

O/655/21

Trade Marks Act 1994

**IN THE MATTER OF UK TRADE MARK REGISTRATION NOS. 3267855 AND
3281995**

IN THE NAME OF REVIVE A PHONE LIMITED FOR THE TRADE MARKS



IN CLASSES 36 & 37

AND

wefix

IN CLASS 37

AND

**THE CONSOLIDATED APPLICATIONS FOR INVALIDATION THERETO UNDER
NOS. 503493 & 503494**

BY WEFIX

Background and pleadings

1. Revive A Phone Limited (“the proprietor”) applied to register trade mark no. 3267855 in the UK for the mark ‘wefix’ on 2 November 2017. The trade mark was published on 17 November 2017 and was registered on 26 January 2018. The mark is registered for the services detailed in the table below. The proprietor also applied to register a second trade mark no. 3281995 for the mark



in the UK on 11 January 2018. It was accepted and published in the Trade Marks Journal on 23 February 2018 and was registered on 14 December 2018. This mark is registered for the services outlined in the table below:

Trade Mark	Registration number	Services
wefix	3267855 (“the word mark”)	Class 37: Repair and maintenance of computer and telecommunications hardware; Repair and maintenance of smartphones; Repair of computer hardware; Repair of computers; Repair of consumer electric appliances; Repair of damaged computers; Repair of electrical equipment; Repair of electronic apparatus; Repair of electronic business equipment; Repair of radio equipment; Repair of telecommunication machines and apparatus; Repair of telephone apparatus; Repair or maintenance of computers; Repair or maintenance of consumer electric appliances; Repair or maintenance of telecommunication machines and apparatus; Repair or maintenance of telephone apparatus.
	3281995 (“the logo mark”)	Class 36: Insurance; financial affairs; monetary affairs; services of credit institutions other than banks; services of credit brokers dealing in repayment plans; services dealing with insurance

		<p>such as services rendered by agents or brokers engaged in insurance, services rendered to insured, and insurance underwriting services; insurance brokerage; insurance consultancy; insurance information; loans [financing]; repair costs evaluation [financial appraisal]; financial services related to payment plans; warranty services.</p> <p>Class 37: Photographic apparatus repair; telephone and tablet (electronic) repair; maintenance and repair of telephones and tablets (electronic); mobile telephone and tablet repair services provided at the customer's location; repair and maintenance of smartphones; repair of electronic apparatus; maintenance and repair of communications systems; maintenance and repair of computers; installation, maintenance and repair of computer hardware; repair of telephone apparatus; repair information; telephone installation and repair; Installation, cleaning, maintenance and repair services in connection with telecommunications apparatus and instruments; installation, cleaning, maintenance and repair services in connection with telephones, mobile phones, smart phones, tablets and other computing devices; installation, cleaning, maintenance and repair of computers, computer hardware, and computer peripherals; Electronic device repairs namely Sat Nav, mobile phones, game consoles; laptop computer repairs, camera and camcorder repair, tablet repairs, mp3 player repairs and other electronic</p>
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		devices; repair, maintenance and installation of telephones, mobile phones, cellular phones, computers and electric and electronic equipment; provision of information relating to the aforementioned services; advisory, information and consultancy services relating to all of the aforementioned services.
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2. WeFix (“the cancellation applicant”) applied to invalidate both of the trade mark registrations on the basis of section 47(2)(a) and relying on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The applications for invalidation were filed on 10 December 2020. Both actions are based on a single EU¹ trade mark as outlined in the table below:

Trade mark	Registration no. / date	Goods/services relied upon
 Colour Claimed: Orange, black, white.	14948343/ 15 July 2017	Class 9: Telecommunications apparatus; Cell phones; Smartphones; Tablet computers; Wireless connected electronic objects for the transmission of sound and images; Handheld personal computers; batteries for portable telephones; Telephone receivers; Telephone headsets; Cases for mobile telephones and tablets; Cases for telephones; Telephone adapters; Peripherals adapted for use with computers; Computer memory devices; Mice; Keyboards; Printers; Data storage devices; Hard disks, USB flash drives and other storage units; Audio/visual and photographic devices; Computer programs; Systems for

¹ Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

		<p>the input, analysis, extraction, processing, management, display and storage of data and computer files; Downloadable computer software and applications for mobile devices, telephones and tablets; Computer software for database management.</p> <p>Class 35: Retailing in physical shops or online of electronic apparatus, telecommunications apparatus, mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects; Retailing in physical shops or online of accessories for mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects; Presentation of goods on all means of communication for retail; Purchase and acquisition of second-hand goods, namely mobile telephones, smartphones, touchscreen tablets and connected objects; Resale of mobile telephones, smartphones, touchscreen tablets and connected objects.</p> <p>Class 36: Insurance services and insurance contracts relating to electronic apparatus, telecommunications apparatus, telephones and mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects, and accessories and peripheral devices therefor.</p>
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3. The trade mark relied upon has a filing date of 22 December 2015. By virtue of its earlier filing date, the trade mark upon which the cancellation applicant relies qualifies as an earlier trade mark pursuant to section 6 of the Act in both actions.
4. The cancellation applicant argues in both cases that the respective goods and services are identical or similar and that the marks are similar, and that as such, there is a likelihood of confusion between the marks.
5. The proprietor filed two counterstatements denying the claims made. These proceedings were consolidated following a request received from the cancellation applicant on 18 March 2021. Both parties were informed of the joining of the proceedings by way of a letter from the Tribunal dated 22 March 2021.
6. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.
7. A Hearing took place via video conference on 19 August 2021, with the cancellation applicant represented by Mr Lee Curtis of HGF Limited and the proprietor by Mr Daniel Selmi of Clarke Willmott LLP.
8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

Evidence

9. The cancellation applicant filed evidence by way of a witness statement in the name of Ms Emma Pallister, described as a Trainee Trade Mark Attorney at HGF Limited, the representative for the cancellation applicant. The witness statement introduces 9 exhibits, namely Exhibits EP1 to EP9.
10. Ms Pallister describes the exhibits as coming from her own research “conducted on 13 April 2021 into the electronic goods market and the scope of the products and services offered by operators within that market.” Exhibit EP1

comprises print outs from <https://www.apple.com/uk/shop>, <https://support.apple.com/en-gb/repair> and <https://support.apple.com/en-gb/mac/repair/service> showing the company trading as 'Apple' offering products including smart phones, smart watches, laptops and computers for sale, in addition to repair services described as below. Costs for the repair services are given on the screenshots.

Apple Repair

We're here to help. Apple-certified repairs are performed by trusted experts who use genuine Apple parts. Only Apple-certified repairs are backed by Apple. Whichever option you choose, you'll get your product back working exactly the way it should.

11. Exhibit EP2 comprises screenshots of repair services offered on the Apple website dated via the webpage archiving website Wayback Machine on 28 April 2016, 9 June 2017 and 24 July 2017.
12. Exhibit EP3 comprises screenshots from www.samsung.com/uk/mobile in addition to www.samsung.com/uk/support/repair/ again showing the offering of products including smart phones, smart watches, laptops and computers, in addition to repair services described as below:

When you buy a Samsung product, the service to you is only just getting started. So, when you need painless troubleshooting and quick and easy repairs then you're in the right place. Our Samsung authorised technicians use genuine Samsung parts to repair your product to the highest standard, while protecting your original factory warranty.

13. Exhibit EP4 comprises screenshots again showing the sale of electronics in addition to repair services by the company trading as Sony on the webpage

<https://www.sony.co.uk/all-electronics> and <https://www.sony.co.uk/electronics/support/articles/00244641>. Exhibit EP5 consists of pages from the Sony website at <https://www.services.sony.co.uk/supportmvc/en/repair> as dated by Wayback machine on 28 June 2016, 20 November 2016 and 23 November 2017 and showing pages offering support on repair and warranty for products.

14. Exhibit EP6 shows pages from <https://www.carephonewarehouse.com/repair.html> showing phone repair services in addition to offering upgrade and trade in services, and Exhibit EP7 shows these pages available via the Wayback machine dated 11 September 2017, 11 January 2018 and 26 March 2018.

15. Exhibit EP8 shows two webpages using the trading name 'cex'. One webpage is at <https://uk.webuy.com> and offers to buy and sell second hand goods, including mobile phones and other items. The other page is at <https://www.cexclinic.com> and offers repairs of electronic items including mobile phones, games consoles, tablet computers and laptops. Exhibit EP9 comprises pages from Wayback machine dated 10 January 2018, again showing the page <https://www.cexclinic.com> and offering the same repairs.

16. The proprietor's evidence comprises a witness statement in the name of Mr Aaron Brown, along with Exhibits AB1 to AB8. Mr Brown is described as a Director of the proprietor, and it is stated he has held that position since February 2018.

17. In his witness statement, Mr Brown states that it "...is not standard practice for manufacturers or retailers of consumer tech goods to offer related repair and maintenance services, as these services are usually outsourced to economically independent third parties." Mr Brown submits as Exhibit AB1 a page from the cancellation applicant's Exhibit EP3, namely a page from the Samsung website provided. Mr Brown draws attention to the text stating that repairs are offered by trusted third party service providers. Mr Brown submits it is common practice for businesses to offer repair services only and produces at Exhibit AB2 a list which he states is a list of the proprietor's competitors

offering repair services only. This list contains six different names and web addresses.

18. Exhibits AB3 to AB6 comprise webpages for the parties listed on the competitors list. These pages show that these parties offer repair services for Apple products including Macs and iPhones, in addition to Samsung products including 'smartphone, tablet and wearable repairs'. A page from a company operating under the name SBE that claims to have a worldwide presence and states as follows:

We are an accredited service partner for some of the world's most prestigious consumer electronics brands. Our repair centres perform warranty services on behalf of global clients in the communications and technology sectors.

19. Mr Brown explains that Exhibit AB7 is a price list of the proprietor's iPhone screen repair services. Mr Brown states these prices range from £61 to £429, and he submits "those prices are representative of consumer tech repair and maintenance services in general." Mr Brown explains that Exhibit AB8 is the proprietor's price list for Samsung phone models, as well as competitor's prices. The exhibit comprises a table listing the 'WeFix' prices between £249 - £289, with two competitors prices listed between £125.95 - £229.95 and between £209.99 and £249.00 all for the same Samsung screen fixing services. Mr Brown submits that the proprietor's prices are around 50% higher than the average high street repair shops due to the high quality and convenience of its at home services.

20. Whilst some of the parties' evidence has been described only briefly, this has been reviewed and considered in its entirety. I have detailed this only to the extent that I find necessary for the purpose of this decision.

21. At the hearing, there was some discussion about the emphasis I should place on the evidence filed. Mr Selmi as the representative for the proprietor submitted that whilst he was not criticizing Ms Pallister's evidence, more weight should be given to the evidence of Mr Brown as an expert in the industry,

particularly in respect of his comments on the goods and services normally offered by entities. Mr Curtis stated that Ms Pallister's evidence stands on its own as evidence of fact. I asked Mr Selmi to confirm if he was suggesting that I take Mr Brown's evidence as expert evidence, and he confirmed he was not, but that instead it should be taken as evidence of fact as submitted by someone with a position in the industry. I have considered the submissions from either side on this. I agree that Ms Pallister's evidence stands alone and that the fact she is not in a position in the industry concerned does not take away from the documents filed. I also accept that, to the best of his knowledge in his position held for just over three years at the time that the witness statement was filed, Mr Brown believed that it was not the norm for parties selling electronics to undertake the repair services themselves. I shall take the evidence from both sides into account when I am deliberating on the similarity between the goods and services. I do not accept that I should attribute more weight to Mr Brown's comments than to Ms Pallister's documentary evidence in this instance.

Proof of use

22. The earlier mark had not been registered for a period of over five years at the date on which the applications for invalidation were filed, and so it is not subject to proof of use under section 47(2A)(c) and (2B) of the Act.

Decision

Section 5(2)(b)

Section 47

23. Section 47 of the Act states as follows:

"47. –

(1) [...]

(2) The registration of a trade mark may be declared invalid on the ground -

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5 (4) is satisfied

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

Section 5(2)(b)

24. Section 5(2)(b) of the Act is 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”.

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

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

The Principles

26. The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") 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.

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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

27. Section 60A of the Act provides:

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

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

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

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

28. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

29. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

30. 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 GC stated that goods may be considered “complementary” where:

“...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”.

31. The case law provides further guidance on how the wording of goods and services as registered and filed should be interpreted within the comparison. 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.”

32. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

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

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

34. With these factors in mind, the goods and services for comparison are below:

Earlier goods and services	Contested services
Class 9: Telecommunications apparatus; Cell phones; Smartphones; Tablet computers; Wireless connected electronic objects for the transmission of sound and images; Handheld personal computers; batteries for portable telephones; Telephone receivers; Telephone headsets; Cases for mobile telephones and tablets; Cases for telephones; Telephone adapters; Peripherals adapted for use with computers; Computer memory devices; Mice; Keyboards; Printers; Data storage devices; Hard disks, USB flash drives and other storage units; Audio/visual and photographic devices; Computer programs; Systems for the input, analysis, extraction, processing,	Class 37: Repair and maintenance of computer and telecommunications hardware; Repair and maintenance of smartphones; Repair of computer hardware; Repair of computers; Repair of consumer electric appliances; Repair of damaged computers; Repair of electrical equipment; Repair of electronic apparatus; Repair of electronic business equipment; Repair of radio equipment; Repair of telecommunication machines and apparatus; Repair of telephone apparatus; Repair or maintenance of computers; Repair or maintenance of consumer electric appliances; Repair or maintenance of telecommunication machines and apparatus; Repair or maintenance of telephone apparatus. (the contested word mark)

<p>management, display and storage of data and computer files; Downloadable computer software and applications for mobile devices, telephones and tablets; Computer software for database management.</p> <p>Class 35: Retailing in physical shops or online of electronic apparatus, telecommunications apparatus, mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects; Retailing in physical shops or online of accessories for mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects; Presentation of goods on all means of communication for retail; Purchase and acquisition of second-hand goods, namely mobile telephones, smartphones, touchscreen tablets and connected objects; Resale of mobile telephones, smartphones, touchscreen tablets and connected objects.</p>	<p>Class 36: Insurance; financial affairs; monetary affairs; services of credit institutions other than banks; services of credit brokers dealing in repayment plans; services dealing with insurance such as services rendered by agents or brokers engaged in insurance, services rendered to insured, and insurance underwriting services; insurance brokerage; insurance consultancy; insurance information; loans [financing]; repair costs evaluation [financial appraisal]; financial services related to payment plans; warranty services.</p> <p>Class 37: Photographic apparatus repair; telephone and tablet (electronic) repair; maintenance and repair of telephones and tablets (electronic); mobile telephone and tablet repair services provided at the customer's location; repair and maintenance of smartphones; repair of electronic apparatus; maintenance and repair of communications systems; maintenance and repair of computers; installation, maintenance and repair of computer hardware; repair of telephone apparatus; repair information; telephone installation and repair; Installation, cleaning, maintenance and repair services in</p>
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<p>Class 36: Insurance services and insurance contracts relating to electronic apparatus, telecommunications apparatus, telephones and mobile telephones, smartphones, electronic tablets, fixed and portable computers, wireless connected electronic objects, and accessories and peripheral devices therefor.</p>	<p>connection with telecommunications apparatus and instruments; installation, cleaning, maintenance and repair services in connection with telephones, mobile phones, smart phones, tablets and other computing devices; installation, cleaning, maintenance and repair of computers, computer hardware, and computer peripherals; Electronic device repairs namely Sat Nav, mobile phones, game consoles; laptop computer repairs, camera and camcorder repair, tablet repairs, mp3 player repairs and other electronic devices; repair, maintenance and installation of telephones, mobile phones, cellular phones, computers and electric and electronic equipment; provision of information relating to the aforementioned services; advisory, information and consultancy services relating to all of the aforementioned services.</p> <p>(the contested logo mark)</p>
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35. The evidence filed by the parties is mostly for the purpose of showing that the earlier goods covered by the cancellation applicant in class 9 are offered, or as the proprietor argues, are *not* usually offered, by the same entities as those offering repair services for these goods. This was also a point of discussion at the hearing, and as I have mentioned in the evidence section of this decision, Mr Selmi submitted I should give more weight to the evidence of Mr Brown due to his position in the industry. As I have previously stated, I shall take the evidence submitted from both sides into account in this matter.

36. From the sum of the evidence provided as well as from my own understanding of the goods and services (which, I am satisfied, will reflect the average consumer's view of the matter) it is my view that there will be businesses who offer only electronics, businesses who offer only repair and maintenance services, and also that there will be businesses who offer both electronics and repair and maintenance services. I accept that the repair and maintenance services offered by some businesses may subsequently be outsourced to a third party. However, I also agree with the submission of Mr Curtis at the hearing that where it is the case that these services are offered to the end user by the entities also offering the electronics themselves, but a third party is subsequently engaged to undertake the services, these are still services offered to the end consumer by the original party. I also note that for a finding of complementarity between goods and services, it is enough for the goods and services to be important or indispensable to each other, and for the consumer to *believe* that they would be offered by the same entities, and not for the actual services to be strictly carried out from start to finish by the same.

37. Overall, taking into consideration the sum of the evidence and submissions on this point, I find that electronic goods and the corresponding repair and maintenance services may share trade channels (even if this is not always the case), and that they are complementary. This also aligns with my own understanding of these goods and services. With this in mind, I will complete my comparison of the goods and services below, keeping in mind the other factors that may form part of my consideration as outlined in the case law.

The word mark

38. The services covered by the contested word mark are all repair and maintenance services for the various pieces of electronic equipment covered by class 9 under the earlier mark. I note the reference made by Mr Curtis for the cancellation applicant in his submissions and at the hearing to the comments of Jacob J. (as he then was) in the *Treat* case, namely that repair and maintenance services may be similar to the goods to which they relate. I have already accepted that the electronic goods and the repair and maintenance services for electronic goods may be offered by the same

undertaking as the goods themselves, and that they are complementary. I also note Mr Selmi's acceptance that the goods and services are complementary within his skeleton arguments. Further, I find that consumers of the goods and services will be shared, namely members of the general public. There is also a degree of competition between the goods and services, in the sense that the consumer may choose either to purchase a new electronic item or opt to have the old one repaired. However, I find the nature and method of use to differ. Overall, I find that all of the repair and maintenance services covered by the contested word mark to be similar to the corresponding goods protected by the cancellation applicant to a medium degree.

39. For completeness, whilst I find the retail of electronic items covered by the cancellation applicant will also share some similarity with the repair and maintenance of the same electronic items covered by the proprietor due to the shared users and trade channels, I do not find this strengthens the cancellation applicant's position, on the basis that I would not find the similarity shared by these services to be above a medium degree.

The logo mark

40. The contested logo mark covers the following services relating to insurance in class 36:

Insurance; insurance brokerage;

services dealing with insurance such as services rendered by agents or brokers engaged in insurance, services rendered to insured, and insurance underwriting services;

insurance consultancy; insurance information;

41. *Insurance and insurance brokerage* will include the earlier insurance services as covered by the earlier mark relied upon, for example, *Insurance services and insurance contracts relating to electronic apparatus*. These services are

therefore identical within the meaning of *Meric*. Further, I find that proprietor's services for 'dealing with insurance' as specified will all be incorporated within the *insurance services and insurance contracts relating to electronic apparatus* covered by the earlier mark, and vice versa. One is broader in terms of the services offered and the other is broader in terms of the apparatus these services relate to, and as such both terms may incorporate the other to an extent. I therefore find these to be identical within the meaning of *Meric*.

42. The proprietor stated in its skeleton arguments:

"There is no evidence on this point, but for the purposes of this opposition only the proprietor is prepared to accept that there is an average degree of similarity between "*financial affairs; monetary affairs; services of credit institutions other than banks; services of credit brokers dealing in repayment plans; loans [financing]; repair costs evaluation [financial appraisal]; financial services related to payment plans; warranty services*" and the earlier class 36 services, on the basis that they are of similar nature and may coincide in their provider, relevant public and distribution channels. If and to the extent that the cancellation applicant intends to argue that those services are identical, the proprietor will refer to decisions from the General Court in Case T-58/16 *Apax Partners UK Ltd v European Union Intellectual Property Office* [EU:T:2016:724] at [56] and Case T-209/16 *Apax Partners UK Ltd v European Union Intellectual Property Office* [EU:T:2017:240] at [43], where it was held that "financial services" and "insurance services" were similar, not identical."

43. I consider firstly the following services from those listed by the proprietor above:

financial affairs; monetary affairs; services of credit institutions other than banks; services of credit brokers dealing in repayment plans; loans [financing]; financial services related to payment plans;

44. The services I have outlined above all relate to money and finance, including the more specific services such as the lending and repayment of money. I note that the earlier mark covers services for offering insurance for various electronic apparatus. I find the nature of the services to be similar, and I do not find that it would be unusual for companies offering insurance for electronics to also be offering the lending of the finances and the repayment plans for purchasing the same. I find there may therefore be shared trade channels, in addition to shared consumers, namely those being members of the general public. I do not find the services to be in competition or complementary. Overall, I accept the proprietor's submission that there is an average degree of similarity in respect of the services I have outlined above, and I find these are similar to the cancellation applicant's insurance services to a medium degree.

45. The proprietor has also accepted that *warranty services* are similar to the cancellation applicant's insurance services to an average degree in its statement above. I find that warranty services will provide protection for goods purchased for a particular timeframe. If the goods break within that timeframe, they will be replaced free of charge with a new item. I find the nature of these services to be similar to the insurance services for particular goods as covered under the earlier mark, which will often provide additional or replacement protection for goods once outside of warranty. However, I do find the nature of these services may also differ slightly, as it is likely that insurance will be purchased as a separate policy in the first instance, whereas the warranty services may be offered free with the purchase of the goods themselves. I find it likely that the provider of the goods and the warranty service may also offer the replacement or additional insurance service for the goods, although this may not always be the case. The services will share users, including members of the general public wishing to have protection for their goods. There may be a degree of competition between the services, as an extended and comprehensive warranty may make the need for insurance services redundant for a period of time, and these services may need to compete to offer extra protection during this period. The services will not be complementary. Overall, I find the services to be similar to between a medium and high degree.

46. The proprietor has also accepted that *repair costs evaluation [financial appraisal]*; are similar to the cancellation applicant's insurance services to an average degree. It is my view that these services will be included within the insurance services for various electronic items covered by the earlier mark, with a cost evaluation being required before any payout can be made. I therefore find these to be identical with the insurance services for electronic items as covered by the earlier mark. However, if I am wrong, it is my view that these services will be offered by the same entities as those parties offering the insurance services (even if they are ultimately undertaken by a third party) and I find they will be complementary in the sense that the repair cost evaluation will be at least important if not essential to providing an insurance payout to the consumer, and the consumer will believe this to be offered by the same parties. I do not find these services will be in competition. Overall, if these services are not included within the cancellation applicant's insurance services, then I find these to be similar to the insurance services covered by the earlier mark to a medium degree.

47. The applicant also covers the following services in class 37 under the logo mark:

Photographic apparatus repair; telephone and tablet (electronic) repair; maintenance and repair of telephones and tablets (electronic); mobile telephone and tablet repair services provided at the customer's location; repair and maintenance of smartphones; repair of electronic apparatus; maintenance and repair of communications systems; maintenance and repair of computers; installation, maintenance and repair of computer hardware; repair of telephone apparatus; repair information; telephone installation and repair; Installation, cleaning, maintenance and repair services in connection with telecommunications apparatus and instruments; installation, cleaning, maintenance and repair services in connection with telephones, mobile phones, smart phones, tablets and other computing devices; installation, cleaning, maintenance and repair of computers, computer hardware, and computer peripherals; Electronic device repairs namely Sat Nav, mobile phones, game consoles; laptop

computer repairs, camera and camcorder repair, tablet repairs, mp3 player repairs and other electronic devices; repair, maintenance and installation of telephones, mobile phones, cellular phones, computers and electric and electronic equipment; provision of information relating to the aforementioned services; advisory, information and consultancy services relating to all of the aforementioned services.

48. For the same reasons I have given in paragraph 38 in respect of the word mark, where the repair and maintenance services above relate to the goods covered by the earlier mark, I find these to be similar to the goods to a medium degree. I find this is also the case in respect of the information, advisory and consultancy services relating to the same.

49. Whilst the maintenance and repair services offered are generally self-evidently in relation to goods covered by the earlier mark, I note that the contested services also cover *Electronic device repairs namely Sat Nav, [...] game consoles and mp3 player repairs*. Whilst these are less obviously covered by the goods under the earlier mark, it is my view that these items will be included within the meaning of *Wireless connected electronic objects for the transmission of sound and images* as covered by the same. I therefore find these to be similar to a medium degree.

Comparison of marks

50. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration

is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

51. 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 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.

52. The respective trade marks are shown below:

Earlier trade mark	Contested trade marks
	wefix
	

53. The earlier mark comprises the two English words We and Fix. This is the most dominant element of the earlier mark and it plays the greatest role in the mark overall. However, the orange box also plays a role in the overall impression of the mark, and whilst the stylisation in the ‘X’ is less noticeable than the orange box, it is not negligible.

54. The contested word mark is filed as a single word, but it comprises two identifiable English words, namely ‘we’ and ‘fix’. The overall impression resides in the mark as a whole.

55. The contested logo mark comprises the words WE FIX stacked on top of each other, contained within what appears to be a blue telephone or tablet computer

on its side, with a lighter blue lightning strike running through the same. The cancellation applicant submitted at the hearing that this may also be viewed as an electrical bolt. The wording is where the eye is drawn to initially and is the most dominant element of the mark, with the lightning strike playing a slightly lesser role within the same. The blue telephone appears to initially to act as a simple border and plays a lesser role in the mark overall than the other elements, and it also appears to relate to some of the services filed. No element of the mark is negligible.

Visual comparison

56. The earlier mark coincides with the contested word mark visually by use of the same two words WEFIX. I find the use of the orange box around the element FIX, and the unusually stylised 'X' fall outside of what I consider to be notional and fair use of a word mark, and for this reason they create points of visual difference, despite the contested mark being filed in word format. However, overall I find the marks remain visually similar to a high degree.

57. The earlier mark coincides with the contested logo mark visually to the extent that they share the wording WE FIX, although this is in all uppercase in the contested mark, and in a mix of upper and lower case lettering in the earlier mark. The stacking of the wording in the contested mark creates a point of visual difference, as do the additional elements such as the lightening bolt and phone/tablet border around the mark, and the orange box in the earlier mark. Overall, I find the contested logo mark to be visually similar to the earlier mark to a medium degree.

Aural comparison

58. The proprietor accepted that the marks are aurally identical. I agree with this.

Conceptual comparison

59. The cancellation applicant submitted within its skeleton arguments and reiterated at the hearing:

“All the trade marks under consideration are identical conceptually and phonetically.”

60. The proprietor has accepted that the contested word mark is conceptually identical with the earlier mark. I agree these marks are conceptually identical, with the shared concept of a repair service.

61. In respect of the contested logo mark, on the contrary, the proprietor submits:

“The marks share the conceptual meaning of “we repair”. However, they are not conceptually identical because the figurative elements introduce a conceptual difference e.g., if the bolt is perceived as lighting, it may suggest a rapid repair service, which is not the case in the earlier mark (in contrast, if it is perceived as an electrical bolt, it has a more descriptive connotation, being repair services in relation to electrical goods).

62. I agree with the proprietor that the contested logo mark is not conceptually identical to the earlier mark due to the additional elements holding a concept that is not present in the earlier mark. There is firstly the phone or tablet device, although I accept this may not be noticed by some consumers, who may see this as a decorative border. Where this is noticed it will convey that the repair services are likely offered in respect of these items. There is also the addition of what I find will most likely be viewed as a lightning bolt, but that may be viewed as a bolt of electricity, conveying the conceptual meaning of the same. I find it a stretch to find that this will connote speedy services, although it may for some. Where the bolt is seen as a bolt of electricity, in the context of the mark as a whole I find the bolt may reinforce the concept of fixing electrical items to the consumer. Both marks therefore convey to the consumer the meaning of a repair service, but the contested logo mark includes additional elements that tell the consumer something extra about the type of electrical repair service offered. I find the marks to be conceptually similar to a high degree.

Average consumer and the purchasing act

63. 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.

64. 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.”

65. Before deciding on the likelihood of confusion, I must first identify the relevant consumer of the goods and services, and the level of attention paid. Both the cancellation applicant and the proprietor made submissions on this point at the hearing. The proprietor submitted that the level of attention paid by the average consumer would be high, as the repair services were not low value services. In his skeleton arguments Mr Selmi made reference to Mr Brown's evidence that the proprietor's services start from £61 increasing to £429. It was submitted that the level of attention paid by the general public would be high on this basis. Mr Selmi also directed me to the Board of Appeal's comments in a previous case between the parties at the EU IPO,² in which it was stated that they found no

² See R0373/2020-1 paragraph 25

objection to a finding that the consumer would pay a higher than average level of attention towards the services at issue in classes 36 & 37.

66. On the contrary, Mr Curtis for the cancellation applicant submitted that the public would pay an average, or at best a slightly above average level of attention towards the services.

67. It is my view that the relevant consumer will vary in respect of the different services under the mark. Many of the class 36 services, including financial and monetary affairs and the services relating to insurance, may be offered to both professional consumers and the general public.

68. In respect of the insurance services, I find the consumer is likely to give a reasonable level of thought and consideration as to factors such as the level of cover provided by an insurance policy, any excess, and the circumstances under which a policy may payout. However, insurance policies may be offered as an add on and for as little as a few pounds a year for providing the minimum cover for an item such as a mobile phone, and so I do not accept that the level of attention paid towards the same is high for the category as a whole. Instead, I accept the submission from Mr Curtis that this may only be slightly above average. Professionals seeking these services are likely to have a higher level of attention due to the increased liability that goes along with their professional position and seeking these services on behalf of business in general, rendering their level of attention as fairly high.

69. In respect of the services relating to financial affairs and monetary affairs, including loan repayments, I find the general public will likely consider aspects such as the affordability of repayment plans, the level of interest claimed, and the length of the term, and the repute of the business. I find the general public will likely pay a minimum of an above average degree of attention to these services. Where these services are offered to the professional consumer, the level of attention is likely to be high.

70. Whilst the elements to consider in respect of the goods in class 9 may vary depending on the category, generally, there are many different factors the consumer will wish to consider such as the memory and storage, the technical specification, and practical considerations such as the size and weight of the item. These items are not purchased particularly frequently, perhaps once every year, and whilst they will vary in price considerably, they tend to sit in the hundreds rather than the tens of pounds. I find the level of attention paid to these types of goods in class 9 by the general public will be above average. Where these goods are purchased by professionals, I find the degree of attention paid will be higher as these items may be purchased in higher volumes, and the successful running of a business may be dependent on the same. I find the level of attention paid by professionals in purchasing these goods will be fairly high.

71. In respect of the corresponding repair and maintenance services for the goods, I find these are unlikely to warrant the same level of attention as the initial purchase. However, I find that the general public will generally pay at least an average level of attention when it comes to engaging repair and maintenance services, as they will wish to ensure that their goods are in safe hands. Further, professionals may pay an additional level of attention due to the fact that devices sent for repair or maintenance may be required within a particularly quick turn around and contain sensitive data, meaning the attention paid by professionals will sit at above average for these services.

72. All of the goods and services will primarily be purchased visually, often via a website. However, I note the services may also be purchased following verbal recommendations, or over the phone, and so I cannot completely discount aural considerations.

Distinctive character of the earlier trade mark

73. 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).”

74. Within its skeleton arguments and at the hearing, the proprietor submitted that the earlier mark has only a minimum, or the minimum level of inherent distinctiveness on the basis of its meaning as ‘we repair’. I note that the earlier mark does not actually cover repair services itself, rather it is registered in respect of electronic goods, retail of those goods and insurance services relating to those goods. However, I still find that in the context of the goods and services, the mark alludes to the fact that the electronic goods on offer may be repaired, second hand items, or that the entity providing the goods may also offer repair services in relation to the same. In respect of the insurance services, again the mark alludes that the consumer will be insured for the fixing of a broken item. I find that the stylisation of the ‘X’ and orange box surrounding the

wording adds only marginally to the marks distinctive character, and overall I find the earlier mark to be inherently distinctive to a low degree.

75. The cancellation applicant has not filed evidence of its earlier mark in use, and as such I cannot find that the distinctiveness of the earlier mark has been enhanced by virtue of the same.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

76. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 26 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must consider that the likelihood of confusion may be increased where the distinctive character held by the earlier mark is high and may be less likely where it is low. I must remember that the distinctive character of the earlier mark may be inherent, but that it may also be increased through use, and that the distinctiveness of the common elements is key.³ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods or services are obtained will have a bearing on how likely the average consumer is to be confused.

³ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. 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.

77. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.⁴

78. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), 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 to mind another mark. This is mere association not indirect confusion.

79. In respect of the contested word mark, I found this to be visually similar to the earlier mark to a high degree, and aurally and conceptually identical. I found the services covered to be similar to a medium degree to the goods covered by the earlier mark. I also found the consumer's attention would be at least average or higher depending on the consumer group. I found that the earlier mark was only inherently distinctive to a low degree, and whilst I note that the distinctiveness of the common element WEFIX is low, I also find that there is very little for the consumer to grasp onto to differentiate between the marks. Keeping in mind the consumers imperfect recollection, and the fact they will not be comparing these marks side-by-side, it is my view that there will be direct confusion in respect of the earlier mark and the contested word mark in respect of all of the services filed.

80. Mr Selmi submitted for the proprietor that a finding of indirect confusion is not a consolation prize for those unable to reach the bar of direct confusion, and that a finding of indirect confusion requires its own particular set of

⁴ L.A. *Sugar Limited v Back Beat Inc*, BL O/375/10

circumstances. I accept this. However, in this instance I find that even if the consumer noticed the differences between the marks, meaning there would be no direct confusion, the circumstances are such that there would remain a likelihood of indirect confusion between the marks. This is because the shared element WE FIX comprises the most dominant element of the earlier mark, as well as the entire later mark, and there is in my view, nothing to indicate to the consumer that the marks will not be offered by the same economic undertaking, even taking into consideration the low degree of distinctiveness. If the differences were noticed, it is my view that the addition of the orange box and slightly stylised 'X' in the earlier mark would be viewed simply as a stylised variant of the proprietor's word mark, and I find indirect confusion would occur.

81. In respect of the contested logo mark, I found this to be visually similar to the earlier mark to a medium degree, conceptually similar to a high degree and aurally identical. I found the services to be similar to between a medium degree and identical. As stated above, the earlier mark holds a low degree of distinctive character as a whole and the distinctiveness of the common element is also undoubtedly low. I also found the average consumer will pay at least an average degree of attention to the services or higher. Considering the differences between the marks, particularly visually, and whilst keeping in mind the consumers imperfect recollection, it is my view that the consumer will notice and recall the differences between the marks and not be directly confused.

82. I therefore consider if there is a likelihood of indirect confusion between the earlier mark and the contested logo mark. I consider again all of the factors above and remind myself of Mr Selmi's argument that this requires a special set of circumstances. I note also the low level of distinctiveness held in the common element of the two marks, namely the wording WE FIX, and how this is at least allusive of the goods and services offered by the parties. However, despite the low distinctiveness of this element, I find it remains the most dominant in both marks. In this regard I consider *L'Oréal SA v OHIM*, Case C-235/05 P, in which the CJEU considered whether a low level of distinctiveness held in an earlier mark will preclude a likelihood of confusion. In this case, the CJEU stated that:

“45. The applicant’s approach would have the effect of disregarding the notion of the similarity of the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance. The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders.”

83. Whilst I therefore acknowledge that the presence of a common element in two differently stylised marks will not be determinative of a likelihood of indirect confusion as is set out in *Duebros*, in this instance I also note that the additional elements in each mark also hold little or no distinctiveness in respect of the goods or services. It is my view that in this instance, that it is likely the consumer would see the use of the dominant element WE FIX in each of the trade marks, and would conclude that the contested mark represents an updated version or a variant of the earlier WE FIX logo or vice versa, or that this is the alternative logo used in respect of the alternative goods or services. I find this to be true in respect of all of the services registered, and I therefore find there is a likelihood of indirect confusion in respect of all of the services registered.

Final Remarks

84. The application for invalidation has been successful in respect of both contested marks, and subject to a successful appeal, the registrations will be invalidated in their entirety.

COSTS

85. The cancellation applicant has been successful and is entitled to a contribution towards its costs. In the circumstances I award the cancellation applicant the sum of £2400 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Pre consolidation

Official fees	£200 x 2 = £400
Preparing and filing the TM26(i)	£300 x 2 = £600

Post consolidation

Preparing and filing the evidence and considering the other sides evidence	£600
Preparing for and attending the hearing	£800
Total	£2400

86. I therefore order Revive A Phone Limited to pay WeFix the sum of £2400. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 9th day of September 2021

Rosie Le Breton

For the Registrar