools, motors and engines (except for land vehicles), machine coupling and transmission components (except for land vehicles),

agricultural implements other than hand-operated, incubators for eggs, automatic vending machines, hand tools and hand operated implements, cutlery, side arms, razors, electric razors and hair cutters; retail services connected to the sale of 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; retail services connected to the sale of DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth, orthopaedic articles, suture materials, massage apparatus, supportive bandages, furniture adapted for medical use, apparatus for lighting; retail services connected to the sale of heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, air conditioning apparatus, electric kettles, gas and electric cookers, vehicle lights and vehicle air conditioning units, vehicles, apparatus for locomotion by land, air or water, wheelchairs, motors and engines for land vehicles, vehicle body parts and transmissions, firearms, ammunition and projectiles; retail services connected to the sale of explosives, fireworks, precious metals and their alloys, jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, musical instruments, stands and cases adapted for musical instruments, paper, cardboard and printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials; retail services connected to the sale of paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, printers' type, printing blocks, rubber, gutta-percha, gum, asbestos, mica and plastics in extruded form for use in manufacture, semi-finished plastics materials for use in further manufacture, stopping and insulating materials, flexible non-metallic pipes; retail services connected to the sale of leather and imitations of leather, animal skins, hides, trunks and travelling bags, handbags, rucksacks, purses, umbrellas, parasols and walking sticks, whips, harness and saddlery, clothing for animals, non-metallic building materials, non-metallic rigid pipes for building, asphalt, pitch and bitumen, non-metallic transportable buildings, non-metallic monuments, non-metallic framed conservatories, doors and windows, furniture, mirrors; retail services connected to the sale of picture frames, wood, cork, reed, cane, wicker, horn, bone, shell, amber, mother-of-pearl, meerschaum or plastic, garden furniture, pillows and cushions, household or kitchen utensils and containers, combs and sponges, brushes, brush-making materials, articles for cleaning purposes, steel wool, articles made of ceramics, glass, porcelain or earthenware, electric and non-electric toothbrushes, ropes, string, nets, tents; retail services connected to the sale of awnings, tarpaulins, sails, sacks for transporting bulk materials, padding and stuffing materials which are not made of rubber or plastics, raw fibrous textile materials, yarns and threads for textile use, textiles and textile goods, bed and table covers, travellers' rugs, textiles for making articles of clothing, duvets, covers for pillows, cushions or duvets, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons; retail

services connected to the sale of hooks and eyes, pins and needles, artificial flowers, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), wallpaper, games and playthings, playing cards, gymnastic and sporting articles, decorations for Christmas trees, children's toy bicycles, meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products; retail services connected to the sale of edible oils and fats, prepared meals, soups and potato crisps, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice, sandwiches, prepared meals, pizzas, pies and pasta dishes, agricultural, horticultural and forestry products, live animals; retail services connected to the sale of fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, food and beverages for animals, beers, mineral and aerated waters, non-alcoholic drinks, fruit drinks and fruit juices, syrups for making beverages, shandy, de-alcoholised drinks, non-alcoholic beers and wines, alcoholic beverages (except beers), alcoholic wines, spirits and liqueurs, alcopops, alcoholic cocktails, tobacco, smokers' articles, matches, lighters for smokers.