

O/0167/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER UK00004041529

FILED BY EMI (IP) LIMITED

TO REGISTER THE FOLLOWING MARK IN CLASSES 9 AND 42

RUMBLE FILTER

Background

1. On 19 April 2024, EMI (IP) Limited ("the applicant") applied to register the above word only mark in respect of the following goods and services:

Class 9

Audio equalizers and mixing desks, namely, electronic devices for combining, routing and/or changing the level, tone and/or dynamics of audio signals; sound recording and sound mastering consoles; sound cards; sound boards; audio circuit boards; circuit boards; electrical cables; audio processing equipment, namely, compressors, limiters, transistors, amplifiers, microphone pre-amplifiers, equalizers, filters, and audio overdrive distortion units; microphones; microphone cables, stands, power buttons, mixers and adaptor plugs; headphone-microphone combinations; booms for microphones; apparatus for recording, transmission or reproduction of sound or images; downloadable and recorded computer software and mobile applications for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing audio, video, and audiovisual content; downloadable mobile applications for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing audio, video, and audiovisual content; plug-ins, namely, downloadable and recorded computer software modules for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing audio, video, and audiovisual content; downloadable electronic publications in the nature of booklets, magazines, journals, manuals, brochures, leaflets, pamphlets and newsletters in the field of audio equipment; parts and fittings for all the aforesaid goods.

Class 42

Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS) services featuring software for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing audio, video, and audiovisual content; provision of online non-downloadable computer software for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing

audio, video, and audiovisual content; provision of websites for accessing, displaying, distributing, downloading, playing, receiving, sampling, streaming, transmitting, uploading, generating, recording, mixing, reproducing, arranging, routing, and sequencing audio, video, and audiovisual content; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems; computer programming; installation, maintenance and repair of computer software; technical writing; creating, maintaining and hosting the web sites of others; encryption of digital music; encoding of digital music; hosting of digital content on the internet or via a global computer network; design and development of computer hardware and software; maintenance and updating of computer software; information, advisory and consultancy services in relation to all of the aforesaid services.

2. On the 30 April 2024 the Intellectual Property Office (“IPO”) issued an examination report in response to the application. In the report, the following objection was raised under 3(1)(b)&(c) of The Trade Marks Act 1994 (“The Act”):

Absolute grounds for refusal

Section 3(1)(b) and (c)

The application is not acceptable in Classes 9, 42. There is an objection under Section 3(1)(b) and (c) of the Act. This is because the mark “RUMBLE FILTER” consists exclusively of a sign which may serve in trade to designate the kind of goods/services e.g., audio equalizers, mixing desks and processing equipment containing a rumble filter.

Research on the term “RUMBLE FILTER” was undertaken using Google.com on 30 April 2024. Please see internet references at Annex A. This research has demonstrated that in the context of audio reproduction a rumble refers to a low frequency sound which can be undesirable. Rumble filters work by removing the low-frequency sound which can be detrimental to sound quality.

As such, when met with the sign “RUMBLE FILTER” in connection to the goods and services being provided, the average consumer is unlikely to attribute any trade mark significance but merely view the mark as a descriptor that the electronic devices and software contain a rumble filter.

The examination report also included some minor classification issues to be addressed, however, as they are not considered relevant to these proceeding, I have chosen not to include them in this statement of grounds.

3. In line with IPO procedure, a period of two months was allowed in order for the applicant to respond.
4. On the 28 June 2024, Abion UK Limited (“The attorney”), acting on behalf of the applicant requested an extension of time in order to consider their response to the objection further. This request was duly accepted by the examiner.
5. On the 1 August 2024 the attorney filed a request for a further 1 month extension due to delays as a result of the international nature of the applicant and public holidays in the US where the applicant is located. This extension of time was again granted by the examiner.

6. On the 2 October 2024 the attorney requested to be heard in respect of the outstanding 3(1)(b)&(c) objection. The resulting hearing was scheduled to take place on 29 October 2024, with Mr Matthew Bedford in attendance on behalf of the attorney.
7. At the hearing Mr Bedford provided oral submissions which are summarised below:
 - The examiner's objection only referred physical goods in class 9 as the body of the objection only specifically referenced '*audio equalizers, mixing desks and processing equipment*'.
 - The evidence provided by the examiner in support of their objection pertained to physical products known as 'rumble filters'. This evidence did not support a descriptiveness objection given that many of the goods and services included in the application pertained to intangible products such as software.
 - The term 'Rumble Filter' would not be descriptive of a characteristic in respect of terms such as '*applications for accessing audio, distributing audio, audio streaming*' etc., in class 9 and '*maintenance, installation and repair of computer software*' in class 42 because these goods and services do not pertain to physical goods such as those identified by the examiner.
 - The term 'Rumble Filter' appeared somewhat outmoded and saw only limited use, even in respect of physical audio products.

Following on from an enquiry on my part, Mr Bedford also explained that the applicant had not come to market with the goods or services at the time of the hearing and as such, he was unable to confirm whether it was possible for a digital solution that achieved the same function of that of the physical rumble filters identified by the examiner. His appreciation of how the mark will be used or the nature of the applicant's digital goods and services extended only as far as a general understanding of what the specification suggests.

8. I deferred my decision at the hearing to further consider Mr Bedford's submissions, subsequently rendering my decision to maintain the Section 3(1)(b)&(c) objection in my hearing report which was issued on 6 November 2024. The reasons stated in the hearing report for maintaining the objection are summarised as follows:
 - The examiner had clearly stated that their objection raised under 3(1)(b)&(c) was in respect of classes 9 and 42 in their totality. The example given in the opening paragraph of the objection in respect of '*audio equalizers, mixing desks and processing equipment*' is clearly given for illustrative purposes only.
 - Based on the evidence identified by the examiner showing descriptive use of the term 'rumble filter' in respect of audio equipment, it was reasonable for them to raise the objection in respect of the physical audio products listed in the specification.
 - As a result of establishing that physical audio equipment called 'rumble filters' are available to the public, it was also reasonable for me to consider whether the term 'rumble filter' 'may serve in trade' to describe software-based or intangible goods and services associated with audio processes.
 - Based on the natural and ordinary meaning of the words 'RUMBLE' and 'FILTER', the combination would be understood as descriptive by the average consumer across the board in both classes.
9. On the 3 December 2024 a request of a statement of grounds for the registrar's decision was received at the IPO via official form TM5. Having received such a request I now set out my reasons below.

The Law

7. The relevant section of the Act read as follows:

3(1) the following shall not be registered –

(a) ...

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or any other characteristic of goods or services,

(d) ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b),(c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

Relevance of EU Law

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to some decisions of the EU courts which predate the UK's withdrawal from the EU.

The Relevant Legal Principles

9. The case law under section 3(1)(c) of the Act was summarised by Arnold J (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc*. [2012] EWHC 3074 (Ch). These are the most relevant points:

a. The general interest underlying section 3(1)(c) is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services.

b. With a view to ensuring that that objective of free use is fully met, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes.

c. The application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question. It is, furthermore, irrelevant whether there are other, more usual, signs than that at

issue for designating the same characteristics of the goods or services referred to in the application for registration.

- d. The situations specifically covered by section 3(1)(c) of the Act are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.*
 - e. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in section 3(1)(c) of the Act are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. A sign can be refused registration on the basis of section 3(1)(c) only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics.*
 - f. In addition, a sign is caught by the exclusion from registration in section 3(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned.*
10. Additionally, a number of judgements have been handed down by the CJEU which have established the scope of Article 3(1)(c) of the First Council Directive 89/104 (recoded and replaced by Directive 2008/95/EC on the 22 October 2008 which in turn, was repealed and replaced by Directive 2015/2436 on the 15 January 2019) and Article 7(1)(c) of the Community Trade Mark Regulations, whose provisions correspond to section 3(1)(c) of the UK Trade Marks Act 1994. For the avoidance of doubt, it is noted that the Trade Marks Act 1994 is largely derived from EU law (Directive 2015/2436). I derive the following main guiding principles from the cases noted below:
- Subject to any claim in relation to acquired distinctive character, signs and indications which may serve in trade to designate the characteristics of goods or services are deemed incapable of fulfilling the indication of origin function of a trade mark (Wm Wrigley Jr & Company v OHIM, C-191/01P 'Doublemint', paragraph 30);*
 - Article 7(1)(c) (section 3(1)(c)) pursues an aim which is in the public interest, namely that signs or indications relating to the categories of goods or services in respect of which registration is sought may be freely used by all. The provision therefore prevents such signs or indications from being reserved to one undertaking alone because they have been registered as trade marks (see judgment of 4 May 1999 in Joined cases C108/97 and C-109/97 Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots-und Segelzubehör Walter Huber and Franz Attenberger (Chiemsee) [1999] ECR*

I2779, at paragraph 25);

- *It is an accepted principle in law, that in the context of Section 3(1)(c) of the Act, the expression 'may serve in trade' includes within its scope the possibility of future use even in instances where, at the date of application, the sign for which protection is sought is not used descriptively in trade (to that effect, CJEU Cases C-108/97 and C109/97 Windsurfing Chiemsee Produktions und Vertriebs GmbH v Boots and Segelzubehor Walter Huber and others).*
- *Further to the established principle of 'future use', it is also settled in law that the fact there may be little or no current use of the sign in trade at the time of application is not a determinative factor in assessing a marks acceptability for registration. The expression 'may serve in trade' should be interpreted as meaning 'could' the sign for which protection is sought serve to designate a characteristic of the goods or services (see BLO/096/11 Putter Scope, a decision by the appointed person, paragraph 11 refers).*
- *Article 3(1)(c) [Trade Mark Directive] precludes registration of a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services in respect of which registration is sought, and that is the case even when there are more usual signs or indications for designating the same characteristics and regardless of the number of competitors who may have an interest in using the signs or indications of which the mark consists (see C-363/99 KPN/BMB Postkantoor).*
- *It is also a well-established principle that the Registrar's role is to engage in a full and stringent examination of the facts, underlying the Registrar's frontline role in preventing the granting of undue monopolies, see to that effect CJEU Case C-51/10 P, Agencja Wydawnicza Technopol sp. z.o.o. v OHIM [2011] ECR I-1541 (Technopol);*
- *When determining whether a sign is devoid of distinctive character or is descriptive of the goods or services in respect of which registration is sought, it is necessary to take into account the perception of the relevant consumer who is reasonably well-informed and reasonably observant and circumspect (Matratzen Concord AG v Hukla Germany SA, C-421/04);*
- *There must be a sufficiently direct and specific relationship between the sign and the goods in question to enable the relevant consumer immediately to perceive, without further thought, a description of the category of goods and services in question or one of their characteristics (Ford Motor Co v OHIM, T67/07).*

11. In respect of my assessment of the of the goods and services, I have taken into account the comments of the CJEU in Case C-239/05, BVBA [2007] E.C.R. I-1455 which stated:

"34....an examination of the grounds for refusal listed in Art.3 of the Directive must be carried out in relation to each of the goods and services for which trade mark registration is sought and, secondly, that the decision of the competent

authority refusing registration of a trade mark must, in principle, state reasons in respect of each of those goods or services.

35 That conclusion cannot be any different where an application to the competent authority for a range of goods or services does not contain a subsidiary application for registrations of the mark concerned for specific classes of goods or services or for goods and services considered separately.

36 The duty upon the competent authority to state reasons for refusing to register a trade mark in relation to each of the goods or services for which such registration is sought also arises from the essential requirement for any decision of a national authority refusing the benefit of a right conferred by Community law to be subject to judicial review which is designed to secure effective protection for that right and which, accordingly, must cover the legality of the reasons for the decision....

37 However, where the same ground of refusal is given for a category or group of goods or services, the competent authority may use only general reasoning for all of the goods and services concerned

12. I have also taken into account the consequences for third parties of granting the holder a monopoly. In *Linde A.G. v Rado Uhren A.G.* Case C-53/01 the following guidance was given:

73. According to the Court's case-law "Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is applied for may be freely used by all, including as collective marks or as part of complex or graphic marks. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see to that effect, Windsurfing Chiemsee, paragraph 25).

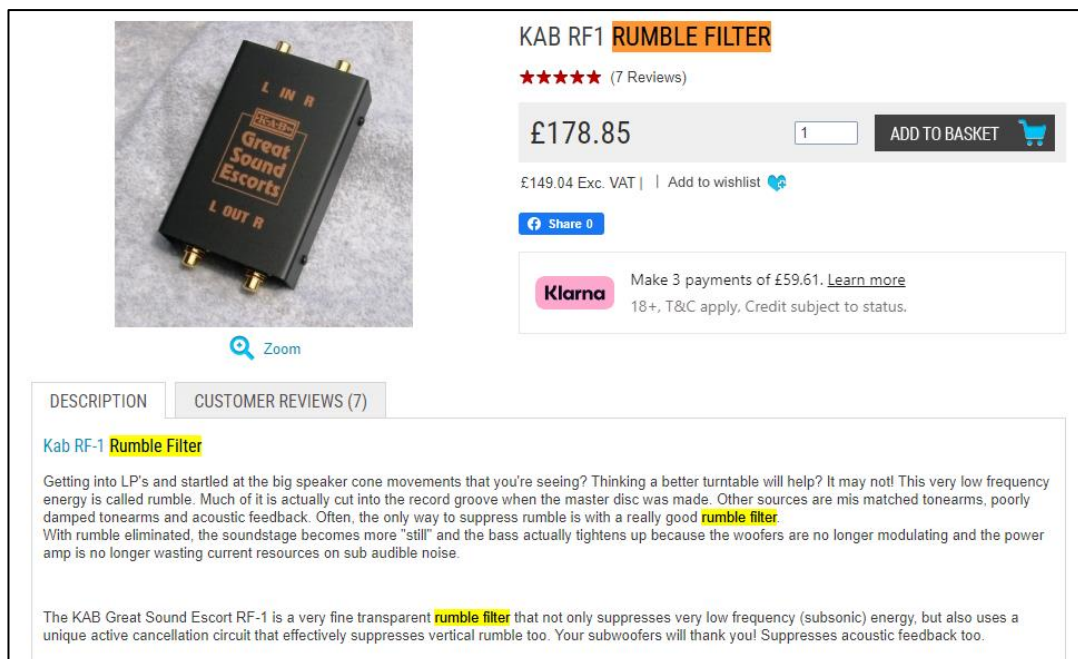
74. The public interest underlying Article 3(1)(c) of the Directive implies that, subject to Article 3(3) any trade mark which consists exclusively of a sign or indication which may serve to designate the characteristics of goods or a service within the meaning of that provision must be freely available to all and not be registrable.

Application of legal principles

13. In regard to identifying the average consumer, given the nature of the goods and services for which protection is sought it is considered it is likely that the consumer will consist of members of the general public who are audio enthusiasts or, potentially, professionals operating within the audiovisual industry. Accordingly, I believe the consumer will likely be somewhat specialist in nature and would likely be paying a high degree of attention when engaging with the mark.
14. Of course, it is appreciated that even if it is established that the degree of attention of the relevant consumer is higher than that of an average consumer, this does not, in and of itself, lead to a finding that a sign which is weaker in distinctive character is

rendered sufficiently distinctive (see *CJEU C-311/11P Smart Technologies ULC v. OHIM – [at para 48]*).

15. Having established the sector in which the goods and services in question would be marketed and sold, as well as the likely level of attention of the average consumer, I now turn to consider the distinctive character of the mark in relation to the goods and services for which protection is sought.
16. In my view, the majority of the goods included in class 9 of this application could be considered to fall into two broad categories, firstly, physical audiovisual equipment products and secondly, downloadable software/applications used for audiovisual purposes. Class 9 also includes various downloadable publications in the field of audio equipment.
17. The specification in class 42 could again be considered to fall into broad categories. Firstly, software as a service, platform as a service and infrastructure as a service all provided in relation to the supply and access to audiovisual content. Secondly, technical support services, computer programming and maintenance related services connected with audiovisual media and lastly, services pertaining to the encryption and encoding of audiovisual content and hosting of digital content online and via websites.
18. When seeking to determine whether the sign 'RUMBLE FILTER' could be exclusively descriptive of a characteristic of the goods and services referenced above, it was identified by the examiner that the term appears to be used in trade in respect of audiovisual apparatus (*with evidence included under annex A which was attached to their examination report*). It is apparent that the term is used to describe individual components to be used by consumers as a constituent element of their audio set up or, in other instances, as a feature or function of larger pieces of audio equipment. Such use is considered to be sufficient to support a finding that the expression 'RUMBLE FILTER' is a term which is apt to describe a kind of product in the field of audiovisual equipment. The selection below are taken from the examination report of 30 April 2024:



KAB RF1 **RUMBLE FILTER**

★★★★★ (7 Reviews)

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DESCRIPTION CUSTOMER REVIEWS (7)

Kab RF-1 Rumble Filter

Getting into LP's and startled at the big speaker cone movements that you're seeing? Thinking a better turntable will help? It may not! This very low frequency energy is called rumble. Much of it is actually cut into the record groove when the master disc was made. Other sources are mis matched tonearms, poorly damped tonearms and acoustic feedback. Often, the only way to suppress rumble is with a really good **rumble filter**. With rumble eliminated, the soundstage becomes more "still" and the bass actually tightens up because the woofers are no longer modulating and the power amp is no longer wasting current resources on sub audible noise.

The KAB Great Sound Escort RF-1 is a very fine transparent **rumble filter** that not only suppresses very low frequency (subsonic) energy, but also uses a unique active cancellation circuit that effectively suppresses vertical rumble too. Your subwoofers will thank you! Suppresses acoustic feedback too.

Figure 1- Example demonstrating use of 'RUMBLE FILTER' to describe an audio component.

<https://www.analogueseduction.net/phono-stages-phono-boards/KABRF1.html>

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FF2.2

While based on the FF6.2/FF4.2 the FF2.2 has some significant differences.

The FF2.2 was designed particularly for use with vinyl. The phono input is a very high quality 2 stage design; plus selectable phono capacitance to better match to cartridge and a switchable **rumble filter**.

Category: Professional DJ Mixers

Figure 2- Example of use describing a feature or function of a piece of audio equipment.- <https://formula-sound.co.uk/product/ff2-2-mixer/>

Tech 21 SansAmp Paradrive D.I. V2

★★★★★ 16

TECH 21

£241

All prices incl. VAT

In stock

Delivery free of charge expected between Friday, 28.02. and Monday, 3.03.

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- o Controls: Level, Treble, Mid, Bass, Drive, Blend & Mid Shift
- o Switch for: Phantom & Ground Connect XLR, +10 dB 1/4 Jack (TRS), 20db XLR, **Rumble Filter** & Air

Figure 3- Example demonstrating use of 'RUMBLE FILTER' to describe the functionality of audio apparatus. - https://www.thomann.co.uk/tech_21_paradrive_d_i_v2.htm

19. In light of the above, I consider it is reasonable to conclude that the term 'RUMBLE FILTER' is used descriptively in respect of audiovisual equipment and apparatus, merely describing a core function or feature of the following goods in class 9:

Audio equalizers and mixing desks, namely, electronic devices for combining, routing and/or changing the level, tone and/or dynamics of audio signals; sound recording and sound mastering consoles; sound cards; sound boards; audio circuit boards; circuit boards; electrical cables; audio processing equipment, namely, compressors, limiters, transistors, amplifiers, microphone pre-amplifiers, equalizers, filters, and audio overdrive distortion units; microphones; microphone cables, stands, power buttons, mixers and adaptor plugs; headphone-microphone combinations; booms for

microphones; apparatus for recording, transmission or reproduction of sound or images

20. At the hearing, it was argued by the attorney that because the examiner had relied on examples of use only in regard to physical audio equipment in their supporting annexes, the objection against the software related goods listed in class 9 and the services listed in class 42, was unfounded. I enquired at the hearing if the attorney was aware of whether a digital solution to filtering out back ground noise or 'rumble' was available in trade and whether the applicant was seeking to provide such a product. The attorney explained that the applicant had not yet brought the goods and services bearing the term 'RUMBLE FILTER' to market and as a result, he was unsure whether software was available which provided for a digital solution equivalent to that of a physical rumble filter or in support of such a feature.
21. Whilst it has proven difficult to find examples of providers of audiovisual software and services pertaining to specific use of the term 'Rumble Filter', it is clear there is an established trade in audio editing software and digital noise reduction software. It is also apparent that there are providers of web-based tools designed to remove unwanted background noise from recordings. Many of the features which are core to the functionality of these kinds of software pertain to the isolation or removal of unwanted background noise, as can be seen in the examples below:

The screenshot displays the Adobe Audition website's 'Noise Reduction' page. At the top, the Adobe logo and navigation menu are visible. The main heading reads 'Explore noise reduction with Adobe Audition.' Below this, a sub-heading states 'Reduce noise on any project.' The page features three distinct sections: 1) 'Edit noise levels with ease.' which shows a waveform with a context menu open over the 'Noise Reduction' option; 2) 'Combine effects to reduce noise.' which describes combining 'DeNoise', 'Adaptive Noise Reduction', and 'Manual Noise Reduction' effects; 3) A final image showing a waveform with a 'History' panel open, highlighting the 'Adaptive Noise Reduction' effect. The overall layout is clean and professional, using a white background with blue and green accents.

Figure 5 - Example of noise reduction software provided by Adobe-
<https://www.adobe.com/uk/products/audition/noise-reduction.html>

The screenshot displays the Noiseremoval.net website. At the top, there is a navigation bar with the site logo and links for Audio Enhancer, Vocal Remover, Pricing Plan, Contact Us, and Login. Below this is an advertisement for the Audi A6 Sportback e-tron. The main content area features a large, dark interface for uploading audio or video files to remove noise. This interface includes an 'Upload Audio/Video' button, a 'REC' recording indicator, a list of supported file formats (.m4a, .mp4, .3gp, .m4b, .aac, .m4p, .m4r, .m4v, .aif, .aiff, .aifc, .avi, .mov, .qt, .mp3, .opus, .ogg, .wav), and a notification about a 500 MB upload limit. Below the upload area are two buttons for selecting a noise removal mode: 'Pulse' and 'Orbit'. The page then transitions to a section titled 'Background Noise Removal Tool', which includes a sub-header 'Struggling with Annoying Background Noise? Try Noiseremoval.net' and a paragraph explaining the tool's utility for content creators. This is followed by a 'Why choose Noiseremoval.net?' section, which lists four key benefits: Advanced Algorithms, AI Driven Technologies, Versatile Application, and Improved Audio Quality. The final section, 'The Cutting-Edge Technology Behind Noiseremoval.net', details four technical aspects: Noise Detection Algorithms, Spectral Analysis, Adaptive Filtering, and Audio Quality Maintenance, each with a brief description of the underlying technology.

Figure 6 - Example of web-based noise reduction service - <https://noiseremoval.net/>

22. Given that there exists an established trade in the provision of digital solutions for the removal of background noise, I must now determine whether the term 'RUMBLE FILTER' may serve in trade to describe a characteristic of goods and services which

serve this purpose. To this end, I have considered the natural and ordinary meaning of the words which are defined in the Cambridge Dictionary as '**Rumble**: noun- a continuous low sound' and '**Filter**: noun- a tool for selecting or removing a particular type of information'. In my view, the individual terms 'RUMBLE' and 'FILTER' constitute everyday words and their meaning would be readily understood by the UK public, including those with a somewhat limited technical knowledge. It is further considered that combining these individual words to create the expression 'RUMBLE FILTER' merely results in a sign which would be perceived by an average consumer as being grammatically correct and unambiguous in its meaning, specifically, that the audiovisual related software and software services incorporate or otherwise engage a filter to eliminate rumble.

23. In my opinion it is probable that because of the established descriptive use of the term 'RUMBLE FILTER' within the audio equipment industry, that a consumer of goods such as software for recording and mixing audio will naturally derive the same understanding of the term 'RUMBLE FILTER' as they would have if confronted by the sign in respect of an audio mixing deck. The same may be equally true in respect of a consumer employing services such as software as a service (SaaS) featuring software for receiving, recording and mixing audiovisual content. In essence, the relationship between audiovisual equipment and software and software type services which pertain to audiovisual media is closely allied and must be treated for my purposes as 'homogenous'. As such, it is possible that an average consumer's perception of the sign 'RUMBLE FILTER' in respect of audio software may be informed or influenced by the established use of the term in the audio equipment sector.
24. Regardless, even in instances where an average consumer remains unaware of the established descriptive use in the audio equipment trade, it is clear that given the grammatically correct and intellectually meaningful nature of the words, the average consumer would not attribute any trade mark significance to the sign in respect of the goods and services for which protection is sought. The natural and ordinary meaning of the words would be immediately understood as indicating that the goods and services facilitate the removal or isolation of background noise from audiovisual recordings.
25. Of course, there will be a variety of ways to describe functionality which pertains to the removal of unwanted matter in an audio recording. Terminology such as 'noise cancellation', 'audio denoiser', 'background noise removal' and 'noise suppression' are just some of the ways audio software providers describe the purpose of their tools. Equally, the language used to describe undesirable noise is just as varied with examples such as 'ambient noise', 'humming noise', 'low frequency noise' and 'background noise' seeing use in trade.
26. Finally, I would like to address the possibility that there may be a variety of terminology used to describe unwanted noise and various methods to remove it. In this respect I am mindful of the comments in *Postkantoor (C-363/99 KPN/BMB)* which stated at para 61:

"...Article 3(1)(c) [Trade Mark Directive] precludes registration of a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services in respect of which registration is sought, and that is the case even when there are more usual

signs or indications for designating the same characteristics and regardless of the number of competitors who may have an interest in using the signs or indications of which the mark consists”

27. Accordingly, I believe that even if there are other, more established ways to describe the removal of background noise, this does not necessarily have a bearing on the assessment before me. Since it is an established legal principle that the expression ‘*may serve in trade*’ should be interpreted as meaning ‘*could*’ the sign for which protection is sought serve to designate, I must simply determine if it is possible that ‘RUMBLE FILTER’ ‘may’ serve in trade do designate a characteristic of the goods and services. As stated previously, it is my view that the expression ‘RUMBLE FILTER’ can be perceived as a descriptor in relation to all of the goods and services, including the non-tangible ones.
28. I also confirm that the 3(1)(b) objection raised in respect of this case is co-extensive with the objection raised under 3(1)(c) and as a result, there is not a separate or independent 3(1)(b) objection to be considered in this case.

Conclusion

29. In this decision, I have carefully considered all the submissions and arguments made during the proceedings and, having done so, concluded that for the reasons set out above, the application is refused in respect of the goods and services applied for because it fails to qualify for registration under Section 3(1)(b) and (c) of the Act.

Dated this 25th February 2025

Darren Smith

For the Registrar