

O-0609-25

**TRADE MARKS ACT 1994  
IN THE MATTER OF  
INTERNATIONAL TRADE MARK NO. WO0000001666107  
DESIGNATING THE UNITED KINGDOM  
IN THE NAME OF TIPMI HOLDINGS PTY LTD  
TO REGISTER**

**TipMi**

**AS A TRADE MARK  
IN CLASSES 9, 35, 38, 41 & 45  
AND OPPOSITION THERETO (UNDER NO.438116)  
BY XIAOMI INC.**

## BACKGROUND & PLEADINGS

1. TipMi Holdings Pty Ltd (“the holder”) is the holder of International Registration (“IR”) no. WO1666107 (“the designation”) in respect of the trade mark set out on the title page of this decision. Protection in the UK was requested on 14 April 2022 based on Australian priority dates of 15 October 2021 and 13 April 2022. The designation was published in the Trade Marks Journal on 16 September 2022 in respect of the goods and services set out in Annex 1 to this decision.

2. Xiaomi Inc. (“the opponent”) opposed the designation in full on 16 December 2022 based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under sections 5(2)(b) and 5(3) of the Act, the opponent relies on the following comparable<sup>1</sup> registrations and IRs. The goods and services relied on are set out in the annexes specified in the table below.

Earlier registrations	Goods & services relied on
UK TM No. 909822751 <b>MI</b> Filing date: 4 May 2011 Registration date: 28 September 2011	Classes 9, 35 & 41 – see Annex 2
IR No. WO1462437 <b>Mi</b> Priority Date (China): 1 March 2018 IR date: 20 August 2018	Classes 9 & 35 – see Annex 3

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<sup>1</sup> Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all rights holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent’s mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in 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.

UK Designation date: 20 September 2019	
UK TM No. 917601667  Filing date: 15 December 2017 Registration date: 22 October 2019	Classes 9 & 35 – see Annex 4
IR No. WO1547288  IR date: 16 June 2020 UK Designation date: 6 May 2021	Classes 41 & 45 – see Annex 5
IR No. WO1650491  IR date: 13 July 2021 UK Designation date: 18 August 2022	Classes 9, 35, 38, 41 & 45 – see Annex 6

3. Under section 5(4)(a) of the Act, the opponent relies on the sign **MI** which it claims to have used in the UK since “at least 2010” on the following goods and services:

*Computer hardware; computer peripheral equipment; computer software; application software; data processing equipment; pedometers; smartphones; mobile phone accessories; global positioning system apparatus; headphones; portable media players; smart watches; electronic sensors; security cameras; smart home products; battery chargers; electric vehicles; electric scooters; printed matter; furniture; home and kitchen utensils; bags; clothing; toys; sports equipment; fitness equipment; pet products; advertising; promotional services; retail services; retail services for the aforesaid; telecommunications; streaming of data, audio and visual; providing online*

*forums and chatrooms; transmission of data; entertainment; education; providing of training; sporting and cultural activities; multimedia production; organisation of competitions; design and development of hardware and software; SaaS (software as a service); security services; online social networking services.*

4. The holder filed a counterstatement in which it denied all grounds of opposition and put the opponent to proof of use of its claims.

5. During these proceedings only the opponent filed evidence and written submissions in lieu of a hearing.

6. The holder has been represented in the proceedings by Barker Brettell LLP and the opponent by Abion UK Limited.

7. I make this decision based on a reading of all the material before me.

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

### **Preliminary issues**

9. The opponent's UK registration No. 909822751 has a filing date that is earlier than the designation date of the contested IR and is therefore an earlier mark, by virtue of section 6 of the Act. As the registration procedure for the earlier mark was completed more than 5 years prior to the designation date of the contested IR, it is subject to the use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods and services it relies on.

10. The opponent's remaining registrations are also earlier marks, in accordance with section 6 of the Act, but have not been registered for five years or more before the designation date of the contested IR, and therefore are not subject to the same proof of use requirements.



## EVIDENCE

### Relevant period

11. My first task is to establish whether, or to what extent, the opponent has shown genuine use of its earlier mark No. 909822751 for the mark MI within the 'relevant period'. The relevant period is defined as being a period of five years ending with the designation or priority date of the contested IR. In this case the relevant period is 16 October 2016 to 15 October 2021.

### Opponent's evidence in chief

12. The opponent filed a witness statement dated 6 February 2024 in the name of Matthew Bedford, a Senior Associate at Lane IP Limited<sup>2</sup> being the opponent's legal representative. Mr Bedford attaches 41 associated exhibits. I do not intend to summarise the evidence in full, but I will set out the most pertinent points below.

13. Mr Bedford states the opponent has used the marks MI,  and  on a global basis since 2010. The opponent is described by Mr Bedford as a company which "designs, manufactures and sells various consumer electronics and other goods such as, but not limited to, smartphones, smartphone accessories, computer hardware, computer software, smart TVs, smart watches, electric scooters, headphones, security cameras, drones, and other electronic goods, as well as screwdrivers, backpacks and clothing".<sup>3</sup> The opponent retails in both physical premises and online. The opponent's MI brand was featured in the Brandz Top 100 global brands list in 2019, 2020 and 2021.<sup>4</sup> In 2020 the opponent was stated to be the third largest smartphone manufacturer in the world with a 13.1% global market share.<sup>5</sup> In June 2021 the opponent held the number one position for global smartphone market share.<sup>6</sup> In February 2021 the opponent held a 1.68% share of the UK mobile phone vendor market rising to a 1.99% share in February 2022.<sup>7</sup> Between September 2020 and February 2021, the opponent's website, namely [www.mi.com](http://www.mi.com), received an average of

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<sup>2</sup> Now Abion UK Limited.

<sup>3</sup> Matthew Bedford Witness Statement- paragraph 4.

<sup>4</sup> Exhibit MB2.


<sup>5</sup> Exhibit MB3.

<sup>6</sup> Ibid.

<sup>7</sup> Exhibit MB23.

between 60 million to 88 million visits per month. Mr Bedford states that of those visits, 1.41% (approximately 2.9 million) were from the UK.<sup>8</sup>

14. Mr Bedford states that global turnover for the opponent rose from ¥66,811M in 2018 to ¥245,865M in 2020. In addition, he provides revenue figures of ¥69,970M in 2018, ¥91,230M in 2019 and ¥122,381M for sales outside China which include Western Europe, being EU member states and the UK, in addition to Indonesia and India.

15. Mr Bedford states that between October 2016 -October 2021, the opponent traded via its physical retail premises in the following EU member states namely Spain, Poland, France and Italy as well as online throughout Europe by virtue of retailing via third parties such as Amazon, Argos, John Lewis, Currys PC World and Euronics among others.<sup>9</sup> The opponent has one physical retail store in the UK, at the Westfield Shopping Centre in London, which it opened in November 2018. The image of the store frontage shows use of the  mark.<sup>10</sup>

16. Mr Bedford states that the opponent has a dedicated UK website, namely [www.mi.com/uk](http://www.mi.com/uk) and courtesy of the Wayback Machine Internet archive service, he exhibits screenshots dated December 2018 and May 2019 showing MI branded goods for sale including smartphones, smart lightbulbs, power banks, headphones, smart sensors, security cameras, smart watches and electric scooters.<sup>11</sup> There are also screenshots exhibited which show customer reviews for MI branded goods namely smartphones, wearable trackers and headphones, dated between 2018 and 2020, taken from the [Amazon.co.uk](http://Amazon.co.uk) and [Carphone Warehouse.com](http://Carphone Warehouse.com) websites.<sup>12</sup>

17. The opponent also produced a number of smart phone software apps between 2014 and 2020 which are branded with an MI derived name such as Mi Wi-Fi, Mi Fit, Mi Home and Mi Store among others.<sup>13</sup>

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<sup>8</sup> Exhibits MB5 & 6.

<sup>9</sup> Exhibit MB7.

<sup>10</sup> Ibid.

<sup>11</sup> Exhibit MB20.

<sup>12</sup> Exhibit MB21.

<sup>13</sup> Exhibit MB24

18. Mr Bedford states that opponent has exhibited its goods worldwide and received a number of global awards from bodies including the Consumer Electronics Show (CES), which is an annual expo for consumer technologies held in the USA. The opponent received a “top pick” award from CES 2017 for its Mi MIX smartphone and in 2019 for its Mi TV4 product. The opponent has also attended the Mobile World Congress (MWC), an annual trade show for the mobile communications industry held in Spain. MWC gave a “best in show” award to the opponent in 2019 for its Mi MIX smartphone. In addition, Mr Bedford states that the opponent has won international design awards for its Mi branded consumer electronics products such as vacuum cleaners, lamps, air and water purifiers and rice cookers among other items as well as for its fitness tracker and smartphone.<sup>14</sup>

19. Mr Bedford also exhibits a number of UK mainstream press articles reviewing the opponent’s Mi branded goods, including reviews from The Sun online dated January 2019 for the Mi MIX 3 smartphone, and from The Daily Star online dated July 2015 for the Mi Band wearable tracker. An article from the Guardian dated May 2015 was also exhibited which detailed the launch of the opponent’s online stores in the UK, France and Germany selling Mi branded headphones, battery packs and wearable trackers.

20. That concludes my summary of the evidence.

**Relevant statutory provision: Section 6A:**

23. “(1) This section applies where,

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

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<sup>14</sup> Exhibits MB26-30

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

24. As the opponent's earlier mark No. 909822751 is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

25. Section 100 of the Act states that:

"100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

26. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology*

*Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37];

*Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

27. I also find the following case law to be helpful where in *Awareness Limited v Plymouth City Council*<sup>15</sup>, Mr Daniel Alexander Q.C. (as he was then) as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

and further at paragraph 28:

“28. .... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the

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<sup>15</sup> Case BL O/236/13

wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

28. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*<sup>16</sup>, Mr Geoffrey Hobbs Q.C. (as he was then) also sitting as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.



22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the

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<sup>16</sup> Case BL O/404/13



evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

### **Variant use**

29. The opponent’s earlier mark UK no. 909822751 is registered as MI in plain typeface. Notional and fair use allows for use in any casing and there is evidence to show that the opponent uses the mark Mi in addition to MI, which I find to be an acceptable variant of the earlier registration. There are also examples in the evidence of the opponent using the mark in a stylised form, namely as  and . The question I must consider is whether use in these two stylised forms constitutes acceptable variant use of the earlier registered mark.

30. In *PW Branding, Inc v Zabou Group Limited*<sup>17</sup>, Mr Philip Harris, sitting as the Appointed Person, considered the matter of variant use for stylisations and summarised the current case law on the issue. He said,

“it is quite clear – the font must not be taken into account in considering the use of word marks. The protection is for the distinctive character of the words themselves, not in form they are presented”.

31. On the basis of the guidance given above, I find both  and  to be an acceptable variant of the earlier registered mark no. 909822751

### **Sufficiency of use**

32. Much of the opponent’s evidence is presented on a global scale in terms of its turnover and market share. There is evidence to indicate use in EU member states prior to 31 December 2020 and some further use since that date for the UK post Brexit. Even extrapolating the turnover data for regions outside China, I find this runs to

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<sup>17</sup> BL O/0234/25 at 68

hundreds of millions of Yuan. I note the high volumes of sales during the relevant period and the existence of physical, online and third party retail streams. I also note the global and UK market shares held by the opponent in relation to the retail of smartphones. Therefore overall, I find that the opponent has demonstrated sufficient use of its earlier mark and acceptable variants.

### **Framing a fair specification**

33. The next stage is to decide whether the opponent's use entitles it to rely on all of the goods and services for which its earlier mark is registered based on my assessments given above. In framing a fair specification, I rely on guidance given in the following judgments. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*<sup>18</sup>, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

34. Moreover in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*<sup>19</sup>, Mr Justice Carr summed up the law relating to partial revocation as follows (at [47]):

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

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<sup>18</sup> BL O/345/10

<sup>19</sup> [2016] EWHC 3103 (Ch)

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

35. I will begin with an assessment of the class 9 goods for which the earlier mark has been registered, namely *Teaching apparatus and instruments; computer programs and computer software; electronic publications provided on-line from a computer database or from a global computer network; audio and video recordings; magnetic data media; optical data media; tapes, discs and laser discs, CDs, CD ROMs, DVDs,*

*audio cassettes; apparatus for recording, transmitting and/or reproducing sound and/or video images; electronic diaries; personal organisers; parts and fittings for all the aforesaid goods.* The opponent's evidence shows that its smartphones, wearable activity trackers, headphones and power packs are the cornerstone of sales relating to class 9 physical goods during the relevant period. There is also some evidence of mobile phone application software relating to a calculator, fitness monitoring, wi-fi, social media, lifestyle and shopping. As such I find a fair specification for this class would be *mobile phone application software; mobile phones; wearable activity trackers; headphones; powerpacks.*

36. With regard to the opponent's class 35 services namely *Exhibition services; arranging, organising, promoting, conducting and management of fairs, exhibitions, stands, displays, trade shows, conventions and product launches including the commissioning and decommissioning of exhibition stands, floor and wall coverings, all for use in relation to exhibitions; marketing services; business project management; management relating to exhibitions; advertising, placing of advertisements; direct mail advertising services; marketing and promotional services relating to exhibitions, all provided by direct communications, telephone, fax and/or e-mail; on-line ordering services; promotion of tickets; business services, all relating to the administering and conducting of registrations, providing registration systems, providing registration equipment, administering, managing, co-ordinating and conducting of registrations, all in relation to exhibitions, shows and/or conferences; provision of information relating to the fields of marketing, management, and business; procurement of tickets for exhibitions, shows and conferences,* I did not find any evidence that the opponent provided these services for others as a business. Therefore, it cannot rely on this class.

37. I make the same assessment as above for the opponent's class 41 services namely *Education, training, teaching, tuition and instruction in the fields of marketing, finance, management, and business; education, training, teaching, tuition and instruction in the fields of marketing, finance, management and business provided on-line from a computer database or from a global computer network; arranging, organising and conducting lectures, meetings, conferences, exhibitions, workshops, tutorials and seminars; provision of educational, training, teaching, tuition and*

*instruction facilities relating to marketing, finance, management and business; publishing; providing electronic publications on-line from a computer database or from a global computer network; production, distribution and rental of films, video recordings and audio recordings, television and radio programmes, instructional materials, teaching materials, printed publications and printed matter; examination services; issuing of certificates and qualifications; organising and arranging sports events, competitions, circuses, shows, concerts, exhibitions, seminars and informal events; provision of audio-visual equipment for exhibitions including video packages, video walls, TV monitor type walls for video, sound packages, sound accessories, video reply facilities, system upgrades; booking, reservation, issuance of tickets for exhibitions, shows and conferences; arranging, organising, conducting and management of conferences, events and seminars; show management; provision of services related to the reservation and distribution of tickets for entertainment, exhibitions and conferences; provision of electrical items for exhibitions (material used in exhibitions, namely, projectors and presentation equipment); provision of lighting.* As previously stated, I did not find any evidence that the opponent provided these services for others as a business. Therefore, it cannot rely on this class.

### **Section 5(2)(b)**

38. Section 5(2)(b) of the Act reads 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”.

39. Section 5A is also relevant and reads:

“5A. [...] Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which

the trade mark is applied for, the application is to be refused in relation to those goods and services only”.

40. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

### **Comparison of goods and services**

41. In *Canon*<sup>20</sup>, the CJEU stated at paragraph 23 of its judgment:

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

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<sup>20</sup> *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, C-39/97

42. Guidance on this issue has also come from Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Ltd* (the *Treat* case)<sup>21</sup>, where he identified the factors for assessing similarity as:

- (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.

43. In addition I find the following case law to be helpful when in *Gérard Meric v Office for Harmonisation in the Internal Market*,<sup>22</sup> the General Court (“GC”) stated that:

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

44. In *Kurt Hesse v OHIM*,<sup>23</sup> the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,<sup>24</sup> the GC stated that “complementary” means:

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<sup>21</sup> [1996] R.P.C. 281

<sup>22</sup> Case T- 133/05

<sup>23</sup> Case C-50/15 P

<sup>24</sup> Case T-325/06

“...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.”

45. In *Sanco SA v OHIM*,<sup>25</sup> the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different – in that case, *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public is liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited*:<sup>26</sup>

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

Whilst on the other hand:

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

46. In *Oakley, Inc v OHIM*,<sup>27</sup> the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

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<sup>25</sup> Case T-249/11

<sup>26</sup> BL-0-255-13

<sup>27</sup> Case T-116/06, at paragraphs 46-57

47. In *Tony Van Gulck v Wasabi Frog Ltd*<sup>28</sup>, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

48. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v. OHIM*, Case T-105/05, at paragraphs [30] to [35] of the judgment, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* Case C-398/07P, Mr Hobbs concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and

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<sup>28</sup> Case BL O/391/14

then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

49. The goods and services to be compared are set out from paragraph 35 and in annexes 1 to 6 of this decision.

#### **Class 9**

***Computer software; computer software applications (downloadable); computer software downloaded from the internet; computer software platforms, recorded or downloadable; computer games entertainment software; interactive entertainment software for use with computers; electronic and recorded multimedia publications; records bearing entertainment material.***

50. The opponent's registration WO1650491 contains the term *Computer software applications, downloadable* which is identically worded to the same term in the holder's specification above and is, in my view, also identical on the *Meric* principle to the holder's term *computer software downloaded from the internet*. In addition, the opponent's registration WO1462437 contains the term *computer software platform, recorded or downloadable* which is identical to the term in the specification above.

51. The holder's term *Computer software* at large is sufficiently broad enough to cover the terms *mobile software applications, downloadable; computer screen saver software, recorded or downloadable* in the opponent's earlier registration no. WO1462437 and is therefore considered identical on the *Meric* principle.

52. The opponent's term *computer programs, recorded* in its earlier registration WO1650491 is sufficiently broad enough to cover the terms *computer games entertainment software; interactive entertainment software for use with computers* in the holder's specification above, and is therefore considered identical on the *Meric* principle.

53. I consider the holder's term *electronic and recorded multimedia publications* to be similar to a low degree to the opponent's class 41 services, from its WO1547288 earlier registration, namely *providing online electronic publications, not downloadable*. I accept the nature of the respective goods and services is somewhat different in that in class 9 the publications are downloadable whereas in class 41 the service provides non-downloadable publications, but the purpose of electronic publications remains the same. There may also be a crossover of user and of channels of trade. The respective goods and services may also have a low degree of competition between them, as consumers have a choice between a downloadable or non-downloadable format.

54. With regard to the holder's term *records bearing entertainment material*, I take this to mean a physical record, i.e. vinyl disc, bearing audio entertainment content such as music. As such I consider this term to be similar to a low degree to the opponent's class 41 term, from its WO1547288 earlier registration, namely *providing online music, not downloadable*. As stated in the previous paragraph the nature of physical goods in class 9 and a non-downloadable alternative in class 42 is different but the purpose is the same, i.e. to provide musical entertainment. There may also be a crossover of user and of channels of trade. The respective goods and services may also have a low degree of competition between them.

### **Class 35**

***Advertising; promotional services; promotional marketing; provision of an online marketplace for buyers and sellers of goods and services; online retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments,***

**games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services for goods connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles (by any means); presentation of goods on communication media, for retail purposes; pay per click advertising; dissemination of advertising material; dissemination of advertising matter; sales promotion (for others); search engine optimisation; search engine optimisation services (marketing services); search engine optimisation for sales promotion; rental of advertising space on the internet; updating and maintenance of data in computer databases; data management.**

55. The opponent has the following identical terms in its WO1650491 earlier registration namely *Advertising; pay per click advertising; sales promotion for others; search engine optimization for sales promotion*. In addition, I find the opponent's term *Advertising* at large to be sufficiently broad to cover the holder's terms *dissemination of advertising material; dissemination of advertising matter*. I therefore consider these terms to be identical on the *Meric* principle. Moreover I consider that the holder's terms namely *search engine optimisation; search engine optimisation services (marketing services)* are sufficiently broad enough to cover the opponent's term *search engine optimization for sales promotion* and are therefore identical under the *Meric* principle.

56. The opponent also has the following identical terms in its WO earlier registration WO1462437, namely *presentation of goods on communication media, for retail purposes; provision of an online marketplace for buyers and sellers of goods and*

*services*. I also consider that the opponent's term in this particular registration, namely *provision of space on websites for advertising goods and services* to be virtually identical in nature and purpose, albeit differently worded, to the holder's term *rental of advertising space on the internet*. I also find that the holder's term namely *promotional services; promotional marketing* are sufficiently broad enough to cover the opponent's terms *promoting goods and services via sports events sponsorship; arranging and organizing market promotions for others; targeted marketing* and are therefore identical under the *Meric* principle.

57. I find the holder's terms *updating and maintenance of data in computer databases; data management* to be sufficiently broad to cover the opponent's terms, namely *systemization of information into computer databases; data search in computer files for others* in its class 35 specification in its 917601667 earlier right.

58. The holder also has the following retail services in its class 35 specification, namely *online retail and retail services connected with the sale of computers, phones, electronic tablets, fitness equipment*. As per the *Oakley* extract given above, I can find that retail services for particular goods may be complementary to those goods, being distributed through the same trade channels, and therefore similar to a degree. As such with regard to the complementarity of retail services and goods in this case, I find that the holder's retail terms are similar to a low degree to the opponent's class 9 goods, namely *Notebook computers; pedometers; smartphones; tablet computers; wearable activity trackers; wearable computer* in its earlier registration for WO1462437.

59. I find the holder's remaining class 35 services, namely *online retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, portable music players, baby and children's furniture, household utensils for babies, toys for babies,*

*music recordings, musical instruments, games, sports balls and equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services for goods connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment; pet furniture, pet food and beverages, pet toys, boats, water vehicles (by any means) to be dissimilar to the opponent's goods and services.*

60. Where I have found the services to be dissimilar, it follows that there is no likelihood of confusion to be considered. I am guided on this matter by the case of *eSure Insurance v Direct Line Insurance*,<sup>29</sup> where Lady Justice Arden stated that:

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

### **Class 38**

***Streaming of data; audio communications services; audiovisual communication services; audiovisual transmission services; delivery of messages by audiovisual media; electronic transmission (uploading, posting or displaying) of data, information, pictures, images, audio and/or video via online forums; communication services for video conferencing purposes; transmission of video films; video-on-demand transmission.***

61. The opponent has the following identical term in its WO1650491 earlier registration, namely *video-on-demand transmission*. I also consider the holder's term

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<sup>29</sup> [2008] ETMR 77 CA

*transmission of video films* to be a highly similar service in terms of its nature and purpose. It will also overlap in terms of users and trading channels.

62. The opponent also has the following terms in its WO1650491 earlier registration, namely *teleconferencing services; videoconferencing services* which are sufficiently broad to encompass the holder's terms being *communication services for video conferencing purposes* and in my view the opponent's same term is highly similar to *audio communications services; audiovisual communication services; audiovisual transmission services* as all use technologies which enable audio and visual communication with others either in a large meeting situation or on a one to one basis. As such they share nature, purpose and user. There will also be an overlap of trading channels. The opponent also has *message sending; computer aided transmission of messages and images* in its class 38 specification which I find to be similar to *delivery of messages by audiovisual media; electronic transmission (uploading, posting or displaying) of data, information, pictures, images, audio and/or video via online forums* in the holder's specification. All of the respective terms relate to the transmission of information via electronic means so share a nature and purpose. There will also be a crossover of users and trade channels and a degree of competition between the services. I find the respective services to be similar to a medium degree.

63. I find the holder's term *Streaming of data* to be similar to a medium degree to the opponent's terms *transmission of digital files* and *video-on-demand transmission*. I understand a streaming service to mean the continuous transmission of audio/video files from a provider to a receiver, such as a TV or computer over the internet. I find that the respective terms therefore are similar in nature and purpose and will have a crossover in terms of users and trade channels.

#### **Class 41**

***Multimedia production, other than for advertising purposes; publication of multimedia material online; distribution (other than transportation) of audio recordings; production of audio and/or video recordings, other than advertising; providing user ratings for entertainment or cultural purposes; advisory services relating to entertainment; arranging of entertainment; dissemination of entertainment material; entertainment; information services relating to***

***entertainment; organisation of competitions (education or entertainment); production of audio entertainment; production of entertainment videos; providing facilities for entertainment; providing information in the field of entertainment; providing information, including online, about education, training, entertainment, sporting and cultural activities; providing user reviews for entertainment or cultural purposes; provision of entertainment, sporting or cultural services from customer loyalty and frequent buyer schemes; video entertainment services.***

64. The opponent has the following identical terms in its WO1547288 earlier registration namely *organization of competitions [education or entertainment]; entertainment; providing information in the field of entertainment*. Given the opponent has also *entertainment services* at large in its specification, I consider this term to be sufficiently broad to encompass the holder's services namely *providing user ratings for entertainment or cultural purposes; advisory services relating to entertainment; arranging of entertainment; dissemination of entertainment material; information services relating to entertainment; distribution (other than transportation) of audio recordings; production of audio entertainment; production of entertainment videos; providing facilities for entertainment; providing information, including online, about entertainment; provision of entertainment from customer loyalty and frequent buyer schemes; video entertainment services*. Therefore, these services are considered *Meric* identical

65. The holder has the term *providing information, including online, about education* in its class 41 specification which I considered to be identical to *providing information in the field of education* in the opponent's class 41 term in its earlier WO1547288 registration. In that same earlier registration, the opponent has the term *training* at large which in my view encompasses the holder's term *providing information, including online, about training* and is therefore identical on the *Meric* principle.

66. The holder has the term *providing information, including online, about sporting activities* in its specification. I believe this service is similar to a low degree to the opponent's terms *providing sports facilities; athletic training services*. In my view, as the holder's information service is not limited then it could involve providing all types of information including that which relates to sporting facilities or sports training. Whilst

there is a difference in nature and purpose, there is likely to be a crossover of user, i.e. consumers who want to find out information about facilities or athletic training services and there is a degree of complementarity as one service is useful for the other.

67. In addition, the holder has the term *provision of sporting services from customer loyalty and frequent buyer schemes*. I take this term to mean that the holder provides a service in which consumers can earn rewards from a loyalty scheme and the reward takes the form of a sporting service. From my own consumer experience, I note that some loyalty schemes offer such rewards as a session at a gym or health club, for example, in exchange for certain number of loyalty credits. On that basis I find there is at least a low degree of similarity to the opponent's terms *providing sports facilities; athletic training services* as the nature of the holder's sporting services is not specified so therefore there may be an overlap in nature, purpose and user.

68. I find the holder's term namely *publication of multimedia material online* to be sufficiently broad enough to cover the opponent's terms *publication of online electronic books and journals; providing online electronic publications, not downloadable* in class 41 of its WO1547288 earlier registration. Therefore they are identical on the *Meric* principle.

69. Likewise I also find the holder's term namely *Multimedia production, other than for advertising purposes* to be sufficiently broad enough to cover the opponent's terms *Production of videotapes; production of motion pictures; production of radio and television programmes; theatre productions; production of shows; production of programs* in class 41 of its WO1547288 earlier registration. Therefore they are identical on the *Meric* principle.

#### **Class 45**

***Personal and social services regarding individual needs, namely online social networking services; personal and social services rendered by others to meet the needs of individuals, namely, internet-based social networking services; providing information, including online, about personal and social services meeting the needs of individuals, namely online social networking services***

***accessible by means of downloadable mobile applications; online social networking services; organisation of meetings for social networking purposes.***

70. I find that the opponent's term *online social networking services* at large, in its earlier registration no. WO1547288, is sufficiently broad to cover the holder's terms set out above and I find it is therefore identical on the *Meric* principle.

### **Average consumer and the purchasing process**

71. I next consider who the average consumer is for the goods and services at issue and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.<sup>30</sup> For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.<sup>31</sup>

72. The average consumer for the contested goods and services will be the general public and businesses. There are a large number of contested goods and services so the price range will vary from the inexpensive to the very expensive. For goods such as software, the level of attention paid be at least medium as technological functionality and compatibility would be a key consideration. I find the same principle and level of attention would be paid for services such as streaming.

73. The goods and services at issue will likely be selected visually from physical premises and their online equivalents as well as from sales literature. Assistance from technical sales personnel may be required, so aural recommendations may play a part. Consequently, the purchasing process for the contested goods and services will be predominately visual but may include an aural element.

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<sup>30</sup> *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch)

<sup>31</sup> *Lloyd Schuhfabrik Meyer*, Case C-342/97.



## Mark comparisons

74. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*<sup>32</sup>, 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.”

75. 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.

76. The respective trade marks to be compared are:

Opponent's registrations	Holder's IR
<p data-bbox="193 1382 796 1433">MI</p> 	

<sup>32</sup> Case C-591/12P

77. The opponent's UK TM 909822751 registration consists of the letter M and I in block capitals. There is no other aspect to the registration. The WO1462437 registration differs only in its casing namely it comprises an upper case letter M and a lower case letter i. In both cases the overall impressions are derived solely from these letters.

78. The opponent's remaining three registrations consist essentially of the same letters, namely m and i, but UK TM 917601667 and WO1547288 (being the same mark) are depicted in heavy black stylised typeface. WO1650491 contains the same stylised typeface but is depicted in white and set on a black background, in a square with curved edges. The stylised letters in all these registrations are shaped to resemble the letters m and i, although the upper portion of the letter m is not given its usual curved construction if it were in lower case nor double pointed construction if it were in upper case but in fact has only a right angle at the top left section. Neither is the upper part of the letter m joined to the central downstroke as is normally the case. In my view, the letter m in these marks is the more distinctive and eye catching element and contributes more to the overall impression of these marks.

79. The holder's IR consists of two conjoined word elements, namely Tip and Mi, with capital letters for the T and M. It has no other aspect to it and both elements contribute to the overall impression.

80. In a visual comparison, all marks have the letters M and I in common. For the opponent's UK 909822751 and WO1462437 word only registrations, the two letters comprise the entirety of those marks. The same two letters are contained at the end of the Holder's mark, in an upper and lower case combination, i.e. with a capital M and lower case i, which is the exact presentation of the opponent's WO1462437 registration. The point of difference is the word Tip at the beginning of the holder's mark which increases its length by an additional three letters and has no counterpart in the opponent's registrations. It is settled case law<sup>33</sup> that the beginnings of words

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<sup>33</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

tend to have greater visual and aural impact on consumers. As such I find there is only a medium degree of visual similarity.

81. The opponent's stylised registrations, whilst sharing the letters mi with the holder's mark, have a different visual impact based on the stylisation of the letter m. Put simply, the earlier stylised registrations look quite different from the holder's IR and neither do they contain the Tip word element. As such I find there is a low degree of visual similarity.

82. In an aural comparison, the stylisation will not be considered so the comparison is just between the opponent's Mi marks and the holder's TipMi mark. It is possible that a consumer may be unfamiliar with how to pronounce the Mi sound without additional letters following it to guide pronunciation, e.g. Micro. However, in my view, a substantial proportion of consumers would likely pronounce the opponent's registrations as MY but I also bear in mind that some consumers may just articulate each letter as M and I when encountering the marks. For the holder's mark the first element Tip will be given its usual pronunciation, but the second element may also be pronounced as MY. Taking all these factors into account, I find there is a low to medium degree of aural similarity.

83. In terms of a conceptual comparison, the opponent's registrations have no immediately graspable concept<sup>34</sup> and would therefore be seen as invented. In the opponent's submissions,<sup>35</sup> it contends that the Tip element of the holder's mark,

“will merely be regarded by the relevant public as referring to the function of the goods and services of specific versions of the products under the Mi mark which either relate to information or assist with tipping, given that Mi is the distinctive element of the mark.”

I disagree with the opponent's submission in this regard. The Holder's first element Tip is a recognisable dictionary word with several meanings which can relate to a hint

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<sup>34</sup> *The Picasso Estate v OHIM*, Case C-361/04 P

<sup>35</sup> Paragraph 30

or a monetary reward, but in this case the Tip element is conjoined to the Mi element, which as previously stated has no concept, so it is difficult to envisage what concept the whole mark may bring to mind. Taking all this into account, I find that the marks are conceptually neutral.

### **Distinctive character of the earlier registered trade mark**

84. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

85. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,<sup>36</sup> the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of

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<sup>36</sup> Case C-342/97

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

86. I will first consider the inherent distinctiveness of the earlier registrations. These marks essentially consist of two letters, namely M and I in a combination of upper and lower casing and in either a plain or stylised form, none of which have any descriptive meaning in relation to the goods or services for which they are registered. However there is nothing particularly striking or inventive about a combination of two letters of the alphabet.<sup>37</sup> As such I consider the earlier word marks to be inherently distinctive to a slightly lower than medium degree. The stylised earlier marks have something more about them which I find leads to an inherent distinctiveness of a slightly above medium degree.

87. I next consider whether the opponent can claim enhanced distinctiveness of its earlier marks, because of the use made of them. The relevant market I must consider is the UK and I bear in mind the *Chiemsee* factors given above. The opponent’s evidence is reviewed at paragraph 32. I explained there that no specific turnover figures have been given for the UK but extrapolating the figures given for turnover outside of China runs to hundreds of millions of Yuan, some of which will be turnover from the UK. I noted that the opponent provided a UK market share of between 1-2% for mobile phone retailing for 2021/22 and there was evidence of both physical and online retail sales of the opponent’s goods namely *smartphones, activity trackers, headphones and power pack accessories*. Taking all this into account I find that the distinctiveness of the opponent’s marks have been enhanced to a slightly higher degree for *mobile phone application software; mobile phones; wearable activity trackers; headphones; powerpacks* and for retail of the same.

### **Likelihood of confusion**

88. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible

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<sup>37</sup> See *Kunze Folien GmbH v Kartell UK Limited* O/085/14 at 29-30.

undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The factors are interdependent, and include the principle that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's registrations, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alert to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

89. In *L.A. Sugar Limited*,<sup>38</sup> Iain Purvis K.C. 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, 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

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<sup>38</sup> *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10

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.).

(c) 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)."

90. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,<sup>39</sup> Arnold LJ approved Mr Purvis's formulation but added:

"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."

91. However it is also settled case law that it is not sufficient to find a likelihood of confusion if a mark merely calls to mind another mark<sup>40</sup>. This is considered mere association not indirect confusion.

92. So far in this decision I have found that the

- The goods and services are identical and similar to varying degrees, but some are dissimilar.

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<sup>39</sup> [2021] EWCA Civ 1207

<sup>40</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

- The average consumer will pay a medium level of attention during the primarily visual purchasing process, but I do not ignore that aural considerations may play a part.
- There is a medium degree of visual similarity between the opponent's word marks and the holder's IR.
- There is a low degree of visual similarity between the opponent's stylised marks and the holder's IR.
- There is a low to medium degree of aural similarity between the respective marks.
- There is conceptual neutrality between the respective marks.
- The opponent's word marks are inherently distinctive to less than a medium degree, whereas its stylised marks are inherently distinctive to a slightly higher than a medium degree. The distinctiveness of the earlier marks have been enhanced modestly through use for some specified goods in class 9 and retail of the same in class 35.

93. The respective marks have the letters M and i in common. However, the shared letters are the fourth and fifth letters of the holder's IR and there are an additional three letters, making up the word Tip, at the beginning of the IR which are not present in the opponent's earlier registrations. I take account of the case law relating to the beginnings of words and find that the similarity of Mi is outweighed by the Tip element, notwithstanding the fact that the Mi element in the holder's IR is presented with a capital M. I do not think consumers will place much significance on the capital M and certainly not to the extent that they will ignore the Tip element which precedes it. This is sufficient, in my view, for the average consumer not to directly confuse the marks, that is to mistake one mark for the other even where the goods and services are identical or similar.

94. Having found that there is no likelihood of direct confusion, I now consider whether there is any indirect confusion. I remind myself of the guidance given in *L.A.Sugar* that indirect confusion requires a consumer to undertake a thought process whereby they acknowledge the differences between the marks yet attribute the common element to a shared undertaking, taking one mark to be a possible brand extension or sub brand of the other mark. However, I am also alert to the guidance in *Duebros* that

a finding of indirect confusion should not be made simply because the respective marks share a common element.

95. I cannot see a reason why the average consumer on seeing TipMi would assume that this is a brand extension from the opponent's range of goods and services. Although the list outlined in the *L.A.Sugar* case is not exhaustive, it is difficult to see how the word Tip could function as a plausible brand extension. It is not a non-distinctive element, nor does it seem to be a logical or consistent brand extension. The opponent provided some examples in its evidence where it has used Mi derived marks for its mobile phone apps. However, these were changed at the suffix point e.g. Mi Wi Fi or Mi Fit so it would seem to go against the opponent's own brand practice to make a change to the beginning of its house marks. Moreover, the word Tip has an impactful visual and aural difference from the opponent's marks. In addition, the IR as a whole has no immediately graspable concept such that consumers would be confused into thinking the goods or services come from the same or connected undertakings. As such I do not find the average consumer is likely to be confused. If one mark is brought to mind by the others on the basis of the letters M and i, then I put this down to mere association not indirect confusion, as per *Duebros*. I find there is no likelihood of indirect confusion with any of the earlier relied on registrations.

96. The opposition brought under section 5(2)(b) is unsuccessful.

### **Section 5(3)**

97. I next turn to consider the claim made under section 5(3). The opponent opposed the IR under this ground based on all its earlier registrations for which it claims that the IR would take advantage of and be detrimental to the opponent's marks. In addition the opponent claims that the IR would ride on the coat tails of the opponent's reputation and lead to tarnishment and dilution of the opponent's brand.

98. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

99. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

100. The relevant case law can be found in the following judgments of the CJEU: Case C375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oréal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora*, Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

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

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

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

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

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

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

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

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

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is

clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

101. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its registrations and the application are similar. Secondly, the opponent must show that its registrations have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them, in the sense of the earlier registrations being brought to mind by the contested mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

## **Reputation**

102. I must consider whether the opponent's registrations have met the test for reputation. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

103. Having considered the factors set out above and weighing in the evidence that I assessed earlier in this decision, I find that the opponent has established the requisite reputation for some of its goods in class 9 namely *mobile phone application software; mobile phones; wearable activity trackers; headphones; powerpacks* and for retail services related to the same goods in class 35. However, I do not find that the opponent has established a reputation for any service other than retail in class 35. Nor do I find that there was any evidence to establish a reputation in classes 38, 41 or 45 under the opponent's marks.

### **Link**

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

#### The degree of similarity between the conflicting marks

105. For the reasons given at paragraphs 80 to 83, I found there is a medium degree of visual similarity between the opponent's word marks and the IR but a low degree of similarity between the opponent's stylised marks and the IR. In addition, I found there was low to medium degree of aural similarity between the respective marks and conceptual neutrality.

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

106. I have already found that some of goods and services are identical and similar to varying degrees. In addition, I found that the contested goods and services will be

purchased by the general public and businesses, paying a medium degree of attention.

The strength of the earlier mark's reputation

107. The earlier marks has established the requisite reputation for specific goods in class 9 listed above and for retail services of same.

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

108. For the reasons given at paragraphs 86-87, the word registrations for **mi** are inherently distinctive to a less than medium degree and the stylised registration are inherently distinctive to a slightly above medium degree. Given the use which has been made of the earlier marks, I find that the distinctiveness has been enhanced modestly for some specific goods in class 9, listed above, and for retail services of same.

Whether there is a likelihood of confusion

109. For the reasons given at paragraphs 93 to 95, I do not find that there was either a direct or indirect likelihood of confusion between the respective marks.

110. In considering all the relevant factors set out above, I do not find that a significant proportion of UK consumers will make the link between TipMi when used in relation to the goods and services covered by the IR and the opponent's mi registrations.

111. If I am wrong about this, then I am satisfied that if a link is made between the respective marks, it would be fleeting and unlikely to give rise to the conditions covered by section 5(3) of the Act.

112. Therefore, the opposition brought under Section 5(3) is unsuccessful.

**Section 5(4)(a)**

113. Under section 5(4)(a), the opponent relies on a single sign, namely **MI**, which it claims to have used in the UK since "at least 2010" on the following goods and services: *Computer hardware; computer peripheral equipment; computer software; application software; data processing equipment; pedometers; smartphones; mobile*

*phone accessories; global positioning system apparatus; headphones; portable media players; smart watches; electronic sensors; security cameras; smart home products; battery chargers; electric vehicles; electric scooters; printed matter; furniture; home and kitchen utensils; bags; clothing; toys; sports equipment; fitness equipment; pet products; advertising; promotional services; retail services; retail services for the aforesaid; telecommunications; streaming of data, audio and visual; providing online forums and chatrooms; transmission of data; entertainment; education; providing of training; sporting and cultural activities; multimedia production; organisation of competitions; design and development of hardware and software; SaaS (software as a service); security services; online social networking services.*

114. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

115. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

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

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

117. In *Reckitt & Colman Products Limited v Borden Inc. & Ors*,<sup>41</sup> Lord Oliver of Aylmerton described the ‘classical trinity’ that must be proved in order to reach a finding of passing off:

“First, [the plaintiff] must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”

118. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

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<sup>41</sup> [1990] RPC 341, HL, page 406.

- (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action”.

## Relevant date

119. In terms of the relevant date for assessment of section 5(4)(a), in *Advanced Perimeter Systems Limited v Multisys Computers Limited*,<sup>42</sup> Mr Daniel Alexander QC (as he was then), sitting as the Appointed Person, quoted with approval the summary made by Mr Allan James, acting for the Registrar, in SWORDERS Trade Mark:<sup>43</sup>

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

120. The UK designation date for the IR is 14 April 2022 but it has a priority date of 15 October 2021. As such, all factors will be considered as at this earlier priority date.

## Goodwill

121. The first hurdle for the opponents is to show that they had the required goodwill at the relevant date. The issue of what constitutes goodwill was discussed in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd*<sup>44</sup> viz,

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

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<sup>42</sup> BL O-410-11

<sup>43</sup> BL O-212-06

<sup>44</sup> [1901] AC 217 (HOL)

122. In *Smart Planet Technologies, Inc. v Rajinda Sharm*<sup>45</sup>, Mr Thomas Mitcheson QC (as he was then), sitting as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

*“.. a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”*

123. Goodwill arises as a result of trading activities and accrues to the business that the public thinks is responsible for the goods and services. The relevant market for assessing goodwill is the UK. I reviewed the opponent's evidence at paragraphs 12 to 19 and I found that at the relevant date the opponent had a UK facing website retailing certain products namely smartphones, smart lightbulbs, power banks, headphones, smart sensors, security cameras, smart watches and electric scooters; smartphones, wearable trackers and headphones. The opponent also demonstrated sales through third party retailing websites. It was also able to evidence reviews of its smartphone and activity tracker goods from UK mainstream media outlets. Taking all this into account, I find that the opponent has been able to evidence sufficient goodwill for the following goods and services, namely *smartphones, smart lightbulbs, power banks, headphones, smart sensors, security cameras, smart watches and electric scooters; smartphones, wearable trackers and headphones.*

### **Misrepresentation**

124. Having cleared the first hurdle of goodwill, I now go on to consider the second hurdle, that of misrepresentation. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

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<sup>45</sup> BL O/304/20

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc. [1990] R.P.C. 341 at page 407* the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in *Halsbury's Laws of England 4th Edition Vol.48 para 148* . The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd. (1941) 58 R.P.C. 147 at page 175* ; and *Re Smith Hayden's Application (1945) 63 R.P.C. 97 at page 101.*”

And later in the same judgment:

“... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

125. On the subject of how many of the relevant public must be deceived or confused for the opponent to be successful in a claim under this ground, I bear in mind the decision in *Lumos Skincare Limited v Sweet Squared Limited and others*<sup>46</sup>, where Lord Justice Lloyd commented on the paragraph above as follows:

“64. One point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the “substantial number” of people

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<sup>46</sup> [2013] EWCA Civ 590.

who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small.”

126. Accordingly, once it has been established that the party relying on the existence of an earlier right under section 5(4)(a) had sufficient goodwill at the relevant date to find a passing-off claim, the likelihood that only a relatively small number of persons would be likely to be deceived does not mean that the case must fail. There will be a misrepresentation if a substantial number of customers, or potential customers, of the claimant's actual business would be likely to be deceived.

127. I have found that the opponent has established goodwill in the sign MI. The contested mark is TipMi which I have found to be visually similar to a medium degree, aurally similar to a low to medium degree and conceptually neutral.

128. I recognise that the test for misrepresentation is different to that for likelihood of confusion, namely, that misrepresentation requires “a substantial number of members of the public are deceived” rather than whether the “average consumers are confused”. However, as recognised by Lewison L.J. in *Marks and Spencer PLC v Interflora*<sup>47</sup>, it is doubtful whether the difference between the legal tests will produce different outcomes. In my view, this is the case here. I do not find that the relevant public faced with the contested marks will believe that there is a connection between MI and TipMi, the differences between the marks are too significant and there is not a logical progression from one to the other to give rise to misrepresentation. As such the opposition based on section 5(4)(a) fails.

### **Overall conclusion**

129. The opposition has failed in its entirety. Subject to any appeal of this decision the IR will proceed to registration and protection in the UK.

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<sup>47</sup> [2012] EWCA (Civ) 1501

## **Costs**

130. The holder has been successful in these proceedings. As such it is entitled to a contribution towards the costs incurred. Awards of costs for proceedings commenced before 1 February 2023 are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs as follows:

£400 Considering Notice of Opposition & preparing counterstatement

£600 Considering other side's evidence

**£1000 Total**

131. I order Xiaomi Inc. to pay TipMi Holdings Pty Ltd the sum of £1000. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 3<sup>rd</sup> day of July 2025**

**June Ralph**

**For the Registrar**

**The Comptroller-General**

## **Annex 1**

### **The published specifications for the holder's mark WO1666107**

9: Computer software; computer software applications (downloadable); computer software downloaded from the internet; computer software platforms, recorded or downloadable; computer games entertainment software; interactive entertainment software for use with computers; electronic and recorded multimedia publications; records bearing entertainment material.

35: Advertising; promotional services; promotional marketing; provision of an online marketplace for buyers and sellers of goods and services; online retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles; retail services for goods connected with the sale of household or kitchen utensils, printed matter, vehicles, clothing, jewellery, works of art, computers, phones, electronic tablets, portable music players, baby and children's furniture, household utensils for babies, toys for babies, music recordings, musical instruments, games, sports balls and equipment, fitness equipment, pet furniture, pet food and beverages, pet toys, boats, water vehicles (by any means); presentation of goods on communication media, for retail purposes; pay per click advertising; dissemination of advertising material; dissemination of advertising matter; sales promotion (for others); search engine optimisation; search engine optimisation services (marketing services); search engine optimisation for sales promotion; rental of advertising space on the internet; updating and maintenance of data in computer databases; data management.

38: Streaming of data; audio communications services; audiovisual communication services; audiovisual transmission services; delivery of messages by audiovisual media; electronic transmission (uploading, posting or displaying) of data, information, pictures, images, audio and/or video via online forums; communication services for video conferencing purposes; transmission of video films; video-on-demand transmission.

41: Multimedia production, other than for advertising purposes; publication of multimedia material online; distribution (other than transportation) of audio recordings; production of audio and/or video recordings, other than advertising; providing user ratings for entertainment or cultural purposes; advisory services relating to entertainment; arranging of entertainment; dissemination of entertainment material; entertainment; information services relating to entertainment; organisation of competitions (education or entertainment); production of audio entertainment; production of entertainment videos; providing facilities for entertainment; providing information in the field of entertainment; providing information, including online, about education, training, entertainment, sporting and cultural activities; providing user reviews for entertainment or cultural purposes; provision of entertainment, sporting or cultural services from customer loyalty and frequent buyer schemes; video entertainment services.

45: Personal and social services regarding individual needs, namely online social networking services; personal and social services rendered by others to meet the needs of individuals, namely, internet-based social networking services; providing information, including online, about personal and social services meeting the needs of individuals, namely online social networking services accessible by means of downloadable mobile applications; online social networking services; organisation of meetings for social networking purposes.

## **Annex 2**

### **Earlier right UK TM No. 909822751**

9: Teaching apparatus and instruments; computer programs and computer software; electronic publications provided on-line from a computer database or from a global computer network; audio and video recordings; magnetic data media; optical data media; tapes, discs and laser discs, CDs, CD ROMs, DVDs, audio cassettes; apparatus for recording, transmitting and/or reproducing sound and/or video images; electronic diaries; personal organisers; parts and fittings for all the aforesaid goods.

16: Printed matter, printed publications, periodicals, books, text books, diaries, agendas, calendars, notebooks, manuals, handbooks, booklets, leaflets, pamphlets, brochures, newsletters, posters, stationery, instructional and teaching material, printed forms, examination papers, study texts, cards; printed forms, certificates; technical drawings, pop up stands.

35: Exhibition services; arranging, organising, promoting, conducting and management of fairs, exhibitions, stands, displays, trade shows, conventions and product launches including the commissioning and decommissioning of exhibition stands, floor and wall coverings, all for use in relation to exhibitions; marketing services; business project management; management relating to exhibitions; advertising, placing of advertisements; direct mail advertising services; marketing and promotional services relating to exhibitions, all provided by direct communications, telephone, fax and/or e-mail; on-line ordering services; promotion of tickets; business services, all relating to the administering and conducting of registrations, providing registration systems, providing registration equipment, administering, managing, co-ordinating and conducting of registrations, all in relation to exhibitions, shows and/or conferences; provision of information relating to the fields of marketing, management, and business; procurement of tickets for exhibitions, shows and conferences.

41: Education, training, teaching, tuition and instruction in the fields of marketing, finance, management, and business; education, training, teaching, tuition and instruction in the fields of marketing, finance, management and business provided

on-line from a computer database or from a global computer network; arranging, organising and conducting lectures, meetings, conferences, exhibitions, workshops, tutorials and seminars; provision of educational, training, teaching, tuition and instruction facilities relating to marketing, finance, management and business; publishing; providing electronic publications on-line from a computer database or from a global computer network; production, distribution and rental of films, video recordings and audio recordings, television and radio programmes, instructional materials, teaching materials, printed publications and printed matter; examination services; issuing of certificates and qualifications; organising and arranging sports events, competitions, circuses, shows, concerts, exhibitions, seminars and informal events; provision of audio-visual equipment for exhibitions including video packages, video walls, TV monitor type walls for video, sound packages, sound accessories, video reply facilities, system upgrades; booking, reservation, issuance of tickets for exhibitions, shows and conferences; arranging, organising, conducting and management of conferences, events and seminars; show management; provision of services related to the reservation and distribution of tickets for entertainment, exhibitions and conferences; provision of electrical items for exhibitions (material used in exhibitions, namely, projectors and presentation equipment); provision of lighting.

42: Rental of computers, computer systems and networks, equipment for the display of computer data, all for use in exhibitions and training, teaching and tuition; graphic and design services for exhibitions and training, teaching and tuition; drafting and planning services.

43: Provision of facilities for exhibitions, conferences, conventions, awards ceremonies, meetings, religious gatherings, trade and fashion shows, musical and sporting events; catering, restaurant, cafe and cafeteria services; accommodation, room and lodging services.

### **Annex 3**

#### **Earlier right IR No. WO1462437**

9: Notebook computers; pedometers; apparatus to check franking; cash registers; mechanisms for coin-operated apparatus; dictating machines; holograms; hemline markers; voting machines; lottery machines; face recognition equipment; photocopying machines; bathroom scales; dressmakers' measures; flashing lights [luminous signals]; smartphones; dashboard camera; cameras [photography]; measuring instruments; air analysis apparatus; speed checking apparatus for vehicles; connected bracelets [measuring instruments]; audiovisual teaching apparatus; inductors [electricity]; simulators for the steering and control of vehicles; mirrors [optics]; materials for electricity mains [wires, cables]; wafers for integrated circuits; chips [integrated circuits]; rheostats; electrical adapters; video screens; electronic key fobs being remote control apparatus; optical fibers [fibres] [light conducting filaments]; electric installations for the remote control of industrial operations; 3D spectacles; mobile power (rechargeable battery); transparencies [photography]; lightning conductors [rods]; ionization apparatus not for the treatment of air or water; fire extinguishing apparatus; radiology screens for industrial purposes; respirators for filtering air; alarms; portable remote control car stop; mobile software applications, downloadable; humanoid robots with artificial intelligence; tablet computers; interactive touch screen terminals; smart watches (data processing); smart glasses (data processing); computer peripheral devices; protective films adapted for smartphones; egg-candlers; dog whistles; decorative magnets; electrified fences; cases for smartphones; wearable activity trackers; virtual reality headsets; camcorders; electronic collars to train animals; sports whistle; headphones; cabinets for loudspeakers; biochips; sockets, plugs and other contacts [electric connections]; protective masks; wearable computer; computer software platform, recorded or downloadable; earphones; remote control apparatus; amplifiers; electronically encoded identity wristbands; thin client computers; electronic pocket translators; computer screen saver software, recorded or downloadable; downloadable graphics for mobile phones; personal digital assistants [PDAs]; telecommunication apparatus in the form of jewellery; selfie sticks for cellphones; satellite finder meters; television apparatus; selfie lenses; teaching robots; electric wire harnesses for automobiles; anti-dazzle shades; batteries, electric; security surveillance robots; encoded identification bracelets, magnetic;

wireless router; flash-bulbs [photography]; selfie sticks [hand-held monopods]; LCD projectors; video projectors; on-board tape players; portable media players; sensors; switches, electric; radios; charging device for motor vehicles; wrist-worn smart phone; car phone brackets; GPS receiver; computer keyboards; wireless mouse for computer; sunglasses; biologic fingerprint lock; rechargeable battery; chargers for electric batteries.

11: Lamps; lights for vehicles; germicidal lamps for purifying air; curling lamps; acetylene flares; cooking apparatus and installations; lava rocks for use in barbecue grills; refrigerators; air purifying apparatus and machines; hair driers [dryers]; water heaters; stage fog machine; heating installations; watering installations, automatic; solar heaters for baths; filters for drinking water; radiators, electric; lighters; polymerisation installations; air cleaner; household air cleaner; portable electric fans; fans [air-conditioning]; household electric fans; LED lamps; air conditioners; air filters for air conditioning; portable headlight; household electric water purifier; water filtering apparatus; reading lamps; desk lamps; electric cooker; coffee percolators, electric; kettles, electric; household faucet filters; water purifying apparatus; household humidifier; coffee machines, electric; multicookers; ceiling lights; bathroom warmers; household electric kettle; bread toasters; microwave ovens [cooking apparatus].

35: Presentation of goods on communication media, for retail purposes; commercial intermediation services; provision of an on-line marketplace for buyers and sellers of goods and services; personnel management consultancy; relocation services for businesses; compilation of information into computer databases; accounting; rental of vending machines; sponsorship search; rental of sales stands; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; promoting goods and services via sports events sponsorship; displaying goods and services via electronic means for teleshopping and online shopping; provision of space on websites for advertising goods and services; promoting serial movies for others; conducting market research by using computer data base; negotiation and conclusion of commercial transactions for third parties; providing business information services via internet; market information services;

arranging and organizing market promotions for others; automobiles auctioneering; targeted marketing; marketing in the framework of software publishing; import-export agency services.

## **Annex 4**

### **Earlier right IR No. WO1547288**

41: Production of videotapes; booking of seats for shows; dubbing; providing on-line game services for computer network; videotape editing; entertainment; mobile library services; recreational activities; organization of competitions [education or entertainment]; correspondence courses; radio entertainment; publication of texts, other than publicity texts; education; training; translation; ticket agency services [entertainment]; teaching; lecturing; production of motion pictures; publication of literature; publication of books; production of radio and television programmes; theatre productions; production of shows; production of programs; television entertainment; photography; club services [entertainment or education]; arranging and conducting of colloquiums; arranging and conducting of conferences; providing information in the field of education; providing information in the field of entertainment; organization of exhibitions for cultural and educational purposes; vocational guidance [education or training advice]; publication of online electronic books and journals; digital imaging services [editing of image]; presentation of live performances; party planning [entertainment]; practical training [demonstration]; providing entertainment information [entertainment]; arranging and conducting of symposiums; providing sports facilities; timing of sports events; animal training; beast training; zoological garden services; modelling for artists; management of lotteries; music composition services; microfilming; calligraphy services; disc jockey services; rental of video cassette recorders; arranging and conducting of congresses; games equipment rental; health club services [health and fitness training]; toy rental; organization of lotteries; rental of indoor aquaria; online publication of electronic books and journals; production of videotape; providing online music, not downloadable; rental of books and magazines; providing online electronic publications, not downloadable; rental of game machines and equipment; entertainment services; athletic training services; organization of lottery draw; conducting guided tours; organization of cultural and artistic activities; training courses in advertising, sales, marketing and business strategy planning.

45: Monitoring of burglar and security alarms; security consultancy; copyright management; licensing of computer software [legal services]; dating services;

escorting in society [chaperoning]; registration of domain names; intellectual property monitoring services; licensing of intellectual property; intellectual property consultancy; evening dress rental; clothing rental; cremation services; funeral; funerary undertaking; opening of security locks; marriage agency services; fire-fighting; rental of fire alarms; rental of fire extinguishers; organization of religious meetings; adoption agency services; lost property return; rental of safes; genealogical research; planning and arranging of wedding ceremonies; personal wardrobe styling consultancy; conducting funeral ceremonies; online social networking services; releasing doves for special occasions; conducting religious ceremonies; leasing of Internet domain names; bomb detection services; organizing a family reunion in memory of the deceased, as part of funeral arrangement services.

## **Annex 5**

### **Earlier right no: WO1650491**

9: Computer software applications, downloadable; computer peripheral devices; notebook computers; mobile phone software applications, downloadable; laser printers; tablet computers; telepresence robots; humanoid robots with artificial intelligence; computers; photo printers; ink-jet document printers; toner cartridges, unfilled, for printers and photocopiers; ink cartridges, unfilled, for printers and photocopiers; liquid crystal displays; LED displays; memory cards; USB flash drives; computer keyboards; mouse [computer peripheral]; mouse pads; smartwatches [data processing]; electronic pocket translators; operating system programs; touch screen pens; electronically encoded identity wristbands; smartglasses; cases adapted for computers; encoded identification bracelets, magnetic; processors [central processing units]; graphics processor units (gpu); computer programs, recorded; monitors [computer hardware]; couplers [data processing equipment]; digital to analogue converters; pedometers; apparatus to check franking; automated teller machines [ATM]; mechanisms for coin-operated apparatus; dictating machines; holograms; hemline markers; voting machines; face recognition apparatus; fingerprint identifier; photocopiers [photographic, electrostatic, thermic]; bathroom scales; body fat scale for household purposes; electronic bathroom scales; scales; measures; digital signs; cell phones; wearable activity trackers; Global Positioning System [GPS] apparatus; network routers; smartphones; navigational instruments; electro-dynamic apparatus for the remote control of signals; sound locating instruments; satellite navigational apparatus; equipment for communication network; navigation apparatus for vehicles [on-board computers]; selfie sticks for mobile phones; smartphones in the shape of a watch; intercoms; transmitters of electronic signals; wireless routers; transponders; communication modems; wireless local area network controllers; cell phone cases; protective films adapted for smartphones; waterproof cases for smart phones; monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; television displays; microphones; audio- and video-receivers; head-mounted video displays; web cameras; audio equipment; electronic audible devices with books; noise cancelling earphones; radio sets; rearview cameras for vehicles; camcorder waterproof cases; security surveillance robots; cabinets for loudspeakers; earphone; camcorders; electronic monitoring apparatus; television apparatus; ear pads for

headphones; bluetooth earphones; headphones; electronic book readers; teaching apparatus with artificial intelligence; event data recorders; set-top boxes; wearable video display monitors; virtual reality headsets; multimedia projectors; cameras [photography]; mini beam projectors; selfie sticks [hand-held monopods]; measuring apparatus; air analysis apparatus; hygrometers; telemeters; tire pressure gauges; automatic indicators of low pressure in vehicle tyres; temperature indicators; connected bracelets [measuring instruments]; laboratory robots; teaching robots; audiovisual teaching apparatus; teaching apparatus; measuring devices, electric; inductors [electricity]; simulators for the steering and control of vehicles; stereoscopes; materials for electricity mains [wires, cables]; USB cables; adapter cables for headphones; semi-conductors; electronic chips; integrated circuits; magnetic materials and devices; amplifiers; conductors, electric; electric plugs; sensors; power adapters; switches, electric; alarm sensors; motion recognizing sensors; plugboards; optical sensors; temperature sensors; plugs, sockets and other contacts [electric connections]; power adaptors; electric sockets; touch sensors; touchscreen sensors; adapter plugs; connections for electric lines; electricity switchboard of high or low voltage; plug connectors; video screens; remote control apparatus; remote controls for household purposes; optical fibers [fibres] [light conducting filaments]; electric installations for the remote control of industrial operations; lightning conductors; electrolyzers; fire extinguishing apparatus; radiological apparatus for industrial purposes; protection devices for personal use against accidents; bicycle helmets; goggles; protective helmets; life saving apparatus and equipment; theft prevention installations, electric; biometric fingerprint door locks; electronic locks; electromagnetic locks; alarms; alarms for the detection of inflammable gases; smoke detectors; peepholes [magnifying lenses] for doors; digital door locks; electric door bells; eyeglasses; sunglasses; 3D glasses; cyclists' glasses; USB chargers; battery charge devices; wireless chargers; battery chargers for mobile phones; batteries, electric; chargers for electric batteries; mobile power supply [rechargeable battery]; cell phone battery chargers for use in vehicles; animated cartoons; sports whistles; egg-candlers; dog whistles; decorative magnets; electrified fences; fridge magnets.

35: Advertising; pay per click advertising; online advertising on a computer network; presentation of goods on communication media, for retail purposes; providing

business information via a web site; commercial intermediation services; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers in the choice of products and services; provision of an on-line marketplace for buyers and sellers of goods and services; sales promotion for others; procurement services for others [purchasing goods and services for other businesses]; import-export agency services; recruitment; search engine optimization for sales promotion; conducting data searches in computer files for others; compiling indexes of information for commercial or advertising purposes; sponsorship search; rental of vending machines; rental of sales stands; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies.

38: News agency services; wireless broadcasting; message sending; providing telecommunication channels for teleshopping services; computer aided transmission of messages and images; providing internet chatrooms; providing user access to global computer networks; providing online forums; video-on-demand transmission; teleconferencing services; videoconferencing services; communications by computer terminals; transmission of digital files; providing access to databases.

41: Instruction services; correspondence courses; arranging and conducting of seminars; organization of competitions [education or entertainment]; lending library services; providing on-line electronic publications, not downloadable; on-line publication of electronic books and journals; distribution of video tapes; providing online videos, not downloadable; production of radio and television programmes; video production; entertainment services; entertainer services; game services provided on-line from a computer network; health club services [health and fitness training]; toy rental; games equipment rental; conducting guided tours; art exhibitions; animal training; modelling for artists; organization of lotteries; rental of indoor aquaria; operating of lotteries.

45: Monitoring of burglar and security alarms; lifeguard services; monitoring of security systems; chaperoning; personal wardrobe styling consultancy; funerary undertaking; opening of security locks; online social networking services; fire-fighting; organization of religious meetings; adoption agency services; lost property

return; rental of safes; genealogical research; planning and arranging of wedding ceremonies; releasing doves for special occasions; dating services; leasing of internet domain names; intellectual property consultancy.