

O-539-18

TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NOS 3206618 & 3206619
BY SADITA HOLDING COMPANY
TO REGISTER

CROWN-MICRO
CROWN MICRO

(SERIES OF TWO)

AND



(SERIES OF TWO)

AS TRADE MARKS
IN CLASSES 9,16 & 35
AND OPPOSITION THERETO (UNDER NOS.409075 & 409072)
BY
HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED

Background & Pleadings

1. Sadita Holding Company ('the applicant') applied for the trade marks outlined on the title page on 13 January 2017. There are two applications, both seeking registration of a series of two marks. The applications were published on 20 January 2017 in classes 9, 16 and 35 though not all these goods and services are subject to opposition. I will set out the opposed goods and services later in this decision.

2. Harman International Industries Incorporated ('the opponent') opposes the applications on the grounds of section 5(2)(b) and 5(3) of the Trade Mark Act 1994 ('the Act') on the basis of its two earlier EU trade marks set out below registered in class 9. I will set out the goods later in this decision

EU 1924760	EU 16258097
CROWN	
Filing date: 13 October 2000 Date of entry in register: 18 October 2001	Filing date: 16 January 2017 Priority date: 29 December 2016 (USA) Date of entry in register: 12 May 2017

3. The opponent's above mentioned trade marks have filing or priority dates that are earlier than the filing date of the application and, therefore, they are both earlier marks, in accordance with Section 6 of the Act. EU TM 16258097 is not subject to proof of use, having not been registered for five years prior to the publication date of the contested application. As the registration procedure for EU TM 1924760 was completed more than 5 years prior to the publication date of the contested application, it is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods it relies on.

4. The applicant filed a counterstatement in which it denied the grounds of opposition and requested that the opponent produce proof of use.

5. In these proceedings the applicant is represented by Trade Mark Wizards Limited and the opponent by Boulton Wade Tennant.

6. The opponent filed evidence and written submissions, whilst the applicant also filed written submissions. Neither party requested to be heard. I now make this decision from the papers before me.

Approach

7. The opponent relies on the two marks set out above in paragraph 2. The first of those marks is subject to proof of use, the second mark is not and has a broader specification. Although I note that the goods covered by the earlier USA priority date are narrower than those claimed in the EU TM. As the EU TM *per se* has a later filing date than the application, I can only consider those goods which are covered by the earlier priority date. With that in mind and in the interests of procedural economy, I will examine the opposition on the basis of the second mark for the goods covered by the priority date, returning to consider the first mark only if it becomes necessary to do so.

Section 5(2)(b)

8. Section 5(2)(b) of the Act states 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.

9. The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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.

The principles

(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

10. The case law relating to the comparison of goods and services is set out below. In *Canon*, the CJEU stated at paragraph 23 of its judgment 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”.

11. In relation to the assessment of the respective specifications, I note that in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... 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."

12. In *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM Case T-133/05) ('Meriç'), the General Court held:

"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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42)."

13. 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. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM), Case T-325/06, the General Court 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".

14. In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

15. In its submissions dated 28 March 2016, the applicant lists a number of goods in its class 9 namely, *temperature control apparatus [electric switches] for machines; temperature control apparatus [electric switches], for vehicles; temperature monitors for household use; temperature monitors for scientific use; temperature monitors for industrial use; electronic temperature monitors, other than for medical use; solar cells; solar cells for electricity generation; solar panels; solar panels for electricity generation; portable solar panels for generating electricity; solar panels for the production of electricity; fire extinguishing apparatus* that were not opposed by the opponents. I note these goods and have removed them from the comparison.

16. As set out previously, the goods covered by the earlier US priority mark are narrower than those claimed in the EU TM. I will make the comparison of goods and services based on those goods set out in the priority application. For convenience, given the length of the applicant’s specification, and because it’s the same specification in both cases, it is only listed once.

17. The goods and services to be compared are:

Opponent's goods	Applicant's goods and services
<p>Class 9: audio speakers; audio filters, namely, power amplifiers, low-pass filters, high-pass filters, equalizers; apparatus for recording, transmission or reproduction of sound and/or images; blank magnetic data carriers; data processing equipment; computers; computer hardware; computer peripherals; apparatus and instruments, namely, remote controls, power amplifiers, loudspeakers, subwoofers, stereo tuners, audio mixers, sound equalizers, and components therefor, all for recording, producing, transmitting, editing or processing audio and/or video signals; audio processing apparatus, namely compressors and signal processors for audio speakers; sound equalizers; audio amplifiers; amplifiers and pre-amplifiers; audio switchers in the nature of electronic switchers for audio signals; microphones; audio test equipment, namely, oscillators and signal analyzers used for measuring and testing audio performance, voltage meters, loads and inter-modulation distortion analysers; computer sound systems and apparatus, namely, remote controls, amplifiers, loudspeakers,</p>	<p>Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs; DVDs and other digital recording media; wireless communication devices; wireless communication apparatus; wireless computer peripherals; two-way wireless communication systems; wireless high frequency transmission instruments; wireless local area network devices; adapters for wireless network access; network cabling; network wires; network servers; wireless communication devices for voice, data, or image transmission; floppy discs; hard discs; video cassettes; audiocassettes; phonographs; compact discs; cd roms; laser-readable discs; microchips; microchip cards; tape recorders and tape cassette players; record players; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment;</p>

subwoofers; loudspeaker systems; signal, sound, surround sound, voice processors; headphones; earbuds; loudspeakers; transducers; radios; satellite-aided navigation systems; telematics apparatus, namely, wireless Internet devices which provide telematics services by creating electronic links between motor vehicles and satellites; Vehicle multimedia and audio systems and components, namely, audio speakers, amplifiers, multimedia connectors, mobile phone connectors, control units for amplifiers, multimedia connectors, mobile phone connectors, navigation systems, and audio speaker systems; portable GPS navigation devices; Audio and video transmitting apparatus, namely, electronic microphone splitters; electronic signal distribution systems used for the distribution of audio and video signals, and audio time delay units; apparatus for altering the tonal characteristics of an audio signal, namely, audio compressors, expanders, dynamic characteristics modifiers, noise gates, limiters, electronic audio crossovers; touch screens; all aforesaid goods also for use with audio systems and mobiles infotainment systems for automobiles; sound recording carriers; magnetic, electronic and optical data

weather balloons; computers; remotely operated computers; media centre computers; media centre PC's; clocks (Time-) [time recording devices]; alarms; touch screens; closed circuit television apparatus; cameras; still cameras; closed circuit television cameras; computer software; computer hardware; computers; tablets; tablet computers; mobile phones; smartphones; keyboards; mice; cables; power cords; speakers; subwoofers; earphones; headphones; virtual reality software; virtual reality hardware; virtual batteries; solar batteries; lithium ion batteries; battery chargers; battery backup; lithium ion battery charger; lithium polymer battery charger; chargers for electric batteries; solar battery chargers; portable charger; power banks; lithium polymer batteries; solar powered radios; phone plugs; memory sticks; USB hubs; USB chargers; USB cables; photographic flash lighting apparatus; cameras; flashlights [photography]; flashbulbs [photography]; screens [photography]; shutter releases [photography]; spools [photography]; cartridges; printer cartridges; remote controls; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity;

storage media; memory boards; position sensing gauges; position detection sensors; navigation apparatus for vehicles in the nature of on-board computers; Electronic transmitters and receivers for Video over IP; Wireless communication devices for voice, data or image transmission; Wireless communication device featuring voice, data and image transmission including voice, text and picture messaging, a video and still image camera, also functioning to allow the user to purchase music, games, video and software applications over the air for downloading to the device; mobile phones, and electronic devices installed in automobiles and other vehicles; computer software that enables the wireless transmission and provision of real-time information to enable automobile and vehicle drivers and passengers to communicate with each other and share real-time data, information, observations, commentary, opinions, and multimedia and online content via mobile phones, and electronic devices installed in automobiles and other vehicles; Light Emitting Diodes (LEDs); signal processing equipment and digital signal processing equipment, namely, signal processors and pre-amplifiers; digital

power supplies; electronic components; electronic components for computers; optical electronic components; semiconductors; transistors; silicon chips; telecommunications apparatus; voltage stabilizers; ethernet controllers; ethernet switches; ethernet transceivers; ethernet cards; ethernet adapters; ethernet repeaters; ethernet cables; ethernet power cables; inverters; electrical inverters; AC/DC inverters; inverters for power supply; photovoltaic inverters; home automation; circulators in the nature of electronic components; embedded electronics; embedded electronic devices; network boards; distribution boards; pc boards; digital boards; memory boards; circuit boards; electronic copy boards; multimedia accelerator boards; electrical circuit boards; connection boards [electric]; memo boards [electronic]; panel boards [electricity]; flexible circuit boards; camera boards; computer circuit boards; printed circuit boards; electrical switch boards; computer interface boards; add-on circuit boards; computer add-on boards; system boards (mother cards); printed wiring boards; integrated circuit boards; distribution panel boards [electricity]; test adapters for testing printed circuit boards; add-on circuit

voice signal processors; sound processors; stereo tuners; home cinema processors; DVD players; compact disc players; tape recorders; remote controls for , namely, projectors, subwoofers, microphones, headphones, video monitors, home theatre systems comprising Loudspeakers, amplifiers, subwoofers and components therefor; audio mixing consoles, namely, audio mixers; audio processing equipment, namely, compressors and signal processors for audio speakers; audio equalizer apparatus; telephones; power supplies; power cables; multimedia connectors, such as electronic docking stations; Public address systems comprised of loudspeakers, amplifiers, subwoofers; Blank USB flash drives; Blank USB cards; USB hardware; Portable multimedia players; wearable digital electronic devices comprising software and protective glass display screens for viewing, sending and receiving texts, emails, data and information from smart phones, tablet computers and portable computers and also featuring a wristwatch; wearable computer peripherals; wearable technology, namely, smart watches, smart wrist watches, smart bracelets, and detachable smart and smart wrist watch bands for uploading,

boards for connecting computers to networking software; add-on circuit boards; computer add-on boards; circuit distributors; circuit fuses; circuit testers; circuit closers; circuit breakers; circuit cards; decision circuits; focusing circuits; analogue circuits; logic circuits; hybrid circuits; printed circuits; electrical circuit testers; integrated circuit chips; integrated circuit modules; electronic circuit cards; SD cards; solid state drives [SSDs]; electrical circuit breakers; integrated circuit memories; electric circuit interrupters; hybrid integrated circuits; printed electric circuits; computer network switches; high frequency switches; electric current switches; valves (solenoid -) [electromagnetic switches]; electronic touch sensitive switches; rotary cam limit switches; push button switches (electrical -); push leaf switches (electrical -); temperature control apparatus [electric switches]; change-over switches [for telecommunication apparatus]; solar cells battery adapters; power adapters; electric plug adapters; electric extension leads and extension outlet sockets; electric conductor wires and cables; electric couplings; electric connections; electric switchboxes; electric fuses; electric sensors; electric contacts; electric cells; electric batteries;

downloading, accessing, posting, displaying, editing, tagging, blogging, streaming, linking, sharing, remote controlling and providing digital media and information via smartphone, handheld PDAs, tablet, notebook, laptop, portable media player, computer, communication and cloud networks; wireless electronic transmitters and wearable receivers for transmitting and receiving streamed audio and video signals from computers, smartphones, handheld PDAs, tablets, notebooks, laptops and portable media players; wearable electronic devices for providing physical, visual or audio feedback based on the user's motion, orientation, velocity, or acceleration; electronics, namely, wearable fitness accessories, namely, activity tracker, calorie usage measuring devices, namely, calorimeters, fitness progress tracking devices wearable as gloves, headbands, wristbands, armbands, in the nature of an activity tracker; wearable GPS based distance, speed/pace and GPS-compass trackers to be worn on the wrist or arm of a person during exercise; wearable computers; computer application software and downloadable mobile applications for use in connection with the above,

electric convertors; electric rectifiers; electric plugs; electric oscillators; electric buzzers; electric cords; electric wire; electrical sockets; electrical inductors; electrical terminators; electrical armatures; electrical capacitors; electrical receivers; electrical coils; electric leads; electrical ducts; electrical meters; electrical conduits; electrical amplifiers; electric switching apparatus; connection plugs (electric -); electric current rectifiers; electric circuit interrupters; metallic cables [electric]; switch panels [electric]; heat resistant electric cables; plastic covered electric wires; data storage devices; memory storage devices; electricity storage apparatus; junction boxes [electricity]; branch boxes [electricity]; connection boxes [electricity]; wire connectors [electricity]; computer network adapters; flash card adapters; test adapters for testing printed circuit boards; high-frequency switching power supplies; uninterrupted power supplies; uninterruptable power supplies; battery backup power supplies; accumulator battery; power supremotely operated power supply; off grid power supply; induction voltage regulators; voltage regulators for vehicles; voltage regulators for electric power; power controllers; electric power

namely, for use in fitness and activity tracking and feedback; downloadable mobile applications for use with multiple wireless connected accessories with fitness and sport data, user's data and progress of trend or achievement including personal information, location, sleep monitoring data, health data including heart rate and body weight for statistical analysis; software for wireless data streaming between connected accessories and smartphone via wireless communication; downloadable mobile applications for multiple wireless connected accessories for recording workouts, viewing and displaying exercises in calendar, connecting with friends with social media interaction, user's friend list synchronization and starting challenges between multiple user's goals and earning badges; software for with mobile tracking with smartphone built-in positioning system on dedicated models to get distance, pace, time during exercise; computer application software, namely, software for use in connection with wearable computer peripherals or wearable computers which provide functionality for the device; downloadable mobile applications for use in connection with wearable computer peripherals or wearable computers which provide

controllers; intelligent power controllers; maximum power point tracking; wireless computer peripherals; microcontrollers; gaming controllers; console controllers; portable transmitters; portable test apparatus; monitoring instruments; monitoring apparatus, electric; remote monitoring apparatus; visual monitoring apparatus; light-emitting diodes [LED]; interface software; infrared thermometers; photographic apparatus; cases adapted for computers; pc cases; cases adapted for cameras; cases for photographic apparatus; cases adapted for binoculars; cases for mobile phones; cases for electronic diaries; cases for pocket calculators; notebook computer carrying cases; laptop carrying cases; computer carrying cases; downloadable online publications.

35: Retail and online retail services in relation to the sale of speakers, subwoofers, earphones, headphones

<p>functionality for the device; software for noise cancellation enhancement, for enhancing headphone, audio speakers, and earbud sound; computer software that provides web-based access to applications and services through a web operating system or portal interface; computer software for manipulating digital audio information for use in audio media applications; computer software for downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data video files; computer application software for mobile phones, portable media players, handheld computers, computers, tablets, namely, software for noise cancellation enhancement, for enhancing sound in headphones, audio speakers, and earbuds; downloadable software application for downloading DVR recorded content for viewing on smartphones; software for monitoring data for use on wearable technology devices.</p>	
---	--

18. Although, in its counterstatement, the applicant denied each of the opponent's claims, in its written submissions it admitted the following goods and services are similar to goods in the opponent's class 9 specification:

Class 9: apparatus for recording, transmission or reproduction of sound or images; speakers; subwoofers; earphones; headphones; wireless communication devices;

wireless communication apparatus; wireless computer peripherals; two-way wireless communication systems; wireless high frequency transmission instruments; wireless local area network devices; computer software; computer hardware; battery adapters; power adapters; cables, power cords.

Class 35: Retail and online retail services in relation to the sale of speakers, subwoofers, earphones, headphones.

19. I note the applicant's admission of similarity but further find that the above class 9 goods are in fact identical to goods in the opponent's specification. In some instances, this is because they are a word for word repetition of terms in the opponent's specification, namely *apparatus for recording, transmission or reproduction of sound or images; subwoofers; wireless communication devices; computer software; computer hardware; cables* or because the goods are included in the broader classification of the opponent's specification and are identical on the *Meric* principle.

20. In relation to class 35, I agree that the retail of the identical goods set out in the opponent's class 9 specification may be considered complementary as such goods are commonly distributed via the retail services and therefore similar to a medium degree.

21. In its submission on the goods and services, the opponent contends that,

“The parties' descriptions of goods and services are long, and for reasons of proportionality a line by line approach is not taken. However we ask that the pleadings in the Statement of Grounds attached to the form TM7 to be taken in account”

22. Given the length of the specifications on both sides, I have grouped the remainder of the applicant's goods together where necessary for the purpose of this assessment ¹.

¹ *Separode Trade Mark* BL O-399-10 (AP)

23. *magnetic data carriers; data processing equipment; computers.*

These are identical to the terms *blank magnetic data carriers; data processing equipment; computers* in the opponent's specification.

24. *measuring apparatus and instruments*

These are considered identical goods to *oscillators and signal analyzers used for measuring and testing audio performance, voltage meters, loads and inter-modulation distortion analysers* in the opponent's specification on the *Meric* principle.

25. *cinematographic and optical apparatus and instruments; recording discs; compact discs; DVDs and other digital recording media; wireless communication devices for voice, data, or image transmission; floppy discs; hard discs; video cassettes; audiocassettes; phonographs; compact discs; cd roms; laser-readable discs; tape recorders and tape cassette players; record players; speakers; subwoofers; earphones; headphones; cameras; still cameras; SD cards; camera boards; photographic flash lighting apparatus; flashlights [photography]; flashbulbs [photography]; screens [photography]; shutter releases [photography]; spools [photography]; photographic apparatus and instruments; photographic apparatus; visual monitoring apparatus; solar powered radios; closed circuit television apparatus; closed circuit television cameras; portable transmitters; electronic components; electronic components for computers; optical electronic components; embedded electronics; embedded electronic devices.*

These goods are considered identical to *Apparatus for recording transmission or reproduction of sound or images* in the opponent's specification on the *Meric* principle.

26. *Memory sticks; USB hubs; USB chargers; USB cables; wireless computer peripherals; keyboards; mice; touch screens; cartridges; printer cartridges; computer network adapters; flash card adapters; solid state drives [SSDs];*

These goods are considered identical to *Computer peripherals* in the opponent's specification on the *Meric* principle.

27. *virtual reality hardware*

These goods are considered identical to *Computer hardware* in the opponent's specification on the *Meric* principle.

28. *Virtual reality software; interface software;*

These goods are considered identical to *computer software* in the opponent's specification on the *Meric* principle.

29. *computer software*

These goods are considered identical to *computer software that enables the wireless transmission and provision of real-time information to enable automobile and vehicle drivers and passengers to communicate with each other and share real-time data, information, observations, commentary, opinions, and multimedia and online content via mobile phones, and electronic devices installed in automobiles and other vehicles; computer software that provides web-based access to applications and services through a web operating system or portal interface; computer software for manipulating digital audio information for use in audio media applications; computer software for downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data video files; computer application software for mobile phones, portable media players, handheld computers, computers, tablets, namely, software for noise cancellation enhancement, for enhancing sound in headphones, audio speakers, and earbuds; downloadable software application for downloading DVR recorded content for*

viewing on smartphones; software for monitoring data for use on wearable technology devices in the opponent's specification on the Meric principle.

30. Remotely operated computers; media centre computers; media centre PC's; computers; tablets; tablet computers; adapters for wireless network access; network servers; network cabling; network wires; data storage devices; memory storage devices; memory boards.

These goods are considered identical to *Computers and Data processing equipment* in the opponent's specification on the *Meric* principle.

31. Mobile phones; smartphones; telecommunications apparatus;

These goods are considered identical to *wireless communication devices for voice, data or image transmission* in the opponent's specification on the *Meric* principle.

32. Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; power supplies; ethernet power cables; power banks; inverters; electrical inverters; AC/DC inverters; inverters for power supply; photovoltaic inverters; High-frequency switching power supplies; uninterruptible power supplies; uninterruptable power supplies; battery backup power supplies; accumulator battery; power supply; power supply; off grid power supply; virtual batteries; solar batteries; lithium ion batteries; battery backup; lithium polymer batteries; electric batteries; voltage stabilizers; voltage regulators for electric power; power controllers; electric power controllers; intelligent power controllers; voltage regulators for vehicles induction voltage regulators; battery chargers; lithium ion battery charger; lithium polymer battery charger; chargers for electric batteries; solar battery chargers; portable charger; solar cells battery adapters; electric plug adapters; electric extension leads; electric cords; electric conductor wires and cables; electric couplings; electric connections; electric wire; electric leads; electrical meters ; metallic cables [electric]; heat resistant electric cables; plastic covered electric wires; electricity storage apparatus ; wire connectors [electricity]; connection plugs (electric -);

These goods are considered identical to *power supplies; power cables* in the opponent's specification on the *Meric* principle.

33. In the absence of any specific submission from the opponent, I can see no way in which the following goods, namely *Scientific, surveying, signalling, nautical, checking (supervision), life-saving apparatus and instruments; Teaching apparatus and instruments; semiconductors; transistors; silicon chips; microchips; microchip cards; ethernet controllers; ethernet switches; ethernet transceivers; ethernet cards; ethernet adapters; ethernet repeaters; ethernet cables; circulators in the nature of electronic components; network boards; distribution boards; pc boards; digital boards; circuit boards; electronic copy boards; multimedia accelerator boards; electrical circuit boards; connection boards [electric]; memo boards [electronic]; panel boards [electricity]; flexible circuit boards; computer circuit boards; printed circuit boards; electrical switch boards; computer interface boards; add-on circuit boards; computer add-on boards; system boards (mother cards); printed wiring boards; integrated circuit boards; distribution panel boards [electricity]; test adapters for testing printed circuit boards; add-on circuit boards for connecting computers to networking software; home automation; add-on circuit boards; computer add-on boards; circuit distributors; circuit fuses; circuit testers; circuit closers; circuit breakers; circuit cards; decision circuits; focusing circuits; analogue circuits; logic circuits; hybrid circuits; printed circuits; electrical circuit testers; integrated circuit chips; integrated circuit modules; electronic circuit cards; electrical circuit breakers; integrated circuit memories; electric circuit interrupters; hybrid integrated circuits; printed electric circuits; computer network switches; high frequency switches; electric current switches; valves (solenoid -) [electromagnetic switches]; electronic touch sensitive switches; rotary cam limit switches; push button switches (electrical -); push leaf switches (electrical -); temperature control apparatus [electric switches]; change-over switches [for telecommunication apparatus]; extension outlet sockets; electric switchboxes; electric fuses; electric sensors; electric contacts; electric cells; electric convertors; electric rectifiers; electric plugs; electric oscillators; electric buzzers; electrical sockets; electrical inductors; electrical terminators; electrical armatures; electrical capacitors; electrical receivers; electrical coils; electrical ducts; electrical conduits; electrical amplifiers; electric switching apparatus; electric current rectifiers; electric circuit interrupters; switch panels [electric]; junction boxes [electricity]; branch*

boxes [electricity]; connection boxes [electricity]; test adapters for testing printed circuit boards; maximum power point tracking; microcontrollers; gaming controllers; console controllers; portable test apparatus; monitoring instruments; monitoring apparatus, electric; remote monitoring apparatus; light-emitting diodes [LED]; phone plugs; cash registers, calculating machines, remote controls; clocks (Time-) [time recording devices]; alarms; Infrared thermometers; weather balloons; weighing apparatus and instruments; Cases adapted for binoculars; cases for pocket calculators; cases adapted for computers; pc cases; cases adapted for cameras; cases for photographic apparatus; cases for mobile phones; cases for electronic diaries; notebook computer carrying cases; laptop carrying cases; computer carrying cases; mechanisms for coin-operated apparatus; downloadable online publications are similar to those in the opponent's specification. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

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

34. I do not find that these goods are of the same nature as the opponent's goods nor do they share the same purpose. They are not in competition. Neither is there any degree of complementarity. I find the goods are dissimilar.

Average consumer and the purchasing act

35. I now consider who the average consumer is for the contested goods and services and how they are purchased. 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: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

36. 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:

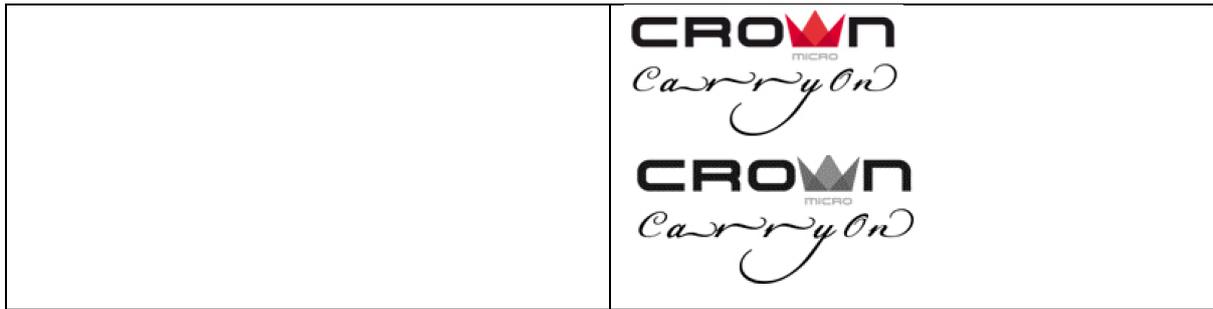
“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively 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.”

37. In this case the specifications are very broad and cover a wide range of goods, some of which are more likely to be purchased by businesses or professionals, e.g. public address systems whilst other goods such as cameras or computers could be purchased by both the general public and businesses. The cost of the goods and services is likely to vary considerably. Some could be very expensive purchases like an audio amplification system whilst other goods are much lower in price like DVDs. Ordinarily I would expect a normal to high level of attention being paid by the consumer when selecting such goods. The purchasing act will be primarily visual as goods will be selected by viewing products in traditional bricks and mortar retail premises, or from perusal of images on Internet websites or in catalogues. However, I do not discount any aural considerations such as advice sought from a technical specialist prior to purchase.

Comparison of the marks

38. The marks to be compared are:

Opponent’s mark	Applicant’s marks
	CROWN-MICRO CROWN MICRO



39. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union 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.”

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

41. The opponent’s mark is a composite arrangement, consisting of a device of a stylised crown inside two concentric circles. The device is placed to the left of the word **crown**, which is itself presented in a bold, lower case, slightly stylised but unremarkable font. The crown device is significant in terms of its size, positioning and stylisation and makes a substantial visual impact. So when combined with the word **crown**, it makes the word and device elements equally dominant and distinctive within the mark as they are conceptually linked.

42. The applicant's mark no. 3206618 consists of a series of two word marks, **CROWN-MICRO** and **CROWN MICRO**. The only difference between the two marks being the presence of a hyphen in the first mark and its absence in the second. In its submissions of 28 March 2018, the opponent contends that,

“the word ‘micro’ possesses little or no distinctive character in relation to goods which are attractive because they are small in size...”

43. It is the case that the word ‘micro’ means very small, in particular for electronic goods which use micro processing technology. On that basis I agree that the word is lower in distinctiveness than the other word element **CROWN** in relation to the goods at hand.

44. The applicant's mark no. 3206619 consists of a series of two composite marks. The marks consist of what will be seen as the word, **CROWN**, with a device resembling a stylised crown in place of the letter W. There are two other additional word elements. Firstly, the word **MICRO** appears in a very small font directly underneath the crown/letter W and is no wider than the width of the crown/letter W device. Secondly the words **Carry On** are presented in a cursive script underneath the full length of the word **CROWN**. The only difference between the two marks is that the crown/letter W is depicted in red in the first mark and in greyscale in the second mark. As to the overall impression, the crown device/letter W element of these marks is significant in terms of its impact within the word and reinforces the concept of the word **CROWN** so in my view these elements are equally dominant and distinctive within the mark. The word **MICRO**, being smaller in scale and size than the words above and below it, has much less significance in the overall impression. Finally, the words **Carry On** are of a significant size and scale to have an impact within the overall impression of the mark. But with regard to these words, the opponent in its submissions of 28 March 2018, contends that,

“...‘carry on’ merely reinforces the descriptive and non-distinctive message of ‘micro’ in that the goods are small in size and portable...”

45. I note the opponent's submission that the words 'carry on' are descriptive in relation to portability. Many of the contested goods are portable by their very nature and other goods may be portable by design so I would characterise these words, like **MICRO**, as having less distinctiveness than the word **CROWN** which precedes it in relation to the contested goods.

Visual, Aural and Conceptual comparison for application no. 3206618

46. Turning to a visual comparison of the marks, there is clearly a shared element in the word **Crown**. But there are also visual differences such as the additional device element in the opponent's mark and the additional word **MICRO** in the applicant's mark, although I have found that the word **MICRO** carries less distinctive weight in relation to the applicant's goods and services. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court noted that the beginnings of words tend to have more visual and aural impact than the ends. The court stated:

"81. It is clear that visually the similarities between the word marks MUNDICOLOR and the mark applied for, MUNDICOR, are very pronounced. As was pointed out by the Board of Appeal, the only visual difference between the signs is in the additional letters 'lo' which characterise the earlier marks and which are, however, preceded in those marks by six letters placed in the same position as in the mark MUNDICOR and followed by the letter 'r', which is also the final letter of the mark applied for. Given that, as the Opposition Division and the Board of Appeal rightly held, the consumer normally attaches more importance to the first part of words, the presence of the same root 'mundico' in the opposing signs gives rise to a strong visual similarity, which is, moreover, reinforced by the presence of the letter 'r' at the end of the two signs. Given those similarities, the holder's argument based on the difference in length of the opposing signs is insufficient to dispel the existence of a strong visual similarity.

82. As regards aural characteristics, it should be noted first that all eight letters of the mark MUNDICOR are included in the MUNDICOLOR marks.

83. Second, the first two syllables of the opposing signs forming the prefix 'mundi' are the same. In that respect, it should again be emphasised that the attention of the consumer is usually directed to the beginning of the word. Those features make the sound very similar.

Taking all of this into account, I find there is a medium degree of visual similarity.

47. With regard to the aural comparison, the shared word element **CROWN** will be pronounced identically in all marks. The opponent's device element will not be verbalised and it has no other aural factors to be considered whereas the applicant's marks have the additional word **MICRO** which will be verbalised, especially so in the first mark of the series as that contains a hyphen which joins the two words. Bearing in mind the guidance outlined above in the *El Corte Inglés* case regarding the first word element being of greater importance, I find there is a medium to high degree of aural similarity between the marks.

48. Turning to the conceptual comparison, the applicant contends in its submission dated 28 March 2018 that its marks are "...an unusual concatenation of two well-known words to create a meaningless phrase". I note these submissions and agree that an average consumer may struggle to find an exact conceptual hook for the marks, other than having something to do with crowns. To that extent, the shared word element **Crown** in the opponent's mark will bring to mind the same concept. The crown device will reinforce that concept. I find there is a medium level of conceptual similarity on that basis.

Visual, Aural and Conceptual comparison for application no. 3206619

49. Regarding the visual comparison of the applicant's composite marks, the **CROWN** word element is present in both the applicant's and opponent's marks as is a device of a crown, albeit that the crown device is separated from the word in the opponent's mark and is part of the word in the applicant's marks. The applicant's marks also have the words **MICRO** and **Carry On** which are not shared by the opponent's mark. However, the word **MICRO** in the composite marks is very small in comparison to the other word elements and does not have the same visual impact as the words **CROWN** and **Carry On**. The guidance outlined in *El Corte Inglés*

regarding the importance of the first word is equally applicable to this composite series. I again find there is a medium degree of visual similarity.

50. Turning to the aural comparison of the applicant's composite marks, the **CROWN** element will be pronounced identically but it is less likely that the word **MICRO** will be verbalised given its size and scale. In my view the words **Carry On** will be verbalised given their size and scale within the mark. Taking these factors into account including the *El Corte Inglés* guidance, I find there is a medium to high degree of aural similarity between the marks.

51. On the conceptual comparison for the applicant's composite marks, it contends in its submission that the marks are "a jumble of English words". I agree there is no immediate conceptual hook for consumers for the marks as a whole, other than having some connection with crowns and possibly carrying something. But as previously outlined, the shared element **Crown** in the opponent's mark will bring to mind the same concept of a crown. To that extent I find there is a medium level of conceptual similarity.

Distinctive character of the earlier mark

52. The distinctive character of the earlier mark must be considered. The more distinctive it is, either inherently or through use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

53. There is no evidence before me showing use of the earlier mark, no. 16258097 for the goods relied on so I am only considering the inherent distinctiveness of this earlier mark. The earlier mark consists of a device of a crown and the word CROWN itself. Neither the device nor the mark has any descriptive meaning in relation to the goods for which it is registered. I find that the earlier mark has an ordinary level of inherent distinctiveness.

54. The level of inherent distinctiveness of a mark may be enhanced because of use in the UK. The opponent filed evidence in relation to its earlier mark, no. 1924760. I have considered that evidence but it is deficient in that it does not provide any turnover figures, any advertising expenditure nor any indication of its market share in the UK. In short there was nothing within the evidence which persuades me that the opponent has a reputation in the goods claimed or enjoys the benefit of enhanced distinctiveness through use of the mark. This mark does not put the opponent in any stronger a position than its composite mark no.16258097.

Likelihood of confusion

55. I now draw together my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors and those outlined in paragraph 10:

- a) The interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon*).
- b) The principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*).
- c) Imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer*).

56. Confusion can be direct (when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related). In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“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.

57. Further I note in *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C., again sitting as the Appointed Person, pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

58. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

59. So far, I have found that some of the contested goods are identical, but that some goods were dissimilar. In relation to the retail services I found that they were similar to a medium degree on the basis of complementarity. Further I found that the average consumer will pay a normal to high level of attention during a primarily visual purchasing process. In addition, I have found that the earlier mark has an ordinary level of inherent distinctiveness and there is visual similarity to a medium degree and aural similarity to a medium to high degree. For the conceptual comparison, I found the marks were conceptually identical for the shared element CROWN. With regard to the additional elements, namely the words MICRO and CARRY ON, I have found that they are descriptive in relation to the goods and services and consequently carry much less distinctive weight.

60. Based on the marks and the goods and services before me and taking into account the assessments I have made, in addition to the comments made by Mr Purvis outlined above in *Kurt Geiger*, I have found that the dominant and distinctive character of the earlier mark lies in the word **CROWN** and the device of a crown. It is this ‘**CROWN**’ word element and the concept of a crown device which are shared by

the applicant's marks. I believe that even in the case of business consumers giving a high level of attention to purchasing expensive goods, the effect of imperfect recollection will be such that a significant proportion of the relevant public will directly confuse the marks where the goods are identical or similar. In relation to the services I find that the relevant public will mistake the applicant's marks for the opponent's mark and cause them to believe the applicant is providing retail services relating to the kind of goods the opponent offers under its mark.

61. Even if I am wrong in this consideration, I also find there is a likelihood of indirect confusion as the average consumer on seeing the CROWN-MICRO or CROWN MICRO CARRY ON marks may note the additional elements but just assume that these are a merely a brand extension of the CROWN goods.

Section 5(3)

62. 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.”

63. Turning to the ground claimed under section 5(3) of the Act, it follows that I must consider the reputation of the earlier mark, namely no.1924760. Then if a reputation is established, go on to consider if a link is made between the earlier mark and the applicant's marks. In this instance I do not find that the opponent has demonstrated the necessary reputation through its evidence for the reasons given in paragraph 54, so does not clear the first hurdle required for section 5(3).

Conclusion

64. The oppositions to application nos. 3206618 and 3206619 were directed only at some of the goods and services for which registration is sought. With that in mind,

and in view of my findings, the oppositions succeed in relation to the following goods and services:

Class 9: apparatus for recording, transmission or reproduction of sound or images; speakers; subwoofers; earphones; headphones; wireless communication devices; wireless communication apparatus; wireless computer peripherals; two-way wireless communication systems; wireless high frequency transmission instruments; wireless local area network devices; computer software; computer hardware; battery adapters; power adapters; cables, power cords; magnetic data carriers; data processing equipment; computers; measuring apparatus and instruments; cinematographic and optical apparatus and instruments; recording discs; compact discs; DVDs and other digital recording media; wireless communication devices for voice, data, or image transmission; floppy discs; hard discs; video cassettes; audiocassettes; phonographs; compact discs; cd roms; laser-readable discs; tape recorders and tape cassette players; record players; speakers; subwoofers; earphones; headphones; cameras; still cameras; SD cards; camera boards; photographic flash lighting apparatus; flashlights [photography]; flashbulbs [photography]; screens [photography]; shutter releases [photography]; spools [photography]; photographic apparatus and instruments; photographic apparatus; visual monitoring apparatus; solar powered radios; closed circuit television apparatus; closed circuit television cameras; portable transmitters; electronic components; electronic components for computers; optical electronic components; embedded electronics; embedded electronic devices; memory sticks; USB hubs; USB chargers; USB cables; wireless computer peripherals; keyboards; mice; touch screens; cartridges; printer cartridges; computer network adapters; flash card adapters; solid state drives [SSDs]; virtual reality hardware; Virtual reality software; interface software; Remotely operated computers; media centre computers; media centre PC's; computers; tablets; tablet computers; adapters for wireless network access; network servers; network cabling; network wires; data storage devices; memory storage devices; memory boards; mobile phones; smartphones; telecommunications apparatus; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; power supplies; ethernet power cables; power banks; inverters; electrical inverters; AC/DC inverters; inverters for power supply; photovoltaic inverters; High-frequency switching power

supplies; uninterrupted power supplies; uninterruptable power supplies; battery backup power supplies; accumulator battery; power suppremotely operated power supply; off grid power supply; virtual batteries; solar batteries; lithium ion batteries; battery backup; lithium polymer batteries; electric batteries; voltage stabilizers; voltage regulators for electric power; power controllers; electric power controllers; intelligent power controllers; voltage regulators for vehicles induction voltage regulators; battery chargers; lithium ion battery charger; lithium polymer battery charger; chargers for electric batteries; solar battery chargers; portable charger; solar cells battery adapters; electric plug adapters; electric extension leads; electric cords; electric conductor wires and cables; electric couplings; electric connections; electric wire; electric leads; electrical meters ; metallic cables [electric]; heat resistant electric cables; plastic covered electric wires; electricity storage apparatus ; wire connectors [electricity]; connection plugs (electric -).

Class 35: Retail and online retail services in relation to the sale of speakers, subwoofers, earphones, headphones.

65. The applications will proceed to registration for:

- All goods in class 16 (which did not form part of these opposition proceedings).
- all services in class 35 with the exception of *Retail and online retail services in relation to the sale of speakers, subwoofers, earphones, headphones.*
- the following goods in class 9, which include the unopposed goods: *Scientific, surveying, signalling, nautical, checking (supervision), life-saving apparatus and instruments; Teaching apparatus and instruments; semiconductors; transistors; silicon chips; microchips; microchip cards; ethernet controllers; ethernet switches; ethernet transceivers; ethernet cards; ethernet adapters; ethernet repeaters; ethernet cables; circulators in the nature of electronic components; network boards; distribution boards; pc boards; digital boards; circuit boards; electronic copy boards; multimedia accelerator boards; electrical circuit boards; connection boards [electric]; memo boards [electronic]; panel boards [electricity]; flexible circuit boards; computer circuit boards; printed circuit boards; electrical switch boards; computer interface boards; add-on circuit boards; computer add-on boards; system boards*

(mother cards); printed wiring boards; integrated circuit boards; distribution panel boards [electricity]; test adapters for testing printed circuit boards; add-on circuit boards for connecting computers to networking software; home automation; add-on circuit boards; computer add-on boards; circuit distributors; circuit fuses; circuit testers; circuit closers; circuit breakers; circuit cards; decision circuits; focusing circuits; analogue circuits; logic circuits; hybrid circuits; printed circuits; electrical circuit testers; integrated circuit chips; integrated circuit modules; electronic circuit cards; electrical circuit breakers; integrated circuit memories; electric circuit interrupters; hybrid integrated circuits; printed electric circuits; computer network switches; high frequency switches; electric current switches; valves (solenoid -) [electromagnetic switches]; electronic touch sensitive switches; rotary cam limit switches; push button switches (electrical -); push leaf switches (electrical -); temperature control apparatus [electric switches]; change-over switches [for telecommunication apparatus]; extension outlet sockets; electric switchboxes; electric fuses; electric sensors; electric contacts; electric cells; electric convertors; electric rectifiers; electric plugs; electric oscillators; electric buzzers; electrical sockets; electrical inductors; electrical terminators; electrical armatures; electrical capacitors; electrical receivers; electrical coils; electrical ducts; electrical conduits; electrical amplifiers; electric switching apparatus; electric current rectifiers; electric circuit interrupters; switch panels [electric]; junction boxes [electricity]; branch boxes [electricity]; connection boxes [electricity]; test adapters for testing printed circuit boards; maximum power point tracking; microcontrollers; gaming controllers; console controllers; portable test apparatus; monitoring instruments; monitoring apparatus, electric; remote monitoring apparatus; light-emitting diodes [LED]; phone plugs; cash registers, calculating machines, remote controls; clocks (Time-) [time recording devices]; alarms; Infrared thermometers; weather balloons; weighing apparatus and instruments; Cases adapted for binoculars; cases for pocket calculators; cases adapted for computers; pc cases; cases adapted for cameras; cases for photographic apparatus; cases for mobile phones; cases for electronic diaries; notebook computer carrying cases; laptop carrying cases; computer carrying cases; mechanisms for coin-operated apparatus; downloadable online publications; temperature control apparatus [electric

switches] for machines; temperature control apparatus [electric switches], for vehicles; temperature monitors for household use; temperature monitors for scientific use; temperature monitors for industrial use; electronic temperature monitors, other than for medical use; solar cells; solar cells for electricity generation; solar panels; solar panels for electricity generation; portable solar panels for generating electricity; solar panels for the production of electricity; fire extinguishing apparatus

Costs

66. Although it failed in its opposition for the goods I found to be dissimilar, the opponent has been successful for the most part, so it is entitled to a contribution towards the costs incurred in these proceedings. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs as follows:

£400	Official fees for filing two Notices of Opposition
£800	Preparing submissions and considering the other side's submissions
£500	Preparing evidence
£1700	Total

67. I order Sadita Holding Company to pay Harman International Industries, Incorporated the sum of £1700. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of August 2018

June Ralph
For the Registrar,
The Comptroller General