

O/0609/24

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 3869725 BY
HALIL OZDEMIR
TO REGISTER AS A TRADE MARK:**

Sky Force

IN CLASSES 25 & 35

AND

**OPPOSITION THERETO
UNDER NO. 440659 BY
SKY LIMITED**

Background & Pleadings


1. Halil Ozdemir (“**the applicant**”) applied to register the trade mark shown on the front page of this decision in the United Kingdom on 19 January 2023. It was accepted and published in the Trade Marks Journal on 3 February 2023 for Class 25 goods and Class 35 services.¹
2. On 3 May 2023, Sky Limited (“**the opponent**”) opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”)². The opponent is the proprietor of the following marks:

Trade Mark no.	UK00002525359 ('359)
Trade Mark	SKY
Goods & Services for which the mark is registered	Classes 3, 4, 7, 9, 11, 12, 16, 17, 18, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 & 45
Filing date	2 September 2009
Date of entry in register	15 April 2022
Priority details	Priority date: 2 March 2009
	Priority country: European Union Intellectual Property Office (EUIPO)
Trade Mark no.	UK00914903173 ('173) ³

¹ These are listed in Annex I to this decision.

² 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 decisions of the EU courts which predate the UK's withdrawal from the EU.

³ On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM. As a result, the opponent's earlier EUTM No UK00914903173 was automatically converted into a comparable UK trade mark. Comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

Trade Mark	
Mark Details	Mark Description/Limitation: Colour Claimed : White; Grey
Goods & Services for which the mark is registered	Classes 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45
Filing date	11 December 2015
Date of entry in register	13 November 2018

3. In its notice of opposition, the opponent provided a table with which some goods and services covered by its earlier marks are relied upon.⁴
4. Under Section 6(1) of the Act, the opponent's trade marks clearly qualify as earlier trade marks. Further, as the registration of the opponent's earlier marks was completed less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings, as per Section 6A of the Act.
5. The opponent, in its notice of opposition, claims that the competing marks have a high degree of visual, aural and conceptual similarity and that the contested goods and services are identical with and/or similar to those covered by the Opponent's Earlier Marks.
6. In response, the applicant filed a defence and counterstatement asserting that the visual, aural, and conceptual elements of the contested mark are distinct from those of the earlier marks. In addition, he claims the following as to the competing goods and services:

“It is important to note that Sky Limited's registered marks primarily cover industries and goods that are distinct and unrelated to the

⁴ These are listed in Annex II to this decision.

sportswear industry and the specific goods and services covered by my application.

The goods and services specified in my application, including sportswear, sports footwear, and related articles, fall exclusively within the scope of Class 25. There is no direct competition or overlap with the industries covered by Sky Limited's marks.

[...]

Class 35 - Marketing and Promotional Services:

While Sky Limited has raised opposition under Class 35, it is important to note that the marketing and promotional services covered by their marks are not directly related to the specific goods and services covered by my application in Class 25.

Any marketing and promotional services provided under the "Sky Force" brand would be limited to the promotion and sale of sportswear products within the scope of Class 25, without infringing upon or causing confusion with Sky Limited's services."

I will return to the above contentions later in my decision.

7. On 30 June 2023, the Registrar issued a preliminary indication under Rule 19 of the Trade Marks Rules 2008 and Tribunal Practice Notice 3/2007. I confirm that the finding of the preliminary indication is not binding upon me.

Papers Filed and Representation

8. Only the applicant filed evidence in these proceedings. This comes in the form of a witness statement from Halil Ozdemir, the applicant in these proceedings, who is the director of the applicant and the owner of the sportswear brand Athletic Forces. His witness statement is dated 23 October 2023 and consists of two Exhibits containing screenshots of clothing items from the *AthleticForces.com* website and Instagram account. Numerous weblinks are included with the exhibits. However,

since the applicant chose not to file copies of the webpages,⁵ I cannot take the contents of the weblinks into consideration. Also, I consider that this has little relevance, if any, in the current proceedings as the applicant's evidence primarily focuses on the use of the contested mark or how this has been used in the trade, which is not relevant to the notional assessment that I must undertake.

9. Both parties filed submissions in lieu of a hearing.
10. No hearing was requested and so this decision is taken following a careful perusal of the papers.
11. In these proceedings, the opponent is represented by Dentons UK and Middle East LLP and the applicant is a litigant in person.

Decision

Section 5(2)(b)

12. 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”.

⁵ Prior to the resubmission of his evidence, the applicant received an official letter from the Registry dated 17 October 2023, addressing this deficiency while providing guidance on the proper format for filing evidence.

13. The principles considered in this opposition stem from the decisions of the European 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 BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of Goods & Services

14. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their

method of use and whether they are in competition with each other or complementary.”

15. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

“(a) The respective uses of the respective goods or services;
(b) The respective users of the respective goods or services;
(c) The physical nature of the goods or acts of service;
(d) The respective trade channels through which the goods or services reach the market;
(e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

16. The General Court (“GC”) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

17. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

18. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

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

19. The competing goods and services, which are annexed to this decision, to be compared are voluminous, and I will refrain from reproducing them here.

20. In addition to his contentions stated in his counterstatement (as shown above), the applicant submitted that:

“[...] Non-Competing Industries: It is crucial to underscore that Sky Limited’s registered marks primarily cover industries and goods distinct and unrelated to the sportswear industry covered by my application in Class 25. The specified goods and services fall exclusively within the scope of Class 25, with no direct competition or overlap with the industries covered by Sky Limited’s marks.

Class 35 – Marketing and Promotional Services: Despite the opposition raised under Class 35, it is important to note that the marketing and promotional services covered by Sky Limited’s marks are not directly related to the specific goods and services covered by my application in Class 25. Any marketing and promotional services provided under the “Sky Force” brand would be limited to the promotion and sale of sportswear products within the scope of Class 25, without infringing upon or causing confusion with Sky Limited’s services.”

21. In response, the opponent submitted that:

“The Applicant also made written submissions (before the Office set any deadline for the same). These cover:

- (i) prior alleged “continuous use” (in contradiction to the Applicant’s own witness statement);
- (ii) assumptions about what industries the parties operate in, ignoring the identity of the goods and services at issue;
- (iii) unevicenced assertions about consumer perceptions and the characteristics of the average consumer; and
- (iv) an assertion that the marks are not similar.

We aver that save for the submission on similarity, all of this is likewise irrelevant to the opposition. All the Applicant's submissions are denied by the Opponent. Reference is made to Attachment 2 of the TM7.

Moreover, neither party led evidence as to the characteristics of the average consumer, so no special features of the same can be relied on. However, in a case concerning ordinary goods or services, the court or tribunal may be able to put itself in the position of the average consumer without requiring evidence. In such a case, the hearing officer can make up their own mind in the absence of evidence and using common sense and experience [fn omitted].

We submit that the goods and services are indeed ordinary and that the tribunal can construct the average consumer a posteriori. Since the average consumer is the ordinary member of the public they will have no special degree of attention or care when selecting goods. This increases the likelihood of confusion in the circumstances.”

22. I agree with the opponent and consider that the applicant's submissions are not accompanied by evidence to support such claims, including the identity of the goods or services and their users. Therefore, I will proceed to the notional assessment of the respective goods and services based on their ordinary meaning and context.
23. Where goods or services in the specification of one party are included in a broader term from the other party's specification, those goods or services are considered to be identical: see *Gérard Meric v OHIM*, Case T-133/05, paragraph 29.

Class 25

24. All of the items in Class 25 of the contested specification are largely items of clothing, footwear and headgear with the majority of them relating to sportswear. This means, in my view, that as everything is in the field of clothing, as is the opponent's broad terms "*Clothing, footwear, headgear*;

underclothing” (appearing in both of the earlier specifications), they are either self-evidently identical or *Meric* identical. For instance, the terms “*Sportswear; Sports garments; Sports overuniforms; Athletic clothing*” in Class 25 in the applicant’s specification fall within the broader categories of “*clothing*” in the opponent’s specification. Therefore, they are identical on the principle outlined in *Meric*.

Class 35

25. I note that the applicant has made assertions in relation to his Class 35 “*Marketing and Promotional Services*”, denying any similarity with the earlier goods and services. However, without putting forward a blanket denial for the competing specifications in relation to the services in Class 35, he is deemed to have accepted the opponent’s contentions in relation to the rest of the competing terms.⁶ Therefore, I will conduct below my assessment solely for the term “*Marketing and Promotional Services*”.

26. The opponent’s earlier specification ‘359 contains the term “*promotional services*” which is self-evidently identical to the identically worded contested term. As to the contested “*marketing services*”, I consider that there is similarity with the opponent’s “*promotional services*”. The purpose of the opponent’s service is to promote the goods and services of others, while that of the applicant’s is not only to promote but also to increase sales. While these purposes are not identical, there is a high correlation between them. There is an overlap in the nature of the services and method of use. Such services would target the same users. Also, the services are likely to reach the market via the same channels of trade and

⁶ Prof. Phillip Johnson, sitting as the Appointed Person, in *SKYCLUB*, BL O/044/21, at paragraph 24 states:

“The position in the Civil Procedure Rules (CPR) is clear; namely, a defendant must state which allegations are denied, which allegations a defendant is unable to admit or deny, and which allegations the defendant admits (CPR, 16.5(1)). Where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)). This is subject to the rule that where an allegation is not dealt with, but the defence sets out the nature of his case in relation to the issue to which that allegation is relevant, then the allegation must be proved by the Claimant (CPR 16.5(3)). Thus, the filing of a “blank” defence would lead to the whole of the Claimant’s case being admitted.”

could, in my view, prove to be competitive. The services are not complementary. Overall, I find the services similar to a fairly high degree.

27. The opponent's earlier specification '173 contains the identical term "*marketing*" as in the applicant's specification. Therefore, they are identical. In addition, the opponent's earlier specification contains the terms "[...] *promotional services in relation to lifestyle, ecological and environmental issues*". The applicant's broad term "*promotional services*" will encompass the earlier term. Therefore, I find them to be *Merit* identical.

Average Consumer and the Purchasing Act

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

"The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word 'average' denotes that the person is typical. The term 'average' does not denote some form of numerical mean, mode or median."

29. The goods at issue will be purchased by members of the general public. Such goods are usually offered for sale in stores, such as retail outlets, brochures and catalogues, and online. In retail premises, the goods will be displayed on shelves and racks, where they will be viewed and self-selected by consumers. Similarly, for online stores, consumers will select

the goods relying on the images displayed on the relevant web pages. Therefore, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment, as advice may be sought from a sales assistant or representative. Even for those at the inexpensive end of the scale, the average consumer will examine the products to ensure that they select the correct type, size, material, quality, and aesthetic appearance of, for example, clothing. Thus, the average consumer will pay an average degree of attention.

30. For the services at issue, the average consumer will primarily be business users/professionals or a member of the general public. The consumer will select such services by looking through brochures and websites or signs on a physical property, so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may also influence consumers' decisions. The cost of the services will be relatively significant, contributing to the selection process of the service provider. Given the more specialist nature of the services in play, especially those selected by business users, I consider that the average consumer will pay a slightly higher than average degree of attention in choosing the service provider.

Comparison of Trade Marks

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

“[...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a

sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

Earlier Mark '359	Contested Mark
<p style="text-align: center;">SKY</p>	<p style="text-align: center;">SKY FORCE</p>
<p style="text-align: center;">Earlier Mark '173</p>	
	

Overall Impression

34. The contested mark comprises of the words “SKY FORCE” in a standard typeface, presented in a black font and in uppercase. Registration of a word mark protects the word itself.⁷ The overall impression of the mark lies in the words themselves with neither word dominating the other.

⁷ See *LA Superquimica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

35. Similarly, the overall impression of the earlier mark '359 lies in the word itself, namely "SKY".
36. The earlier mark '173 is a figurative mark which consists of the highly stylised word element "sky" in lower case, presented in a white and grey font with a glossy 3D effect. I consider that the word element will have the greatest impact on the overall impression, with the stylisation having a lesser weight.

Visual Comparison

37. Both of the earlier marks are each single words with three letters ("SKY"), whereas the contested mark consists of two words ("SKY FORCE") and is eight letters long. Bearing in mind, as a rule of thumb, that the beginnings of words tend to have more impact than the ends,⁸ the word element, "SKY", positioned at the beginning of the competing marks, is identical. The contested mark includes the word "FORCE", which is a point of visual difference. Considering the font/stylisation used in the earlier mark '173, it is my view that this does not remove the level of visual similarity on account of the similar sequence of letters in the word "SKY". As such, those features do not provide a point of distinction when comparing a word-only mark with a figurative mark, where the figurative mark comprises of words in a stylised font.⁹ Taking into account all the factors, including the overall impression of the marks, I find that the competing marks are similar to a between low and medium degree.

Aural Comparison

38. The earlier marks are monosyllabic marks which will be verbalised as "SKAI". The contested mark is a two-syllable mark and will be articulated as "SKAI FORSS". Although the marks share the same first syllable,

⁸ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

⁹ See *Herno S.p.A. v Miss Sparrow Ltd*, BL O/954/22, Mr Iain Purvis QC (as he then was) sitting as the Appointed Person.

“SKAI”, there is a phonetic difference generated by the second word element “FORSS” in the contested mark. Therefore, I find that the competing marks are aurally similar to a between low and medium degree.

Conceptual Comparison

39. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.
40. The competing marks share the common word component “SKY”, which will be readily understood as ‘the atmosphere and outer space as viewed from the earth’.
41. The contested mark “SKY FORCE” contains the additional dictionary word “FORCE” which the average consumer will interpret as referring to ‘strong natural power’. In the absence of evidence, I do not consider that the average consumer will perceive these words as forming a unit extracting a concept from the mark as a whole. Despite the conceptual difference created by the additional word element “FORCE”, the shared word element “SKY” will bring to mind the same concept between the competing marks. Therefore, I find that the marks are conceptually similar to a medium degree.

Distinctive Character of the Earlier Trade Mark

42. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

43. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
44. The opponent has not shown use of its marks and thus cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier marks to consider. The earlier marks consist of the verbal element “sky”, which is a commonplace word, conveying the meaning described earlier in this decision. I note that the verbal element does not describe or allude to the goods or services relied upon in this opposition. Consequently, the earlier mark ‘359 is inherently distinctive to a medium degree while the stylisation of the earlier mark ‘173 does not, in my view, raise the inherent distinctiveness to any noticeable extent.

Likelihood of Confusion

45. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.¹⁰ It is essential to keep in mind the distinctive character of the opponent's trade mark since the more distinctive the trade mark, the greater may be the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹¹
46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.
47. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C., (as he then was) sitting 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,

¹⁰ See *Canon Kabushiki Kaisha*, paragraph 17.

¹¹ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

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.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.)

I where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.¹²

48. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis K.C. as the Appointed Person pointed out that the level of ‘distinctive character’

¹² See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

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

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

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

49. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU’s judgment in *Bimbo*, on the court’s earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

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

51. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, the Court of Appeal dismissed an appeal against a ruling of the High Court that trade marks for the words EAGLE RARE registered for whisky and bourbon whiskey were infringed by the launch of a bourbon whiskey under the sign “American Eagle”. In his decision, Lord Justice Arnold stated that:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Mr Mellor went on to say that, if there is no likelihood of direct confusion, “one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion”. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

52. Earlier in this decision I have concluded that:

- the goods and services at issue range from identical to highly similar;
- the average consumer of the goods will be a member of the general public. The selection process is predominantly visual without discounting aural considerations. The average consumer will pay an average degree of attention during the purchasing process. As to the services, the average consumer will be business users/professionals or a member of the general public. The selection process is predominantly visual without discounting aural considerations. The average consumer will pay a slightly higher than average degree of attention;
- the competing marks are visually and aurally similar to a between low and medium degree; and conceptually similar to a medium degree;

- the earlier mark '359 is inherently distinctive to a medium degree while the stylisation of the earlier mark '173 does not, in my view, raise the inherent distinctiveness to any noticeable extent.

53. The opponent in its statement of grounds claims that:

“10. SKY plays an independent distinctive role in the mark applied for, such that there is a risk the average consumer will believe the mark to be a sub-brand of Sky’s offering and/or part of a joint venture with a third party.

11. The Opponent’s Earlier Marks constitute a family of SKY marks. The average consumer is accustomed to seeing the word SKY in conjunction with sub-brands. Extensive use of the earlier marks has educated consumers that SKY mark is used as part of a family of marks, which increases the risk that consumers will believe the mark ‘Sky Force’ to indicate an economic connection with the Opponent.”

54. I note that the opponent has not filed any evidence in support of such a claim. In *Il Ponte Finanziaria SpA v OHIM*, the CJEU at paragraph 64 stated:

“[...] Accordingly, in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a ‘family’ or ‘series’, the earlier trade marks which are part of that ‘family’ or ‘series’ must be present on the market.”

Without evidence, it is not possible for me to determine that the earlier marks relied upon are present on the market and, subsequently, that they form a family of marks. Consequently, I will not consider a family of marks argument in determining whether there is a likelihood of confusion.

55. Taking into account the above factors and notwithstanding the identical or highly similar goods and services in play, there is no likelihood of direct confusion. Despite the principle of imperfect recollection, consumers are

not likely to mistake one mark for another. Even though the competing marks share the common word element “SKY”, the average consumer will recognise and remember the differences arising from the dictionary word element “FORCE” present in the contested mark. Thus, the overall impressions and various visual, aural, and conceptual differences between the competing marks previously identified are, in my view, sufficient, and, as a result, the marks will not be directly confused.

56. Turning to indirect confusion, I bear in mind that there should be a proper basis for a finding of a likelihood of indirect confusion. I consider the marks would be indirectly confused for the respective identical goods and services. In particular, while the average consumer will identify the difference in the competing marks, they will recognise the shared word element “SKY”, which has an independent distinctive role and is the first verbal element in the contested mark, a position which is considered to be more impactful. Bearing in mind my assessment of the overall impression and the conceptual hook stemming from the common word element, when coming across the respective marks, I find that at least a significant proportion of average consumers will interpret the marks as a house mark and a sub-brand or product/service variation because of the independent distinctive significance of the common element (“SKY”). This is so as the words “SKY FORCE” in the contested mark are unconnected and do not form a cohesive whole. Therefore, I find that the average consumer would assume a commercial association between the parties, believing that the respective goods come from the same or economically linked undertakings. This finding extends to the goods and services for which I found any degree of similarity.
57. For the avoidance of doubt, even if I had conducted a full comparison between the competing services, my outcome advanced above would have been the same, including the case where the competing services were similar at any degree.

Outcome

58. The opposition on the basis of the claim under Section 5(2)(b) **is successful in its entirety**. Therefore, subject to appeal, the application will be refused.

Costs

59. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs as follows:

Official opposition fee	£100
Preparing a statement and considering the counterstatement	£250
Preparing and filing submissions	£350
Total	£700

60. I, therefore, order Halil Ozdemir to pay Sky Limited the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of June 2024

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General

Annex I

The applicant's specification

Class 25: Clothing; Footwear; headwear; Sportswear; Sports footwear; Articles of sports clothing.; Sports shoes; Sports garments; Sports pants; Sports bibs; Sport stockings; Sports shirts; Sports footwear; Sports overuniforms; Sports clothing; Sports vests; Sports singlets; Sports wear; Sports jerseys and breeches for sports; Sports jackets; Sports socks; Sports caps; Sport shirts; Sports jerseys; Sport shoes; Sports bras; Sport coats; Clothes for sports; Sports over uniforms; Clothes for sport; Boots for sports; Footwear for sport; Footwear for sports; Clothing for sports; Combative sports uniforms; Sports [Boots for -]; Boots for sport; Clothes; Wristbands [clothing]; Tops [clothing]; Knitted clothing; Oilskins [clothing]; Motorcyclists' clothing; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Sports clothing; Leather clothing; Gloves [clothing]; Waterproof clothing; Plush clothing; Girls' clothing; Swaddling clothes; Knitwear [clothing]; Cloth bibs; Cyclists' clothing; Playsuits [clothing]; Slipovers [clothing]; Jerseys [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Combinations [clothing]; Furs [clothing]; Shorts [clothing]; Collars [clothing]; Babies' clothing; Ties [clothing]; Outer clothing; Cashmere clothing; Bandeaux [clothing]; Women's clothing; Bodies [clothing]; Embroidered clothing; Layettes [clothing]; Jackets [clothing]; Kerchiefs [clothing]; Chaps (clothing); Maternity clothing; Thermal clothing; Belts [clothing]; Muffs [clothing]; Capes (clothing); Motorists' clothing; Boas [clothing]; Slips [clothing]; Veils [clothing]; Wraps [clothing]; Athletic clothing.

Class 35: Advertising; business management; business administration; office functions; marketing and promotional services; Business assistance, management and administrative services; Retail services relating to sporting goods; Wholesale services in relation to sporting articles; Online advertisements; Online marketing;

Online advertising; Online ordering services; Online advertising services; Online business networking services; Online community management services; Online data processing services; Providing searchable online advertising guides; Online advertising on computer networks; Dissemination of advertising matter online; Compilation of online business directories; Advertising the goods and services of online vendors via a searchable online guide; Conducting online business management research surveys; Online advertising on a computer network; Provision of online financial services comparisons; Conducting virtual trade show exhibitions online; Online retail services relating to toys; Online retail services relating to luggage; Online retail services relating to clothing; Providing a searchable online advertising guide featuring the goods and services of online vendors; Online retail services relating to jewelry; Online retail services relating to handbags; Online retail services relating to cosmetics; Providing online commercial directory information services; Provision of online price comparison services; Online retail services for downloadable digital music; Online retail services for downloadable ring tones; Provision of commercial information from online databases; Online advertising via a computer communications network; Dissemination of advertising via online communications networks; Online retail store services relating to clothing; Arranging subscriptions of the online publications of others; Online retail store services in relation to clothing; Arranging commercial transactions, for others, via online shops; Online advertising network matching services for connecting advertisers to websites; Providing online marketplaces for sellers of goods and or services; Online retail store services relating to cosmetic and beauty products; Providing academic course administration services relating to online course registration; Online retail services for downloadable and pre-recorded music and movies.

Annex II

The opponent's goods and services comparison table

Attachment 1

The tables below set out the goods and services covered by the Opponent's Earlier Marks relied on in the Opposition under Section 5(2)(b) Trade Marks Act 1994, together with an indication of whether they are identical or similar to the goods/services covered by the opposed Application:

1. UK Trade Mark Registration No. 2525359 SKY

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
<i>Class 25</i>		
Clothing; footwear; headwear; Sportswear; Sports footwear; Articles of sports clothing; Sports shoes; Sports garments; Sports shirts; Sports footwear; Sports overuniforms; Sports clothing; Sports wear; Sport shirts; Clothes for sports; Sports over uniforms; Clothes for sport; Clothing for sports; Combative sports uniforms; Clothes; Tops [clothing]; Knitted clothing; Oilskins [clothing]; Motorcyclists' clothing; Hoods [clothing]; Leisure clothing; Sports clothing; Leather clothing; Gloves [clothing]; Plush clothing; Girls' clothing; Swaddling clothes; Knitwear [clothing]; Cyclists' clothing; Slipovers [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Combinations [clothing]; Furs [clothing]; Shorts [clothing]; Collars [clothing]; Outer clothing; Cashmere clothing; Bandeaux [clothing]; Women's clothing; Bodies [clothing]; Embroidered clothing; Layettees [clothing]; Kerchiefs [clothing]; Chaps (clothing); Maternity clothing; Thermal clothing; Muffs [clothing]; Capes (clothing); Motorists' clothing; Boas [clothing]; Slips [clothing];	Clothing, footwear, headgear	Identical

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Mark Applied For	Opponent's Earlier Mark	Identical/Similar
Veils [clothing]; Wraps [clothing]; Athletic clothing.		
Sports pants	Pants	Identical
Sports bibs	bibs	Identical
Sport stockings	stockings	Identical
Sports vests; Sports singlets	vests	Identical
Sports jerseys; Sports jerseys and breeches for sports	Clothing, footwear, headgear; jerseys	Identical
Sports jackets	Jackets	Identical
Sports socks	Socks	Identical
Sports caps	Caps	Identical
Sport shoes; Boots for sports; Footwear for sport; Footwear for sports; Sports [Boots for -]; Boots for sport	footwear, shoes, boots, slippers, and athletic shoes	Identical
Sports bras	underclothing	Identical
Sport coats	coats	Identical
Wristbands [clothing]	wristbands	Identical
Infant clothing; Children's clothing; Babies' clothing	clothing for men, women, children and infants	Identical
Waterproof clothing	Waterproof clothing	Identical
Cloth bibs	bibs	Identical
Playsuits [clothing]	playsuits	Identical
Jerseys [clothing]	jerseys	Identical
Ties [clothing]	Ties	Identical
Jackets [clothing]	jackets	Identical
Belts [clothing]	belts	Identical
<i>Class 35</i>		
Advertising; Online advertising; Online advertising services; Online advertising on computer networks; Advertising the goods and services of online vendors via a searchable online guide; Online advertising on a computer network; Online advertising via a computer communications network; Online advertising network matching services for connecting advertisers to websites	Advertising	Identical
business management	business management	Identical
business administration	business administration	Identical
office functions	office functions	Identical

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
marketing and promotional services	promotional services; advertising	Identical
Business assistance, management and administrative services	business management: business administration	Identical
Retail services relating to sporting goods; Wholesale services in relation to sporting articles; Online retail services relating to toys; Online retail services relating to luggage; Online retail services relating to clothing; Online retail services relating to jewelry; Online retail services relating to handbags; Online retail services relating to cosmetics; Online retail services for downloadable digital music; Online retail services for downloadable ring tones; Online retail store services relating to clothing; Online retail store services in relation to clothing; Online retail store services relating to cosmetic and beauty products; Online retail services for downloadable and pre-recorded music and movies. Online ordering services; Arranging commercial transactions, for others, via online shops; Providing online marketplaces for sellers of goods and or services	The bringing together, for the benefit of others, of a variety of... sports equipment, sporting articles, toys, trunks and travelling bags, clothing, footwear, headgear, jewellery bags, cosmetic preparations, cosmetics, interactive sound and/or audio recordings, music, video, sound and/or audio recordings (downloadable) provided from MP3 Internet websites, telephone ring tones (downloadable) ... enabling customers to conveniently view and purchase those goods including via an Internet website, an interactive television shopping channel, a digital television shopping channel, an Internet walled garden or by means of interactive television and/or telecommunications (including voice, telephony and/or transfer of digital information or data) and/or interactive digital media; on- line ordering/purchase of gift items	Identical/similar
Online advertisements	Advertising; advertisements (class 16)	Identical
Online marketing	Advertising; promotional services	Identical/similar
Online business networking services	arranging and conducting of trade shows and exhibitions	Identical/similar
Online community management services	The bringing together, for the benefit of others, of a variety of ... administration services relating to the organising and conducting of volunteer programmes and community service projects, chat room services, discussion group and chat room services enabling customers to	Identical/Similar

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
	conveniently view and purchase those services, including over a global computer network; provision of chat rooms (class 38)	
Online data processing services	electronic and online retrieval of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other data or information, online auction services	Identical/similar
Providing searchable online advertising guides	Advertising; Advertisements (class 16)	Identical/similar
Dissemination of advertising matter online; Dissemination of advertising via online communications networks	dissemination of advertising matter	Identical
Compilation of online business directories; Providing online commercial directory information services; Provision of commercial information from online databases	compilation of business statistics and commercial information; provision of business information and advice	Identical
Advertising the goods and services of online vendors via a searchable online guide	promotional services	Identical/similar
Conducting online business management research surveys	marketing studies	Identical
Provision of online financial services comparisons	provision of online financial services comparisons	Identical
Conducting virtual trade show exhibitions online	arranging and conducting of trade shows and exhibitions	Identical/similar
Provision of online price comparison services	provision of online price comparison services	Identical
Arranging subscriptions of the online publications of others	Publications (class 16)	Similar
Providing academic course administration services relating to online course registration	organising and conducting safety courses and educational courses (class 41); arranging conferences, seminars, symposiums or workshops (class 41)	Identical/Similar

2. UK Trade Mark Registration No. 914903173 SKY (fig.)

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
<i>Class 25</i>		
Clothing; Sports clothing; Sports wear; Clothes for sports; Clothes for sport; Clothing for sports; Clothes; Oilskins [clothing]; Leisure clothing; Infant clothing; Children's clothing; Sports clothing; Plush clothing; Girls' clothing; Swaddling clothes; Slipovers [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Shorts [clothing]; Babies' clothing; Cashmere clothing; Bandeaux [clothing]; Women's clothing; Bodies [clothing]; Embroidered clothing; Kerchiefs [clothing]; Chaps (clothing); Maternity clothing; Thermal clothing; Capes (clothing); Wraps [clothing]	Clothing	Identical
Footwear; Sports footwear; Footwear for sport; Footwear for sports	Footwear	Identical
headwear	headgear	Identical
Sportswear; Sports garments; Sports overuniforms; Athletic clothing	Clothing; Sports shoes; athletic footwear; athletic shoes; athletic uniforms	Identical
Articles of sports clothing.	Clothing, footwear, headgear	Identical
Sports shoes	Sports shoes	Identical
Sports pants	Pants	Identical
Sports bibs	Bibs, not of paper	Identical
Sport stockings	Stockings	Identical
Sports shirts	Shirts	Identical
Sports vests	Vests	Identical
Sports singlets	Singlets	Identical
Sports jerseys and breeches for sports; Sports jerseys	Jerseys [clothing]	Identical
Sports jackets	Jackets [clothing]	Identical
Sports socks	Socks	Identical
Sports caps	caps	Identical
Sport shirts	Shirts	Identical
Sport shoes	Shoes	Identical
Sports bras	Underwear	Identical
Sport coats	Coats	Identical
Sports over uniforms; Combative sports uniforms	Uniforms	Identical
Boots for sports; Sports [Boots for -]; Boots for sport	Boots for sports	Identical
Wristbands [clothing]	wristbands	Identical

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
Tops [clothing]	Teeshirts; Short-sleeve shirts; Shirts; polo shirts	Identical
Knitted clothing; Knitwear [clothing]	Knitwear [clothing]	Identical
Motorcyclists' clothing	Motorists' clothing	Identical
Hoods [clothing]	Hoods [clothing]	Identical
Leather clothing	Clothing of leather	Identical
Gloves [clothing]	Gloves [clothing]	Identical
Waterproof clothing	Waterproof clothing	Identical
Cloth bibs	Bibs, not of paper	Identical
Cyclists' clothing	Cyclists' clothing	Identical
Playsuits [clothing]	playsuits	Identical
Jerseys [clothing]	Jerseys [clothing]	Identical
Combinations [clothing]	Combinations [clothing]	Identical
Furs [clothing]	Furs [clothing]	Identical
Collars [clothing]	Clothing; Detachable collars	Identical
Ties [clothing]	ties	Identical
Outer clothing	Outer clothing	Identical
Layettes [clothing]	Layettes [clothing]	Identical
Jackets [clothing]	Jackets [clothing]	Identical
Belts [clothing]	Belts [clothing]	Identical
Muffs [clothing]	Muffs [clothing]	Identical
Motorists' clothing	Motorists' clothing	Identical
Boas [clothing]	Boas [necklets]	Identical
Slips [clothing]	Slips [undergarments]	Identical
Veils [clothing]	Veils [clothing]	Identical
<i>Class 35</i>		
Advertising; Providing searchable online advertising guides	Advertising	Identical
business management	business management	Identical
business administration	business administration	Identical
office functions	office functions	Identical
marketing and promotional services	Marketing	Identical
Business assistance, management and administrative services	business management; business administration	Identical
Retail services relating to sporting goods; Wholesale services in relation to sporting articles; Online retail services relating to toys; Online retail services relating to luggage; Online retail services relating to clothing; Online retail services relating to jewelry; Online retail services relating to handbags; Online retail services relating to cosmetics; Online retail services for downloadable digital music; Online retail services for downloadable ring tones; Online retail store services relating to	the bringing together, for the benefit of others of a variety of goods namely... sporting articles, sports equipment, fitness equipment, toys, games and playthings, bags, clothing, footwear, headgear, jewellery, cosmetic preparation, cosmetics, online market place services in relation to streamable and downloadable media content, including video and films, television programmes, computer games,	Identical

Mark Applied For	Opponent's Earlier Mark	Identical/Similar
clothing; Online retail store services in relation to clothing; Online retail store services relating to cosmetic and beauty products; Online retail services for downloadable and pre-recorded music and movies.	music, images and ring tones provided by internet, telephone line, cable, wireless transmission, satellite or terrestrial broadcast, telephone ring tones (downloadable) ... enabling customers to conveniently view and purchase those goods including via an Internet website, an interactive television shopping channel, a digital television shopping channel, an Internet walled garden or by means of interactive television and/or telecommunications (including voice, telephony and/or transfer of digital information or data) and/or interactive digital media	
Online advertisements; Online advertising; Online advertising services; Online advertising on computer networks; Online advertising on a computer network; Online advertising via a computer communications network	Advertising; On-line advertising on a computer network	Identical
Online marketing	Marketing	Identical
Online ordering services	Administrative processing of purchase orders	Identical
Online business networking services	arranging and conducting of trade shows and exhibitions	Identical/similar
Online community management services	computer software for the purpose of monitoring online communications and chat room conversations and alerting third parties to the contents (class 9); provision of access to electronic conferencing, discussion groups and chat rooms (class 38); provision of chat rooms; (class 38)	Identical/similar
Online data processing services	electronic and online retrieval of data, files, e-mails, contacts, calendars, task lists, text messages, photos, music, audio, visual, audio visual, video, text, graphics, programs and other data or information, online auction services	Identical/similar
Dissemination of advertising matter online; Dissemination of advertising via online communications networks	Dissemination of advertising matter	Identical
Compilation of online business directories	compilation of business statistics and commercial information	Identical

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Mark Applied For	Opponent's Earlier Mark	Identical/Similar
Conducting online business management research surveys	Marketing research; Marketing studies; Business research	Identical
Provision of online financial services comparisons	provision of online financial services comparisons	Identical
Conducting virtual trade show exhibitions online	Organization of exhibitions for commercial or advertising purposes; Organization of trade fairs for commercial or advertising purposes	Identical/similar
Providing a searchable online advertising guide featuring the goods and services of online vendors; Advertising the goods and services of online vendors via a searchable online guide	electronic commerce services, namely, providing information about products and services via audio, video, digital, and online media for advertising and sales purposes	Identical
Providing online commercial directory information services; Provision of commercial information from online databases	the bringing together, for the benefit of others, of a variety of ...directory enquiry services... enabling customers to conveniently view and purchase those services, including over a global computer network; Business information	Identical
Provision of online price comparison services	provision of online price comparison services	Identical
Arranging subscriptions of the online publications of others	Arranging newspaper subscriptions for others; Arranging subscriptions to telecommunication services for others	Identical
Arranging commercial transactions, for others, via online shops	Administrative processing of purchase orders	Identical
Online advertising network matching services for connecting advertisers to websites	advertising services in the nature of matching and connecting advertisers and video content publishers for the purpose of advertising, marketing and promotional services	Identical
Providing online marketplaces for sellers of goods and or services	electronic commerce services, namely, providing information about products and services via audio, video, digital, and online media for advertising and sales purposes	Identical
Providing academic course administration services relating to online course registration	organising and conducting safety courses and educational courses (class 41); arranging conferences, seminars, symposiums or workshops (class 41)	Identical/similar