

O/658/18

TRADE MARKS ACT 1994

TRADE MARK APPLICATION No. 3231100

BY CXO2.COM (UK) LIMITED

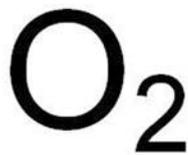
AND

OPPOSITION No. 410403

BY O2 WORLDWIDE LIMITED

Background and pleadings

1. This is an opposition by O2 Worldwide Limited (“the opponent”) to an application filed on 15th May 2017 (“the relevant date”) by CXO2.COM (UK) Limited (“the applicant”) to register **CXO2** and **cxo2** as a series of two trade marks.
2. The application for registration covers a wide range of goods/services in classes 9, 35, 36, 38, 42 & 45. The services applied for include telecommunications services. A full list is at annex A.
3. The opponent is the proprietor of 5 earlier EU and UK trade marks. Three of these are EU trade marks consisting of **O2**. These marks cover goods/services in classes 9, 35, 36, 38, 42 & 45.
4. The other two earlier marks are UK and EU registrations of the mark shown below.



The EU trade mark covers, inter alia, services in class 35. Therefore, the earlier marks cover (between them) all the classes of goods/services in which the applicant seeks to register the contested marks.

5. The opponent claims that the contested marks are similar to the earlier marks, that the respective goods/services are identical or similar, and there is a likelihood of confusion on the part of the public.
6. Additionally, the opponent claims that the earlier marks have been used and acquired a reputation in the EU (including in the UK) in relation to telecommunications goods and services, software, entertainment services, retail and financial services. According to the opponent, use of the contested mark would, without due cause, take unfair advantage of the reputation and distinctive character

of the earlier marks. Specifically, the inclusion of the letter/numeral combination O2 in the contested marks would cause consumers to believe that they are marks of the opponent. Alternatively, even if consumers are not so confused, the inclusion of the O2 letter/numeral combination would take unfair advantage of the reputation of the earlier marks and their image as “*trendy, cool and high tech.*” Alternatively, use of the contested marks would be detrimental to the reputation of the earlier marks, if they were used in relation to goods/services of inferior quality to those provided under the opponent’s marks.

7. The opponent therefore claims that registration of the contested marks would be contrary to sections 5(2)(b) and/or 5(3) of the Trade Marks Act 1994 (“the Act”). Consequently, the application should be refused.

8. The applicant filed a counterstatement denying the grounds of opposition. I note that the applicant:

- (i) Denied that the earlier marks are similar to the contested marks;
- (ii) Put the opponent to proof of the reputation claimed to be attached to the earlier marks.

9. None of the earlier marks had been registered for 5 years at the date of publication of the contested marks. Consequently, the opponent does not have to show that it has made genuine use of the earlier marks to rely on them in these proceedings.

10. Both sides seek an award of costs.

Representation

11. The applicant is represented by Elkington and Fife LLP. The opponent is represented by Stobbs. A hearing took place on 31st August 2018 at which Mr Christopher McLeod appeared on behalf of the applicant. Mr Julius Stobbs appeared on behalf of the opponent.

The evidence

12. Only the opponent filed evidence.

13. The opponent's evidence comes from Mr Peter Holmes who is the 'Director of Brand' at "*one of the subsidiary companies*" which form part of the Telefónica Group of Companies, which includes the opponent. According to Mr Holmes, "*the O2 Group of Companies comprises integrated fixed and mobile telecommunications businesses in the UK, Germany, the Czech Republic and Slovakia all of which use, or have used, "O2" as their main consumer brand.*" The businesses in the Czech Republic and Slovakia were sold in 2014 but continue to use the O2 brand under licence.

14. Mr Holmes says that the O2 mark has been used in the UK since 2002. In 2007, one of the Telefónica Group of Companies launched consumer broadband services. In 2010, a 'O2 Home Phone' service was added. The number of broadband customers grew to 664k in 2010, but later declined. In 2013¹ O2 sold its broadband and fixed line business to Sky.

15. Mr Holmes says that his company's target market is 16 to 34-year olds. This is because this group includes more high value customers than other age groups. In this context, Mr Holmes points to the significance of his company winning the Cool Brand award. However, he does not explain what this is, or where or when it was awarded, or by whom.²

16. According to Mr Holmes, O2 had nearly 25m active mobile (phone) customers in 2014. He claims that it is "*one of the most important players in the mobile telecommunications field in the UK.*" In the same year the average amount of revenue per customer in the UK in the mobile telephony field was €18.8 per customer per month for use of the phone, and €10.8 per month for the data

¹ Four years prior to the relevant date

² I cannot find any information about this award in the table at paragraph 42 of Mr Holmes' witness statement

downloaded. The company's 'Operating Income before D & A'³ in the UK was €1744m.

17. In 2014, O2 spent over £77m promoting its goods and services in the UK. The largest amounts were spent on advertising in print, on television and through digital media.

18. Mr Holmes says that O2's branding has remained consistent with regard to the use of the O2 trade marks. The O2 brand is "*strictly managed*" with clear guidelines setting out the way that the mark is to be used. This ensures consistent use of the company's four key identifiers, i.e. the O2 name, the O2 logo, bubbles and the graduated blue background on which these marks appear.

19. In 2014 Millward Brown Optimor valued the O2 brand at \$5,656,000.⁴ In 2015, 'Consumer' listed the brand as one of 5 superbrands in the telecommunications and broadband category.

20. Mr Holmes says that the reputation of his company also arises from its sponsorship of high profile events, such as sports (Arsenal, until 2012, England Rugby Team, Movistar cycling team in 2013), music (the O2 entertainment venue and 13 Academy venues, Pop Stars – The Rivals, O2 Wireless Festival, and prime time reality TV shows (Big Brother 3)).⁵ O2 also sponsors music festivals and events. The most recent one mentioned in Mr Holmes' statement took place in 2009.

21. The O2 entertainment venue (formerly the Millennium Dome) has a capacity of 23k. It has hosted many high-profile music and sports events, including the 2012 Olympics gymnastic and basketball events. The total footfall at the venue between 2007 and 2012 was 34m. Over 10m tickets to concerts/events were sold during this period.

³ I do not know what 'D & A' is.

⁴ This is what the witness says, but judging from figures from previous years, he may have meant \$5,656,000,000.

⁵ This must have been a long time ago.

22. As to the other goods/services covered by the earlier marks, Mr Holmes says that his company offers a wide range including:

- (i) Insurance for mobile phones, tablet computers as well as business insurance;
- (ii) 4 financial products, including an O2 Money prepaid Visa card;
- (iii) 7 items of computer hardware, all being, or for use with, mobile phones and mobile devices;
- (iv) Software apps and music download services, including O2 Music (introduced in 2003), O2 Tracks giving access to music via mobile phones, apps which support fan engagement with the sports teams, the O2 Trains app which allows customers to access train information, the O2 Academy app, which allows users to get access to information about the latest gigs at O2 Academies, the O2 Touch app, a sports and fitness app, and O2 Sports, a dedicated YouTube channel providing sports related information;
- (v) O2 Learn, which is a free-to-use video library for secondary school students featuring lessons and revision tips;
- (vi) O2 Gurus in retail outlets and online who provide advice about mobile telephones and other telecommunications services;
- (vii) O2 WIFI which offers 15k free Wi-Fi hotspots across the UK and an app to help users find the nearest one.

23. No specific sales or usage figures are provided in relation to the above.

The section 5(2)(b) ground of opposition

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”.

Similarity of goods/services

25. With one exception, the applicant accepts that the respective goods/services are identical or similar. The exception is retail services in class 35. The contested mark and earlier mark EU13108139 cover retail services in class 35 in relation to a wide range of goods falling in classes 9, 16, 18, 25, 28, 29, 30, & 32. However, the contested mark also covers retail services in relation to goods falling in (at least) classes 3, 5, 8, 10, 11, 12, 20, 21, 24, & 31. The opponent submits that all retail services are similar to a certain degree because they are services intended to encourage the sale of goods from a particular retailer rather than registrations of trade marks for the goods concerned. The applicant disputes that all retail services are similar.

26. In *Praktiker Bau v Heimwerkermärkte AG*⁶ the Court of Justice of the European Union (“CJEU”) stated that:

“...the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.”

The opponent is therefore correct to point out that a registration in class 35 covers retail services relating to the selection and marketing of goods rather than the goods themselves. There will usually be some similarities in the nature and purpose of retail services involving the selection of a range of goods and marketing those goods to

⁶ Case C-418/02

the public, either in bricks and mortar establishments or online. However, it is also important to note that in *Praktiker Bau* the CJEU:

“48.recalled that, according to the Court’s case- law, the likelihood of confusion must be assessed globally, taking into account all the factors relevant to the circumstances of the case (see Case C-251/95 SABEL [1997] ECR I- 6191, paragraph 22, and Case C-39/97 Canon [1998] ECR I-5507, paragraph 16). In the context of that global assessment, it is possible to take into consideration, if need be, the particular features of the concept of ‘retail services’ that are connected with its wide scope, having due regard to the legitimate interests of all interested parties.

49. In those circumstances, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. To identify those services, it is sufficient to use general wording such as ‘bringing together of a variety of goods, enabling customers to conveniently view and purchase those goods’.

50. However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings..... .

51. Such details will make it easier to apply Articles 4(1) and 5(1) of the directive without appreciably limiting the protection afforded to the trade mark.”

The requirement to identify the goods to which the retail services relate is therefore an important aspect of defining the extent of the protection to which such trade marks are entitled. This means that retail services relating to goods X are not the same as retail services relating to goods Y. However, that does not mean that retail services cannot be similar if they relate to different categories of goods.

27. I find that, where they do not relate to the same goods, the retail services in dispute are, for the most part, still similar to a degree. This is because there is a certain degree of similarity between the nature, purpose and method of use of retail services relating to most consumer goods. This does not apply to the retail services relating to the technical goods covered by the contested mark, e.g. vehicles. In this case the differences between the nature, purpose and method of use of the respective retail services differs so substantially as to eliminate any meaningful similarity between the services. However, it would not appear to matter whether my assessment of the similarity between the non-identical retail services covered by the contested mark and earlier mark EU13108139 is right or wrong. This is because, although the opponent did not rely on it at the hearing, I note that earlier trade mark EU9279456 (O2) is registered for retail services relating to goods in all the classes covered by the contested mark. Consequently, there is no material difference between the retail services covered by the contested marks and those covered by EU9279456.

Global assessment

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

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.

Average consumer

29. 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*.

30. The goods and services covered by the contested mark range from those that would mainly be purchased by the general public, e.g. *retail store services connected with the sale of perfumery* in class 35, to goods/services mainly aimed at businesses, e.g. *computer software to assist in handling requests for IT technical support* in class 9, to goods/services that could be of interest to both, e.g. *telecommunication services* in class 38. The level of attention paid by consumers is likely to vary from 'high' in the case of relatively expensive goods/services aimed at businesses to 'average' in the case of everyday goods/services aimed wholly or partly at the general public, within which I include *telecommunication services*.

The distinctive character of the earlier marks

31. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* 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)."

32. Three of the earlier marks consist of the letter/numeral combination O2, or two numbers (if the 'O' is perceived as a zero). The other two marks consist of O₂ in stylised form.⁷ There is no suggestion that any of these marks are descriptive of the goods/services for which they are registered. Considering first the degree of inherent distinctiveness of the O2 group of earlier marks, I find that the marks are (at most) averagely distinctive. This is because the combination of a letter and number, or two numbers, is relatively banal.⁸ It is possible that some average consumers would recognise the combination as representing the chemical symbol for oxygen, but absent the presentation of the letter/numeral in the manner associated with chemical symbols, i.e. O₂, I am not prepared to accept that this would be a typical reaction. Therefore, there is no immediately apparent concept which might make O2 more inherently memorable than any other two letter/number combination. The earlier O₂ marks have a concept. When presented like this it looks like the chemical symbol for an oxygen molecule. I find that a significant proportion of relevant average consumers would recognise this meaning (although many of them would understand it as meaning simply 'oxygen'). That makes O₂ more inherently memorable than O2. The O₂ marks are therefore more inherently distinctive than the letter/numeral O2 *per*

⁷ See paragraph 3 above.

⁸ See, by analogy, the decision of the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co. KG*. Case C-265/09 P.

se. However, the degree of inherent distinctiveness of the O₂ marks is still little more than average.

33. The opponent's evidence shows that it has made substantial use of O₂. According to Mr Holmes's evidence, the opponent has strict branding guidelines requiring the consistent use of the O₂ name and the O₂ logo. The guidelines themselves are not in evidence. But going on Mr Holmes's description of them and the opponent's use as shown in the exhibits to his statement,⁹ it seems that the opponent uses O₂ in the branding of its goods/services. That is how the brand is recorded as a superbrand in the telecommunications sector.¹⁰ Admittedly, there is evidence of third parties referring to the opponent and some of its services as O₂ (i.e. as the letter 'O' and number '2').¹¹ This appears to be partly because O₂ is the opponent's corporate title and, in that context, the way it refers to itself.¹² Further, I note that when referring to the entertainment arena it sponsors, the opponent often refers to it as the O₂ Arena, particularly in the references to the arena on its theo2.co.uk website.¹³

34. The opponent claims the earlier marks have acquired a reputation and enhanced distinctiveness in relation to telecommunications goods and services, software, entertainment services, retail and financial services. However, the only sales or usage figures it provided relate to the number of mobile (phone) customers and visitors to the O₂ Arena. And the information provided about the use of these services only goes up to 2014 and 2012, respectively.

35. At the hearing, the applicant's representative accepted that the opponent's marks have acquired a reputation in relation to telecommunications and entertainment, but not otherwise. That appears to me a realistic concession for these reasons:

- (i) In 2014, the opponent had 25m mobile customers and a substantial share of the market;

⁹ See exhibit PH6

¹⁰ See exhibit PH7, particularly page 210

¹¹ See, for example, page 216 of the evidence (exhibit PH7)

¹² See, for example, exhibit PH5

¹³ See exhibit PH8

- (ii) The position was unlikely to be very different at the relevant date;
- (iii) The number of visitors and events held at the O₂ Arena shows that it is a national entertainment venue;
- (iv) Again, that was unlikely to have changed between 2012 and the relevant date.

36. The opponent's s.5(2)(b) case does not focus on the use and registration of its marks in relation to entertainment services, probably because the contested mark does not cover these services. Therefore, the most relevant aspect of this part of the opponent's case is the extent and strength of the opponent's marks in relation to telecommunications goods/services. The conceded reputation of the earlier marks in relation to telecommunications services does not mean that the earlier marks are highly distinctive for all such services. As Judge Hacon stated in *Burgerista*,¹⁴ "*Reputation constitutes a knowledge threshold.*" The nature of the reputation may bring with it other qualities and values, but in the first instance it is simply a question of how many of the potential consumers of the goods/services covered by the earlier mark know about it. By contrast, distinctive character is a measure of how strongly the mark identifies the goods/services of a single undertaking. Distinctiveness and reputation are therefore different albeit related matters.¹⁵

37. Taking the evidence of use into account, I find that, at the relevant date, the earlier O₂ mark was very highly distinctive in relation to telephone communications services, especially mobile services. Although there is limited evidence of use of O₂ as such as a trade mark, I find that the use of the O₂ mark has, by proxy, also enhanced the inherent distinctiveness of O₂ (as such) in relation to these services. However, not to the same extent as the O₂ mark, which is how the public usually see it.

Similarity of the marks

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

¹⁴ [2018] EWHC (IPEC) at paragraph 69 of the judgment

¹⁵ See, for example, the judgment of Mr Daniel Alexander QC as the Appointed Person in *Alterego Retail Group Limited v Retail Royalty Company* BL O/468/17 at paragraph 35.

average consumer normally perceives trade marks as a whole and does not proceed to analyse their 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.

39. The respective trade marks are shown below:

<p>O2</p> <p>O₂</p>	<p>CXO2</p> <p>cxo2</p>
<p>Earlier trade marks</p>	<p>Contested trade marks</p>

40. The opponent submits that the O2/o2 element of the contested mark are recognisable as the opponent's trade mark and/or the symbol for oxygen, whereas the CX/cx element is meaningless or, alternatively, an acronym for 'customer experience'. According to the opponent, either reaction to CX/cx would mean that average consumers would view the -O2/-o2 element as a distinct part of the contested marks. The opponent therefore submits that there is a moderate degree of visual similarity between the respective marks.

41. The applicant denies that there is any similarity between the marks. According to the applicant, the opponent's arguments are even less tenable in relation to the **cxo2** mark.

42. The opponent has not provided any evidence that CX is a recognised acronym for 'customer experience'. This is not within my own knowledge and, even if it were, it is not a well-known fact of which I could assume that average consumers of any relevant kind would be aware. Therefore, this part of the opponent's argument must be rejected because it is unsupported by the evidence.

43. I accept that the letters CX in the contested marks convey no recognisable meaning to relevant average consumers. However, this does not necessarily mean

that consumers would focus their attention on the O2/o2 element of the marks. After all the legal teaching is that consumers normally perceive trade marks as wholes and do not proceed to analyse their details. The highpoint of the opponent's case on visual similarity is, in my view, that O2/o2 constitutes (the second) 50% of the contested marks and O2/o2 either is, or is visually similar to, the earlier marks. However, I find that this coincidence creates only a very low degree of visual similarity between the marks. I agree with the applicant that the degree of visual similarity between the earlier marks and the **cxo2** mark is, if anything, even lower than in relation to **CXO2**.

44. Turning to aural similarity, I find that the contested marks would be verbalised as the spoken letters and number(s) C-X-O-2. This would be the case whether the average consumer thought that the 'O' was a letter or a number. The earlier marks would be verbalised as O-2 (again, if the 'O' is regarded as a letter or a number). The common element is therefore at the end of the contested marks and accounts for only 50% of those marks. Admittedly, the differences in the presentation of the o2 element of the second mark in the applicant's series and the earlier O2 mark will not come out in the aural expression of the marks. Therefore, some of the marks at issue sound a little more similar than they look. Even so, there is only a low degree of overall aural similarity between the any of the marks at issue when considered as wholes.

45. From a conceptual viewpoint, I find that neither **cxo2** nor **CXO2** (as wholes) have any recognisable meaning. Similarly, **O2** is unlikely to convey any semantic meaning to most average consumers when presented as a plain combination of a letter and a number, or two numbers. This means that the contested marks are conceptually neutral when compared to the earlier **O2** mark. By contrast, a significant proportion of average consumers would recognise **O2** as the symbol for oxygen. To these consumers the **O2** marks will have a concept which is absent from the contested marks.

Likelihood of confusion

46. I will first assess the likelihood of confusion without taking account of the enhanced degree of distinctiveness of the earlier **O₂** marks and (to a lesser degree) the **O₂** marks because of the extensive use of **O₂** as a trade mark.

47. Looking at the matter like this, I find that the degree of visual and aural similarity between the marks is so low that, even where identical goods and services are concerned, there is no likelihood of direct confusion. The opponent drew my attention to decisions of the registrar, the EUIPO and the General Court in which various third-party trade marks were found to be likely to cause confusion with the opponent's **O₂/O₂** marks. It is not suggested that I am bound by these previous decisions. They concern different trade marks and, in some cases, different goods/services. I therefore find them of limited assistance.

48. The most relevant of these decisions appears to be UK opposition 400375. The marks at issue in that case were O2 and VO2. The goods at issue were essentially identical tobacco products. The Hearing Officer found that there was a likelihood of (direct) confusion through average consumers imperfectly recollecting the later mark as the earlier mark or vice versa. However, as the applicant points out, **CXO₂/cxo₂** are less similar to **O₂** than VO2. Further, as a general rule the beginnings of marks tend to make more impact on consumers than the endings.¹⁶ This points away from a likelihood of confusion through imperfect recollection in this case. To use a concrete example of an average consumer paying an average degree of attention, I see no realistic possibility of such a consumer imperfectly recollecting **CXO₂/cxo₂** as **O₂/O₂** (or vice versa) if these marks are used in relation to identical services such as:

“Retail store services, online retail store services connected with the sale of DVDs”.

¹⁶ See, for example, *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, although it does not exclude the likelihood of confusion: see, for example, *Bristol Global Co Ltd v EUIPO*, Case T-194/14

Indeed, I regard the submission that there would be such confusion as rather farfetched. To be fair, this was not the opponent's primary argument, which was instead based on the likelihood of indirect confusion, i.e. of consumers picking out O2/o2 in the contested marks and assuming they are sub-brands of the opponent.

49. In this connection I note that in *L.A. Sugar Limited v By Back Beat Inc*,¹⁷ 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.

50. In *Duebros Limited v Heirler Cenovis GmbH*,¹⁸ Mr James Mellor Q.C., also as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. Further, he pointed to the need to identify a credible thought process which would cause average consumers to believe that the similarity between the respective marks indicates that they are used by the same or related undertakings.

51. *Prima facie*, I see no reason why average consumers would believe that the users of the **CXO2/cxo2** and **O2/O2** marks are likely to be economically related. Firstly, there is nothing about the presentation of the contested marks which invites consumers to focus on the O2/o2 element. Secondly, the letter/numeral combination

¹⁷ Case BL O/375/10

¹⁸ Case BL O/547/17

O2 is not so inherently distinctive that it would be natural for consumers to pick it out in the sequence **CXO2/cxo2**. Thirdly, there is no obvious reason why consumers would be likely to treat the CX component of the contested marks as less important than O2/o2. Therefore, leaving to one side the enhanced distinctiveness of the earlier marks in relation to certain goods/services, I would find that there is no likelihood of indirect confusion either.

52. As I noted earlier, 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 have found that the earlier marks are very highly factually distinctive (**O2**), or at least highly distinctive (**O2**), in relation to telephone communications services, especially mobile services. This enhanced distinctive character increases the likelihood of confusion if the contested marks are used in relation to these services (“the key services”) or very closely connected goods/services.

53. Even allowing for enhanced distinctiveness, I find that the differences between the marks are still sufficient to rule out any likelihood of direct confusion. However, I accept that the highly distinctive character of **O2/O2** is sufficient for that element of the contested marks to catch the eye (or ear) of relevant average consumers if the marks are used in relation to the key services or very closely connected goods/services.

54. I recognise that simply bringing the earlier marks to mind does not amount to a likelihood of confusion. And I accept that the differences between the parties’ marks as wholes are such that a significant proportion of average consumers would probably not think that the presence of O2/o2 in the contested marks indicates anything relevant, even if the contested marks were used in relation to mobile phone services. However, I find that the association between the parties’ marks would create a risk that a significant proportion of the relevant public might believe that the respective goods or services come from the same or economically-linked undertakings. This is because such consumers may think that the likelihood of there being a provider of the key services with a letter/numeral type mark incorporating o2/O2, which is unconnected with the well-known **O2/O2** brand, is even lower than

the user of the **O2/O₂** marks adopting **CXO2/cxo2** as brand extensions or as the result of a collaboration with a third party. Average consumers in this group are therefore more likely to believe that the users of the marks are connected. This constitutes a likelihood of indirect confusion,¹⁹ but only in relation to a subset of the goods/services covered by the application.

55. This means that I am required to uphold the s.5(2)(b) ground of opposition in relation to the goods/services caught by the objection, but not otherwise. I have carefully considered how this should be done. The task has not been made any easier by the fact that the applicant has not filed evidence, or otherwise identified its actual field of business. I have also borne in mind that the applicant was invited to provide, on a without prejudice basis, a fall-back specification for the Hearing Officer to consider. It did not do so. I have therefore decided that the necessary restriction of the application to accommodate my findings under s.5(2)(b) should be made by refusing any descriptions of goods/services specifically relating to phones, excluding phones and telephone communication services (where appropriate), and other closely related goods/services. This includes parts, fittings and accessories for mobile phones as well as software adapted for use with mobile phones.

56. The necessary deletions and exclusions are shown in Annex A below.

The section 5(3) ground of opposition

57. 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

¹⁹ See paragraph 34 of the judgment of the Court of Appeal in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41 and paragraphs 27 and 28 of the judgment of Mann J. in *Soulcycle Inc v Matalan Ltd*, [2017] EWHC 496 (Ch).

without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

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

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

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

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

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

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark’s ability to identify the goods/services for which it is registered is

weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

Reputation

59. The applicant accepts that the earlier marks have a reputation in relation to telecommunications and entertainment services. I will assess the s.5(3) ground of opposition on that basis.

Link?

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

The degree of similarity between the conflicting marks

61. The respective marks are (at most) similar to a low degree.

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

62. I accept that many of the services covered by the application fall within the broad description 'telecommunications services' and that other services are also similar to a certain degree to entertainment services, e.g. social media services. It follows that there is a high degree of overlap between the relevant sections of the public.

The strength of the earlier marks' reputation

63. The earlier **O2** mark has a strong reputation in relation to telephone communications services, especially mobile services. The **O2** mark less so. I accept that this reputation radiates outwards in the telecommunications sector, but naturally diminishes the further one moves away from the key services. The earlier marks have a moderate reputation for entertainment services. This appears to be almost entirely because of the reputation of the **O2** entertainment arena.

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

64. The **O2** and **O2** marks have an around average degree of inherent distinctiveness (slightly more so in the case of the latter mark). I find that the earlier marks are highly

factually distinctive in relation to telephone communications services, especially mobile phone services (very highly distinctive in the case of the **O2** mark), but otherwise have little more than an average degree of distinctiveness.

Whether there is a likelihood of confusion

65. There is a likelihood of indirect confusion if the contested marks are used in relation to the goods/services identified by the deletions/exclusions in Annex A, but not otherwise.

66. Taking all these factors together, I find that the public would make a link between the respective marks if the contested marks are used in relation to the goods/services identified by the deletions/exclusions in Annex A, but not otherwise. It follows that the s.5(3) ground of opposition fails in relation to the other goods and services listed in the application.

Unfair advantage

67. To the extent that the public are caused to believe that the contested marks are connected to the user of the earlier reputed marks, this is bound to give the contested marks an unfair advantage. However, as I have already upheld the s.5(2)(b) ground of opposition in relation to these goods/services, this takes the opponent's case no further.

68. The opponent argues, in the alternative, that even if there is no confusion about the users of the respective marks being connected, the contested marks will take unfair advantage of the reputation of the earlier marks and their image as "*trendy, cool and high tech.*" There is little evidence that the earlier marks have such a reputation. Even if they do, the low degree of similarity between the respective marks makes it unlikely that the reputation of the earlier marks would benefit the contested marks in the absence of a likelihood of confusion. Accordingly, I would reject the opponent's alternative case of unfair advantage.

Detriment to reputation

69. The opponent argues that use of the contested marks would be detrimental to the reputation of the earlier marks, if they were used in relation to goods/services of inferior quality to those provided under the opponent's marks. This claim also appears to depend on the public believing the users of the parties' marks are the same or connected. If that is right, I find that the objection succeeds, but only to the same extent as the opposition under s.5(2)(b). If the objection is free-standing of the allegation of a likelihood of confusion, i.e. based purely on the effect of the contested marks bringing the earlier marks to mind, then it is hypothetical and based on mere supposition.²⁰ Accordingly, I reject it.

Outcome

70. The opposition partly succeeds, but mainly fails. The contested marks may proceed to registration in relation to the amended specification set out in Annex A.

Costs

71. The opposition has failed to a much greater extent than it succeeded. Therefore, the applicant is entitled to a contribution towards its costs. I calculate this as follows.

£350 for considering the notice of opposition and filing a counterstatement;
£500 for considering the opponent's evidence;
£1000 for attending a hearing and providing a skeleton argument.

²⁰ See paragraphs 46 and 47 of the judgment of Ms Anna Carboni as the Appointed Person in *Unite The Union v The Unite Group Plc*, Case BL O/219/13

72. I therefore order O2 Worldwide Limited to pay CXO2.COM (UK) Limited the sum of £1850. This to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the end of the appeal proceedings (subject to any order of the appellate tribunal).

Dated the 17th day of October 2018

**Allan James
For the Registrar**

Annex A

Applicant's goods/services	Goods/services covered by earlier marks and relied on by opponent
<p>Class 9 Computer hardware; computer software; data communications apparatus; computer software platforms; computer operating system software; computer interface software; computer software for use as an application programming interface (API); software for creating and operating a graphic user interface; computer application software for mobile phones, tablet computers and other portable electronic devices; downloadable computer application software; computer software for controlling and managing access server applications; software for telecommunication and communication via local or global communications networks, including via the internet; software for robotic process automation; computer software to assist in handling requests for IT technical support; computer software for recordal, compilation, analysis and retrieval of information regarding the handling of requests for IT technical support; computer software for the automatic resetting of passwords; word processing computer programs; computer software for electronic document management and capture and for form processing; computer software for the design, creation and maintenance of, and access to, document management, authoring, storage and retrieval systems; computer software for the categorisation, research and retrieval of documents and data on computer networks; computer software for managing stock control systems; computer software for business operational and process efficiency, business organisation, risk management, financial control, supply chain optimisation, and cash flow; computer software for managing personal contact information, diary programs, and calculating programs; computer software for handwriting identification; computer software for the identification and verification of persons based on one or more biometric characteristics; computer software for access to sites on customised intranets and sites on global communications networks; computer software for the manufacture, processing and provision of text and graphics information, locally or by means of remote transmission; computer software for security and encryption programs and data synchronisation programs; computer software for the analysis and reporting of firewall log data; computer software for detecting, blocking and intercepting malware and other threats to computer hardware and software; computer software for identity security; computer software for authentication and identity</p>	<p>Class 9 Apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, dvds and other digital recording media; cash registers, calculating machines, data processing equipment, computers; computer software; compact discs [audio-video]; compact discs [read-only memory]; computer game programs; computer keyboards; computer memory devices; computer operating programs, recorded; computer peripheral devices; computer programmes [programs], recorded; computer programs [downloadable software]; computer software, recorded; computers; data processing apparatus; downloadable image files; downloadable music files; electronic publications, downloadable; encoded identification bracelets, magnetic; encoded magnetic cards; identity cards, magnetic; integrated circuit cards [smart cards]; laptop computers; magnetic data media; magnetic encoders; magnetic tape units for computers; magnetic tapes; magnetic wires; magnets; modems; monitors [computer hardware]; monitors [computer programs]; notebook computers; optical data media; optical discs; portable telephones; printers for use with computers; scanners [data processing equipment]; screens [photography]; sound recording apparatus; sound recording carriers; sound recording strips; sound reproduction apparatus; sound transmitting apparatus; telephone apparatus; telephone receivers; telephone transmitters; telephone wires; video recorders; videotapes; word processors; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; computer software; computer software downloadable from the internet; pdas (personal digital assistants), pocket pcs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; computer software recorded onto cd rom; sd-cards; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; cds, dvds; electronic publications (downloadable); magnetic cards, encoded cards.</p>

management information security; computer software for data exchange using wireless communications technologies and for use with personal digital assistants; computer software for the linking, networking and central management of mobile terminals; computer software for the safeguarding of digital files; computer software for use in database management, namely for managing personal and business information; computer programs; computer firmware; apparatus for networking of computers; computer servers; computer peripheral equipment; computer printers; modems; handheld electronic devices with wireless e-mail and wireless access to electronic communications networks; pointing devices for use with computers, ~~mobile phones~~ and other portable electronic devices; computer games software; software for the infrastructure and operation of computer games via the internet; tablet computers; computer scanners; data processing apparatus and instruments for use with computers; screens and keyboards for computers; data processing apparatus and instruments; telecommunications apparatus and instruments; ~~mobile phones; smartphones;~~ telecommunications network apparatus; audio, visual and audio visual apparatus and instruments; apparatus for storage, recordal, retrieval and transmission of data; downloadable electronic publications; magnetic data carriers; audio recordings; visual recordings; audio-visual recordings; instruction manuals and other printed publications in electronic form relating to the aforesaid goods; *but not including mobile or smart phones or parts, fittings or accessories for mobile or smart phones or firmware or software adapted for use with mobile or smart phones.*

Class 35

Retail store services, online retail store services connected with the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring preparations, soaps, perfumery, essential oils, hair lotions, dentifrices, abrasive cloth, preparations for the hair and for the care of the skin (non-medicated), toiletries for babies and infants (non-medicated), non-medicated creams for the prevention and treatment of nappy rash, petroleum jelly (for cosmetic purposes), pre-impregnated wipes and towels with personal cleansing and/or cosmetic lotions, pre-impregnated wipes and towels for the treatment and prevention of nappy rash, pre-impregnated wipes and towels for hygienic purposes (personal use), hygienic wipes and towels for cleaning purposes (household use), skin creams, skin balms, body lotions, body oils, body butters, baby lotion, baby oil, nipple creams

Class 35

Arranging newspaper subscriptions for others; arranging subscriptions to telecommunication services for others; retail services and online retail services connected with scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, dvds and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image,

<p>and balms, lotions, creams and gels for treatment of stretch marks, moisturising gels, soaps, bar soaps, liquid soaps, shampoo, hair conditioner, all in one bath and hair cleansers, bath and shower gels and foams, talcum powder, liquid talc, baby massage oil, sunscreen, sun protection oils, lotions, creams and gels, after-sun oils, lotions, creams and gels, toothpaste, mouthwash, cosmetic products, lip balms, cotton sticks, cotton wool, candles, lights, bulbs, matches, pharmaceutical and sanitary preparations, disinfectants, medicated soaps, medicated shampoo, medicated hair conditioner, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, feminine hygiene products, panty liners, sanitary towels, tampons, maternity towels, pants for feminine hygiene, sanitary briefs, incontinence pads, incontinence pants, nappies, disposable nappies, disposable nappies made of cellulose, disposable nappies made of paper, nappies for incontinence, cotton wool for pharmaceutical purposes, cotton wool in the form of buds for medical use, towels impregnated with medicated or disinfectant lotions, impregnated antiseptic wipes, impregnated medicated wipes, petroleum jelly (for medical purposes), skin care creams for medical use, medicated creams, babies' creams (medicated), medicated skin creams, nappy cream (medicated), sanitising wipes, moist wipes impregnated with a pharmaceutical lotion, antiseptic wipes, baby wipes, medicated balms, teething gel, hand tool and implements, cutlery, razors, nail clippers, cutlery for use with babies, children and infants, forks, knives, spoons, cases for cutlery, disposable tableware (cutlery) made of plastics, soft- tip spoons for use with babies, infants and children, computers, DVDs and other blank digital recording media, pre-recorded DVDs and other digital pre- recorded media, computer software, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software,</p>	<p>telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, apps, computer software, computer software downloadable from the internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, pdas (personal digital assistants), pocket pcs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [gps] apparatus, satellite navigation devices, computer software recorded onto cd rom, sd-cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, mp3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, cds, dvds, downloadable electronic publications, mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, paper, cardboard, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for packaging, printers' type, printing blocks, arts, crafts and modelling equipment, pictures, portraits, paintings, drawings, figurines of paper and cardboard, drawing instruments, drawing materials, modelling materials, packing bags of paper, packaging material, packaging materials made of paper, packaging materials made of cardboard, packaging material made of card, wrapping materials made of card, wrapping materials made of cardboard, wrapping materials made of paper, wrapping materials made of plastics, plastics for modelling, correcting and erasing implements, educational equipment, printing equipment, photo albums, writing implements, writing instruments, writing materials, writing or drawing books, writing pads, writing paper, stamping implements, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, decalcomanias, diaries, gift cards, labels, maps, printed publications, thesauri, dictionaries, personal organizers, postage stamps, postcards,</p>
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<p>children's educational software, downloadable publications, downloadable electronic publications, baby monitors, thermometers, safety caps, safety covers for electrical equipment and apparatus, safety alarms, children's safety gates, eyewear, protective eyewear, visors and hats, sunglasses, buoyancy aids, inflatable arm-bands, surgical, medical, dental and veterinary apparatus and instruments, eyes and teeth, orthopaedic articles, suture materials, feeding bottles, feeding bottle teats, teats for babies, infants and children, reusable and disposable teats for bottles and drinking cups for babies, infants and children, spoons for administering medicine, incubators for babies, gloves for medical purposes, maternity belts, medical physical exercise apparatus, incontinence sheets for babies, infants and children and adults, birthing mats, plastic and/or paper bags and wraps for disposal of hospital waste, disposable bags and precursors therefor for hospital waste, surgical and medical sponges, medical thermometers (electrical, and/or non-electrical, and/or digital), teething rings, teething and teething rattles, pacifiers, baby soothers, medicine syringes, medicine dispensers, and nasal aspirators, apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, steam generation devices, apparatus and equipment, cookers and cooking appliances, stoves, cooker guards, ionisation, purifying and deodorising apparatus and machines, vaporisers, disinfectant distributors and dispensers for sanitary purposes, heaters for feeding bottles and heating plates, baby food heaters, solar collectors and thermoelectric heating and cooling devices, hot water bottles, foot warmers, cooling appliances and devices and installations, beverage and liquid cooling apparatus and devices, baths, shower baths, bath fittings, toilet seats and portable sanitary installations, sanitary apparatus and installations, toilet seat adaptors and toilet seat adaptors for children, steriliser and sterilisation apparatus and equipment, sterilisers for babies' feeding bottles, disposable sterilisation pouches, electric kettles, steam sterilisation devices, UV sterilisation devices, travel sterilising devices for babies' bottles and feeding equipment, water sterilizers, water purification installations, disinfecting apparatus, lights for babies, infants and children, vehicles, car seats, pushchairs, prams, strollers, wheeled trolleys, transporters and buggies, baby walkers, perambulators incorporating carry cots, rain covers for pushchairs, prams, strollers, transporters and buggies, harnesses for prams, harnesses for use with pushchairs, tricycles, bicycles, booster seats, vehicle safety apparatus for children, watches, jewellery musical</p>	<p>posters, appointment books, industrial paper and cardboard, money clips of precious metals, disposable paper products, absorbent paper, bathroom tissue, bibs of paper, coasters of paper or cardboard, tissues of paper, towels of paper, hygienic paper, kitchen paper, napkins made of paper for household use, table cloths of paper, table mats of paper, table mats of cardboard, toilet paper, toilet rolls, printed tariffs, credit cards without magnetic coding, cards for use in connection with sales and promotional incentive schemes and promotional services, printed forms, savings stamps, adhesive tapes for stationery or household purposes, gift boxes, gift bags, photographic printing paper, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to clothes shops, garden centres; retail services in relation to telecommunication goods; retail services and online retail services relating to foodstuffs, white goods, domestic electrical and electronic equipment; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.</p>
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instruments, books, printed matter, stationery, photographs, paper, cardboard, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, printers' type, printing blocks, paper, cardboard and goods made from these materials, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, paper products for household and sanitary use, namely kitchen and bath towels, kitchen rolls, napkins, handkerchiefs, toilet paper, paper wipes, paper towels, printed matter, including printed publications, magazines, brochures, leaflets, stationery, disposable nappies made of paper and/or cellulose, printed guides, printed guides relating to parenting and new born babies, packs containing printed matter relating to new born babies and parenting advice, leaflets, leaflets relating to new born babies and parenting advice, activity books, colouring books, books for babies, infants and children, sticker books, stickers, photograph albums, calendars, diaries, diaries relating to babies' progress, planners (printed) relating to babies and infants, birthing diaries (printed matter), birthing planners (printed matter), travelling bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, attaché cases, shoulder belts of leather, sling bags, briefcases, garment bags for travel, haversacks, hat boxes of leather, umbrella covers, walking canes, handbags, bags, tote bags, handbags, clutch bags, shoulder bags, casual bags, athletic bags, school bags, duffel bags, beach bags, purses, wallets, credit card holders, luggage, holdalls, sports bags, rucksacks, backpacks, satchels, briefcases, bags for cosmetics, suitcases, document cases, music cases, key cases (leatherware), frames for umbrellas or parasols, change purses, travelling bags, trunks (luggage) and boxes of leather or leather board, furniture, mirrors, picture frames brushes and combs, household and kitchen utensils and containers, combs and sponges, brushes, articles for cleaning purposes, glassware, porcelain and earthenware, pots and pans, cups, bowls, plates, tea sets, lunchboxes, plastic cups, plastic bowls, plastic plates, beakers, sippers, snack-pods, snack-pots, foodpots, egg-cups, thermally insulated containers for food, thermally insulated flasks, thermally insulated containers for drink, basins (bowels), dishes for microwave ovens, textiles, bed covers, table covers, textiles for making clothing, duvets, table cloths, bed covers, duvet covers, pillow covers, bath linen, bed canopies, curtains, blankets, bed blankets made of cotton,

bed blankets made of wool, bed blankets made of man-made fibres, blankets for babies, cot blankets, lap blankets, children's blankets, travel blankets, towel blankets, hooded towels, hooded towels for babies, face towels, children's towels, sleeping bags, sleeping bags for babies, clothing, footwear, headgear, baby grows, cloth bibs, dressing gowns, onesies, sleep suits, bodysuits, rompers, pramsuits, mittens for babies, mittens for infants, hats for babies, hats for infants, booties, earmuffs, socks, carpet, rugs, mats and matting, linoleum, wall hangings, toys, games and playthings, sporting articles, decorations for Christmas trees, play mats, exercise mats, yoga mats, games and playthings, gymnastic and sporting articles, children's toys, stuffed toy animals, soft toys, balloons, toy bakeware and cookware, bath toys, bean bags, snow globes, music box toys, dolls, porcelain dolls, bean bag dolls, paper dolls, puppets, collectible toy figures, doll houses, doll furniture, clothing for dolls, dolls for playing, educational playthings, fresh foods and processed foods, animal foodstuffs, bedding and litter for animals, non-alcoholic beverages, beers alcoholic beverages, wines, spirits; online retail store services featuring audio and video recordings, spoken word recordings, electronic books and computer games; online retail store services in the fields of toiletries, audio, visual and audio-visual equipment, clothing, sporting goods, home furnishings and vehicles; subscription-based services featuring books, audiobooks, music, films, TV shows, videos and games; information and advisory services relating to all the aforesaid services; *but not including retail services connected with the sale of mobile or smart phones or parts, fittings or accessories for such goods or firmware or software adapted for use with smart or mobile phones.*

Class 36

Financial services; financing services; credit services; financial planning, financial budgeting, financial management and loan services; insurance services; asset management; information and advisory and support services relating to all the aforesaid services.

Class 36

Insurance; financial affairs; monetary affairs; banking; credit bureaux; credit card services; deposits of valuables; exchanging money; fiduciary; financial consultancy; financial evaluation [insurance, banking, real estate]; financial information; financial management; financing services; fund investments; funds transfer (electronic -); instalment loans; insurance brokerage; insurance consultancy; insurance information; insurance underwriting; issuance of credit cards; loans [financing]; mutual funds; provident fund services; safe deposit services; financial payment services; payment processing services; electronic payment services; automated payment services; payment collection agencies; processing of payment transactions via the internet; money transfer services; electronic funds transfer services; bill payment services.

Class 38

Communication services; communication services via computer networks, internet portals, and computer terminals; electronic transmission of data and information via computer networks and internet portals; telecommunication services; rental of telecommunication apparatus and instruments; provision of telecommunication access and links to computer databases and networks; arranging and leasing access time to computer databases; provision of access to electronic online networks for information retrieval; network implementation services, namely implementation of data communications over infrastructures supplied by third parties; rental of data communication apparatus; provision of internet chat rooms; information and advisory services relating to all the aforesaid services; *but not including telephone communication services, communications services via smart or mobile phones, communication services via a cellular network, or the rental of smart or mobile phones.*

Class 42

Computer services; advisory and consultancy services relating to information technology, computers, computer networking, computer programs and computer systems; computer programming services; design of application software; design of computer operating system software; design of computer interface software; design of computer software for use as an application programming interface (API); design of software for creating and operating a graphic user interface; design of computer application software for ~~mobile phones~~, tablet computers and other portable electronic devices; design of downloadable computer application software; design of software for robotic process automation; design of computer software to assist in handling requests for IT technical support; design of computer software for recordal, compilation, analysis and retrieval of information

Class 38

Telecommunications; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; message sending; providing access to databases; providing internet chatrooms; providing telecommunications connections to a global computer network; providing user access to global computer networks; rental of access time to global computer networks; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; telephone services; transmission of digital files; telecommunications services; mobile telecommunications services; telecommunications portal services; Providing access to Internet portals; mobile telecommunications network services; fixed line telecommunication services; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; chatroom services for social networking; providing online forums; forums for social networking; providing electronic telecommunication connections; routing and connecting services for telecommunications; rental of telecommunications equipment.

Class 42

Scientific and technological services and research and design relating thereto design and development of computer hardware and software; IT services; computer programming services; services of a programmer; recovery of computer data; consultancy in the field of computer hardware; computer programming; duplication of computer programs; computer rental; computer software design; installation of computer software; maintenance of computer software; updating of computer software; rental of computer software; rental of computer hardware; computer system design; computer systems analysis; consultancy in the field of computer software; creating and maintaining websites for others; data conversion of computer programs and data (not physical conversion); hosting computer sites (web sites); rental of data processing apparatus and computers; technical

<p>relating to requests for IT technical support, IT troubleshooting, and incident handling; computer programming services for the automated installation and configuration of computer hardware, computer programs and computer software; design, development, updating, modification, testing, installation and maintenance of computer software; hire, rental and leasing of computers, printers, computer firmware, computer programs, computer peripheral equipment, data communications apparatus, data processing equipment, computer networking apparatus and instruments, and parts and fittings for all these goods; cloud computing services; creation and structuring of computer databases; creation and maintaining of databases to hold information regarding compliance with licences for the use of computer software programs; provision of helpdesk services for the provision of advice in relation to issues with computer hardware, computer networks, data processing equipment and computer software; operating and hosting a website for the provision of technical information and advice on IT matters and enabling the downloading of application software; technical support services; provision of IT technical support by way of web chat conversations; design, research, development, testing and rental of computer hardware, computer peripherals and computer networking systems; computer systems analysis; monitoring, recording and/or controlling access to sites and locations on a global computer network; computer network management services; computer outsourcing services; computer operations support services, being central processors with multiple users, taking on all aspects of computer housekeeping and data back-ups; network monitoring services; systems migration and integration services; applications management; applications support services; operation of computer network infrastructure, including by means of internet portals and mobile application software; recovery of computer data; data security services (firewalls); computer environmental control services; encryption of information maintained on computers; electronic storage of documentation products, document templates, models and reports relating to project management, project management methodology, and management of customer service regarding IT technical support; web site design services; hosting the web sites of others; creating, developing, designing and maintaining the websites of others; rental of data processing equipment; server management services; server hosting; advisory and consultancy services, including by means of blogs, articles, and messages on social media, relating to any of the aforesaid services and any</p>	<p>support services relating to telecommunications and apparatus; cloud seeding; computer hardware (consultancy in the field of-); computer rental; rental of computer software; rental of web servers.</p>
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other services relating to information technology, computers, computer programs and computer systems; creating an on-line community for registered users to participate in discussions, form virtual communities and engage in social networking services; *but not including services for the hire, rental and leasing of smart or mobile phones or the design, programming, maintenance or installation of firmware or software adapted for use with smart or mobile phones.*

Class 45

Online social networking services; social networking services provided via a website and communications networks; social networking services provided via on-line computer databases and on-line searchable databases; social networking services provided via a website.

Class 45

Dating services provided through social networking, matchmaking and personal introduction services, internet-based social networking services, introduction and social networking services, online social networking services, on-line social networking services, online social networking services accessible by means of downloadable mobile applications, providing access to computer databases in the fields of social networking, social introduction and dating, information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet.