

O/0650/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 1720647

**IN THE NAME OF ZUMEDIA INC.
IN RESPECT OF THE TRADE MARK**

DMDb

IN CLASS 9

AND

**THE OPPOSITION THERETO UNDER NO. 441780
BY IMDB.COM, INC.**

Background and pleadings

1. On 21 February 2023, ZUMEDIA INC. (“the holder”) filed the International Registration (“IR”) no. 1720647 for the mark shown on the cover page of this decision, designating the UK. It was accepted and published in the Trade Marks Journal on 7 April 2023 in respect of the following goods:

Class 9: Computer application software for mobile devices for use in providing users with access to searchable databases; software for creating searchable databases; software for wireless content delivery; downloadable software featuring an entertainment database for use on computers and mobile devices; software for accessing information on the Internet or other computer or communications network; software for transmitting, receiving, downloading, streaming, and displaying content, text, visual works, audiovisual works, data, files and electronic works via the Internet or other computer or communications network; software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers; software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device.

2. On 6 July 2023, IMDb.com, Inc (“the opponent”) opposed the IR on the basis of Section 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). Both grounds rely on its two earlier marks set out below:

1. IMDB

UK comparable mark no. 918002197 (“the earlier word mark”)

Filing date: 19 December 2018

Registration date: 27 June 2019

Relying on goods in classes 9 & 42, as set out at Annex A to this decision.¹

¹ In the opponent’s submissions in reply, the opponent mentions only a subset of its services relied upon. At the hearing, Mr Carter for the opponent submitted that it was not the opponent’s intention in its submissions to limit the goods and services relied upon. I accept this position.



2.

UK comparable mark no. 912629374 (“the earlier logo mark”)

Priority date: 27 August 2013 (US no. 86049642)

Filing date: 24 February 2014

Registration date: 16 July 2014

Relying on all goods in class 9, as set out in Annex B to this decision.

3. By virtue of their earlier filing dates, the above registrations constitute earlier marks in accordance with section 6 of the Act.

4. In respect of section 5(2)(b), the opponent argues that the marks are similar, and the goods and services are identical or similar, and as such there exists a likelihood of confusion, including a likelihood of association between the marks.

5. In respect of section 5(3) of the Act, the opponent argues that it holds a significant reputation for its marks in the UK by virtue of the extensive use made of the same, and that the holder’s mark is closely similar to its marks, to the extent that use of the holder’s mark would take unfair advantage of or be detrimental to, the distinctive character or the repute of the opponent’s marks.

6. The holder filed a counterstatement denying that the marks are similar and that the goods are identical, and not admitting that the goods are similar. The holder denies a likelihood of confusion between the marks, and further denies that the opponent has a significant reputation for its marks. It puts the opponent to proof of such a reputation, and again denies that the marks are similar under section 5(3) of the Act. The holder further denies that the application would take unfair advantage of, or would be detrimental to, the distinctive character or repute of, the opponent’s marks. It also denies that “there [is] no cause for its use of its marks”.

7. Both parties filed evidence and written submissions during the evidence rounds. This will be summarised to the extent that it is considered necessary. A Hearing took place before me on 10 December 2024. The opponent was represented in the proceedings by Morgan Lewis & Bockius UK LLP and was represented at the hearing by Samuel Carter of Hogarth Chambers. The holder was represented in the proceedings by Appleyard Lees IP LLP, and was represented at the hearing by Edward Bragiel of Hogarth Chambers.

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 which predate the UK's withdrawal from the EU.

Evidence

9. The opponent filed its evidence in the name of Dana Northcott, Vice President and Associate General Counsel of IMDb.com, Inc. The statement introduces 7 exhibits, namely Exhibit DN1 – Exhibit DN7. The statement is dated 9 December 2023, and goes to the use and reputation of the earlier marks.

10. The holder filed its witness statement in the name of Phyllis Jager, CEO of the holder. This introduces 6 exhibits, namely Exhibit PJ01 – Exhibit PJ06, and is dated 8 February 2024. The evidence goes to the use of the holder's mark, as well as the opponent's marks, in addition to the use of initialisms including the letters DB by third parties.

Proof of use

11. In order for an earlier mark to be subject to the use provisions set out at section 6A of the Act, it must have been registered for a period of over five years at the date on which the contested mark was filed. This means the provisions of section 6A apply

only to the opponent's earlier logo mark. At the hearing, Mr Carter submitted for the opponent:

"The first point to make on genuine use, Madam, is that, in fact, very little turns on this because the word mark is not susceptible to proof of use. In my submission, it is at least [as] similar to the application as the figurative mark and the specifications of the word mark and figurative mark very substantially overlap. In core part they are broadly identical, or very nearly identical.

For the purposes of this opposition, little turns on it. The one possible point of difference is that the figurative mark is registered with a lower case "b" but, as I will address you on in due course, very, very little turns on that, in any event, because both the application and the word mark are word marks, and the authorities are clear, therefore, that where the letters are upper case or lower case or might be used in a particular font or not is irrelevant."

12. I asked Mr Carter at the hearing to confirm whether, if I was with him on the above, there was a need for the opponent to continue to rely on the logo mark under section 5(2)(b). However, Mr Carter confirmed at that point that there were very minor differences in the specification, and that the opponent wishes to continue to rely on this mark, despite the fact that "... very little is likely to end up turning on it because the word mark is almost [its] strongest case".

13. From the submission made, it appears that the opponent is not of the view that its position under the logo mark is necessarily stronger, but that it still wishes to rely on it just in case. It is open to the opponent to do so, and on this basis, I will do as requested and consider the opponent's position regarding proof of use of its earlier logo mark accordingly.

14. The relevant statutory provisions are as follows:

Section 6A:

"(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
- (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.”

15. As the earlier logo mark relied upon under this ground 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”.

16. 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.”

17. 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 Bunderversvereinigung 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 Merken 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].”

18. The relevant period within which the opponent must prove use in these proceedings is the five years directly preceding and ending with the date the IR was filed, that being 22 February 2018 - 21 February 2023. The opponent must show that genuine use has been made of the mark relied upon, within the relevant territory, in respect of the goods relied upon during that period. The relevant territory is the UK throughout the period, and the EU including the UK up until the end of the transition period on 31 December 2020. However, I note use within the EU but outside of the UK does not appear to be a feature of the opponent’s evidence, and as such I will focus on the use within the UK throughout this time.

18. In her witness statement, Ms Northcott explains:²

“IMDb is an online resource of information related to films, television series, podcasts, home videos, video games, streaming content, production personnel biographies, plot summaries, fan and critical reviews and ratings, and related software.”

19. She explains it has been owned by the holder since 1998, but it began as an online fan-operated movie resource.³ A press release dating from 1998 provided at Exhibit DN1 explains that it was originally launched in 1990 and is a “comprehensive repository for movie and television information on the Internet”.

20. Exhibit DN2 provides a page from the website IMDb.com dated 20 November 2023, after the relevant date. The page is entitled “What is IMDb?” The logo mark is not shown. This refers to “IMDb” as the world’s most popular and authoritative source for movie, TV and celebrity content, and it talks about its searchable database

² See paragraph 8 of the witness statement of Ms Northcott.

³ See paragraph 8 of the witness statement of Ms Northcott

including millions of movies, TV and entertainment programs and cast and crew members.

21. Ms Northcott explains the two earlier marks relied upon⁴ have been used consistently and continuously to distinguish the IMDb goods and services from competitors in the UK.⁵

22. Statistics relating to visits to the opponent's website are provided at Exhibit DN3 and are summarised at paragraph 13 of Ms Northcott's statement. The statistics provided post-date the relevant period, being from the period of August 2023 – October 2023. It is confirmed the opponent's website received over 1.462billion views over this period, and 7.49% of these views originated from the UK. Exhibit DN6 provides pages from the website www.imdb.com showing its presence from February 2018, and at various dates throughout 2018, 2019, 2020, 2021, 2022 and until February 2023. On all of these pages the logo below is shown:



23. Exhibit DN7 provides 24 examples of third-party articles mentioning IMDb. I note the holder's evidence from Ms Jager provides a table with comments on these articles.⁶ The comments include criticisms such as the fact that a number of articles did not originate from, and do not appear to have been directed at, the UK (or EU) market. Many of these criticisms appear to be valid, and I note the opponent did not file any further evidence in reply on this point. However, there remain a number of articles that do appear to be targeted at the UK consumer which reference IMDb, and I will outline some of text from these articles below:

“IMDb is such an invaluable resource for everyone who goes to see films and everyone who works in film. It is a real privilege to receive this award.” (A

⁴ I note the earlier logo mark is shown in greyscale on the witness statement itself.

⁵ See paragraph 12 of the witness statement of Ms Northcott

⁶ See Exhibit PJ05

comment from actress Felicity Jones when receiving a IMDb “Fan Favourite” award – reported in Daily Mail Online UK 10 September 2016)

“IMDb adopts the 'F-rating' for female positive movies” (An article on Yahoo Movies UK⁷ dated 7 March 2017)

“One of those famous faces was The Marvelous Mrs. Maisel's Rachel Brosnahan, who was on hand Friday to receive IMDb's Fan Favorite STARmeter Award.

The award, determined by IMDbPro data pertaining to views of celebrities' IMDb pages, has previously been bestowed upon Mindy Kaling, Bill Skarsgard, Bryce Dallas Howard and Peter Dinklage, to name a few.” (Article in the Daily Mail Online UK dated 25 January 2020.)

“Daisy Edgar-Jones has received an IMDb Breakout STARmeter Award for her performance as Marianne in Normal People.” (Article in Daily Mail Online UK dated 1 September 2020 – this article references 200 million monthly page views to the IMDb website worldwide)

“Jai Bhim: The Indian film that overtook The Godfather on IMDb” (Article from the BBC News homepage dated 17 November 2021)

“Salma Hayek has received the first ever IMDb Icon STARmeter award in celebration of IMDbPro's 20th anniversary.” (Article from Daily Mail Online UK dated 3 March 2022)

24. As can be seen from the above, most of the UK based articles provided discuss various awards issued, apparently based on ratings and views on the IMDb website itself. Further articles which appear not to be targeted at the UK are also provided, and

⁷ I note Ms Jager's criticism that this article does not originate from or target the UK, and the page was disconnected in 2022. However, it is my view that I have no reason to doubt from the clear reference to Yahoo Movies UK at the top of the page that this article was intended for a UK market. The fact that the webpage was disconnected in 2022 is of no relevance.

I note particularly the mention in several of these from within the relevant period to 200 million monthly views to the website worldwide. I also note one article from publication techSPARK from 25 April 2017 (prior to the relevant date) which refers to “IMDb” as the world’s number one movie and TV database, and of 250 million unique users a month, and more than 115 million downloads of the app.

25. Ms Northcott explains that in 2010, the opponent released the IMDb app, “giving customers mobile access to the most comprehensive movie and TV information on the web”.⁸ She explains that as of November 2023, there had been more than 100 million downloads.⁹ Exhibit DN4 provides a press release discussing the launch of this app in April 2010. However, I note this article makes reference specifically to “localized U.S. movie showtimes” and “localized U.S. TV listings”. There is no reference to the app’s availability to, or targeting of, UK consumers, although I do note that a further press release from June that year mentions that the app has been downloaded by millions of users “worldwide”, and a much later reference in Exhibit DN5 dating from November 2023 (after the relevant period) confirming the application is “available worldwide”. I note the printout from this page appears from its URL to come from the US Google app store.

26. Whilst I have not detailed every page of the evidence provided by the opponent, this has been considered in full, and the above summary references what are, in my view, the most relevant aspects of the same. I remind myself at this point that my assessment of use is only to be made in relation to the class 9 goods upon which the earlier logo mark relies. These are as follows:

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital

⁸ See paragraph 14 of the witness statement of Ms Northcott.

⁹ See paragraph 14 of the witness statement of Ms Northcott.

recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; computer application software for mobile devices for use in providing users with access to searchable databases; software for creating searchable databases; software for wireless content delivery; downloadable software featuring an entertainment database for use on computers and mobile devices; software for accessing information on the Internet or other computer or communications network; software for transmitting, receiving, downloading, streaming, and displaying content, text, visual works, audiovisual works, data, files and electronic works via the Internet or other computer or communications network; software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers; software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device.

27. It is, in my view, clear from the evidence that the opponent is mainly providing the consumer with a website which offers information on films, television and actors via a searchable database. It is my view that this offering does not fall within any of the goods listed in class 9 above.

28. I note it is also the case that there was a mobile application offering the same information as found on the website. However, it is not clear from the evidence that the mobile application was actually available to UK consumers¹⁰ during the relevant period, and if it was, the extent of the use of the same by those consumers. At the hearing, Mr Carter submitted that I should infer this application was available to UK consumers based on the global nature of the stores from which the mobile application may be downloaded. However, it is my view that to infer this in favour of the opponent would be to wrongly fill in the gaps in the opponent's evidence with supposition – and would not be the correct approach to take. Further, even if I were to take this leap, which in my view would be too much of a stretch, it would still not be clear from the

¹⁰ Or EU consumers prior to the end of the transition period on 31 December 2020.

evidence how many UK consumers downloaded the application within the relevant period. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. 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.”

29. Overall, the opponent’s evidence is in my view, insufficiently solid to support a finding that there has been genuine use of the opponent’s logo mark in respect of a mobile application in the UK within the relevant period. Further whilst the opponent’s website offering does, from the sum of the evidence, appear likely to have been used by and offered to UK consumers during the relevant period, it is my view that this will not constitute use in relation to any of those goods outlined in class 9 above. The provision of a website offering information, even via searchable databases, is not the provision of software goods to consumers. I therefore find no genuine use of the opponent’s logo mark in respect of the goods relied upon, and the opponent may not, therefore, continue to rely on this mark within this opposition.

Decision

Section 5(2)(b)

30. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

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

The Principles

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

The principles

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the

imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of goods and services

33. Where goods or services are included identically within two specifications, they will be self-evidently identical. This is also true where the exact wording of terms may differ, but the scope of protection does not. Further, in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the 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”.

34. With this in mind, the goods and services for comparison are as follows:

| Earlier goods and services | Contested goods and services |
|---|---|
| Class 9 including: <i>Computer application software for mobile devices for use in providing users with access to searchable databases; computer software for creating and providing user access to searchable databases of information and data; software for wireless content delivery; downloadable software featuring an entertainment database featuring information, news, reviews and user comments about television shows, motion picture films,</i> | Class 9: <i>Computer application software for mobile devices for use in providing users with access to searchable databases; software for creating searchable databases; software for wireless content delivery; downloadable software featuring an entertainment database for use on computers and mobile devices; software for accessing information on the Internet or other computer or communications network; software for transmitting, receiving,</i> |

| | |
|--|--|
| <p><i>celebrities, actors, and the entertainment industry for use on computers and mobile devices; software for accessing information on the Internet or other computer or communications network; computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, viewing, storing and organizing text, data, images, audio and video files, and multimedia content; software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers; software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device. (see Annex A for the full list of class 9 goods)</i></p> <p><i>Class 42: See Annex A for the full list of class 42 services</i></p> | <p><i>downloading, streaming, and displaying content, text, visual works, audiovisual works, data, files and electronic works via the Internet or other computer or communications network; software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers; software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device.</i></p> |
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35. The contested goods include *computer application software for mobile devices for use in providing users with access to searchable databases*. The earlier goods include an identical term.

36. The contested goods include *software for creating searchable databases*. The earlier goods include *computer software for creating and providing user access to searchable databases of information and data*. These goods are identical.

37. The contested goods include *software for wireless content delivery*. The earlier goods include *software for wireless content delivery*. These goods are identical to those covered by the earlier mark.

38. The contested goods include *downloadable software featuring an entertainment database for use on computers and mobile devices*. The earlier goods include *downloadable software featuring an entertainment database featuring information, news, reviews and user comments about television shows, motion picture films, celebrities, actors, and the entertainment industry for use on computers and mobile devices*. These goods are identical in accordance with the principles set out in *Meric*.

39. The contested goods include *software for accessing information on the Internet or other computer or communications network*. This term is included identically within the earlier specification of goods.

40. The contested goods include *software for transmitting, receiving, downloading, streaming, and displaying content, text, visual works, audiovisual works, data, files and electronic works via the Internet or other computer or communications network*. The earlier goods include *computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, viewing, storing and organizing text, data, images, audio and video files, and multimedia content*. These goods are identical in accordance with the principles set out in *Meric*.

41. The contested goods include *software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers*. The earlier goods include an identical term.

42. The contested goods include *software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device*. The earlier goods include an identical term.

Comparison of marks

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

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

45. The respective trade marks are shown below:

| Earlier trade mark | Contested trade mark |
|--------------------|----------------------|
| IMDB | DMDb |

46. The earlier mark comprises the letters IMDB only. The overall impression resides in the combination of these letters and the mark as a whole.

47. The contested mark comprises the letters DMDb only. The overall impression resides in the combination of these letters and the mark as a whole.

Visual comparison

48. The marks coincide through the use of the three letters MDB/b. Whilst the letter 'b' is presented in lowercase in the contested mark, I note the earlier mark is presented in plain text and as such it may be used in upper- or lower-case lettering. For this reason, I consider the use of the lower case 'b' in the holder's mark makes no difference visually. However, if I am wrong and the use of a lower case 'b' against the capital letters is considered to fall outside of fair and notional use of this earlier mark, I note in any case that this element makes only a relatively small visual difference. The largest visual difference results from the use of the letter 'I' in the earlier mark, vs the letter 'D' in the contested mark. This difference is placed at the beginning of the mark where differences tend to make more impact visually (and aurally).¹¹ Further, as the marks are relatively short, the change of the single letter has a bigger impact overall. It is my view that the marks are visually similar to a medium degree.

Aural comparison

49. It is my view that both marks will be pronounced as the individual letters, with the first pronounced as the four individual letters I-M-D-B, and the second as the individual letters D-M-D-B. The difference created by the letter D, pronounced 'dee' and the letter 'I' pronounced 'eye' makes a considerable impact aurally, especially with this being at the beginning of the marks. However, the rest of the marks are clearly aurally identical. Overall, I find the marks to be aurally similar to just above a medium degree.

Conceptual comparison

50. In respect of the conceptual comparison, Mr Carter for the opponent submitted at the hearing that some consumers may see the marks as acronyms, whereas some may simply see them as fanciful words or strings of letters that do not represent other words. In either case, he submits that the consumer would not know what the letters stand for. However, interestingly, Mr Carter went on to submit that where consumers simply perceive the marks as just a string of letters, by virtue of the three identical

¹¹ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

letters, there exists a high degree of conceptual similarity between the marks. On the other hand, Mr Bragiel for the holder submitted if there is any conceptual similarity it would be by virtue of the recognition by the consumer of the letters in the marks standing for database or movie or media database, and any similarity would therefore be on the basis of a non-distinctive element of the marks.

51. It is my view that there is nothing inherent in the marks themselves that provides the consumer with a graspable concept. I do not consider the consumer will automatically understand the use of “DB” as short for “database”, even considering the evidence filed showing some third parties also using this on their own database websites. This is not, in my view, sufficient to show that the average consumer in the UK (or a significant portion of the same) will automatically attribute this meaning to the letters DB in the marks above. Further, I do not consider the same three letters being used in the two marks means that they share a point of conceptual similarity. As it is my view that no graspable meaning will be attributed to either mark inherently, I consider these to be conceptually neutral.

Average consumer and the purchasing act

52. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

53. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average”

denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

54. At the hearing, Mr Carter made a number of submissions relating to the degree of attention paid by the consumer. In particular, Mr Carter submitted that, considering the goods and services here are being provided for free on a website, this strongly suggests the consumer will only pay a low degree of attention.

55. Mr Bragiel, on the other hand, submitted there will be two groups of consumers, both of which will pay a high degree of attention. He submits there are professional consumers, but also members of the general public who seek out a website such as the opponent’s because they are really interested in films, and these types of consumers are likely to therefore pay a higher degree of attention to the services offered. He also states professional consumers will include actors and those in the industry, and that these consumers are going to “know what they are doing”.

56. I note at this stage, that I must conduct a notional assessment based on the goods opposed and the goods and services relied upon in these proceedings. All of the contested goods are various types of software in class 9. I agree the users of these type of software goods may be either professional consumers or members of the general public, and I note these may or may not be free for the consumer to use. However, I still consider that factors such as type, functionality and ease of use is likely to be considered when choosing particular software products. It is my view a medium degree of attention will be paid by the general public to the same, with a slightly higher degree of attention paid by professional consumers due to the increased responsibility that comes with choosing the right products for making their business run smoothly and efficiently. I note for completeness it is also my view this will also be the case in respect of the earlier software and computer services relied upon.

57. It is my view the goods and services will likely be purchased or engaged with visually, being either advertised online such as via a website, or being available to download via app stores. However, I note the possibility for word-of-mouth recommendations, and as such I cannot completely discount the aural aspect of the comparison.

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

59. The earlier mark will, in my view, most likely be considered by consumers as an initialism.¹² It comprises 4 letters only, and whilst these appear likely to stand for something, exactly what they will stand for is not conveyed by the mark itself. Initialisms are not uncommon as trade marks, and being only 4 letters, the mark is

¹² I note both parties use the term acronym when describing the marks. It is my view it will be an initialism on the basis that the letters will be pronounced individually, and they do not form a pronounceable word. However, whether I consider it will be viewed as an initialism, or whether it would be viewed as an acronym will in my view, have no impact on its distinctive character in this instance.

relatively short. However, it is not descriptive, nor is it allusive. Overall, it is my view it holds a medium degree of distinctive character in respect of the goods and services relied upon.

60. I note the opponent has filed evidence in these proceedings, and as such I also consider if the distinctiveness of the earlier mark has been enhanced through use. When considering whether the distinctiveness of an earlier mark has been enhanced, I note it is the perception of the UK consumer at the relevant date, that being the designation date of the IR in the UK on 21 February 2023, that is key.

61. The evidence filed by the opponent is somewhat limited. I note the reference to a vast number of website views, and the proportion of views from the UK in a period of three months, but I also note that the three months for which the information has been provided fell after the relevant date. Further, I note the reference in press releases and publications to a huge number of monthly worldwide website visits during the relevant period, but there is no information relating to the percentage of views by the UK consumer at that time. However, it is my view that this is not the biggest issue with the evidence in this instance.

62. In this case, the opponent has relied on its earlier mark in respect of goods and services in classes 9 and 42. As a reminder, in her witness statement, Ms Northcott explains:¹³

“IMDb is an online resource of information related to films, television series, podcasts, home videos, video games, streaming content, production personnel biographies, plot summaries, fan and critical reviews and ratings, and related software.”

63. On the page provided in the evidence at Exhibit DN2 entitled “What is IMDB?”,¹⁴ it is explained:

What is IMDb?

¹³ See paragraph 8 of the witness statement of Ms Northcott.

¹⁴ I note this dates from after the relevant date.

Launched online in 1990 and a subsidiary of Amazon.com since 1998, IMDb is the world's most popular and authoritative source for movie, TV and celebrity content, designed to help fans explore the world of movies and shows and decide what to watch.

Our searchable database includes millions of movies, TV and entertainment programs and cast and crew members.

IMDb can help you:

- *Jog your memory about a movie, show, or person on the tip of your tongue*
- *Find the best movie or show to watch next*
- *Empower you to share your entertainment knowledge and opinions with the world's largest community of fans*

For fans deciding what to watch and where to watch it, we offer local movie showtimes, ticketing, trailers, critic and user reviews, personalized recommendations, photo galleries, entertainment news, quotes, trivia, box-office data, editorial feature sections and a universal Watchlist. To learn more about watching Trailers, Clips, Featurettes, and IMDb Originals, please see the IMDb Video FAQs.

IMDb creates new original video content each week and you can find it all at IMDb Originals.

You can find new videos highlighted every day on the IMDb homepage via your desktop computer or IMDb app.

64. In his skeleton arguments, Mr Carter defines the services offered as follows:

“19. It is apparent from the above descriptions (and the balance of the evidence) that IMDb (at its core) is:

19.1 an online resource of information, accessible via the web or by bespoke downloadable apps for mobile devices;

19.2 which contains a wealth of content in various formats (text, image, video, audio, etc);

19.3 which content can be accessed by users (via computer or mobile device),

19.4 including by e.g. streaming trailers, or downloading images or text, etc;which content can also be contributed to by users (by e.g. contributing user reviews), such that the users themselves in part create the online resource of information.”

65. I note there are also some references to a service offered under IMDbPro in the evidence, including in a press release dating from 2010 at Exhibit DN2. This appears to be a site designed specifically for industry professionals, however, there is very little additional information provided about this service offering and its popularity or success in the UK prior to the relevant date, although I do note its mention in passing in UK articles discussing various awards distributed, on the basis of ratings shown on this site. I note the reference to IMDbPro on a US Google Play app store dating from after the relevant date, showing an IMDbPro application available for download, as well as Ms Jager's evidence at Exhibit PJ04 that IMDbPro subscriptions are listed in US dollars, and whilst I note the opponent chose not to file evidence in reply on this point, I do accept this does not explicitly mean it was not also available in the UK. However, there is little evidence relating to the success or visibility of IMDbPro and any goods or services offered under the same in the UK prior to the relevant date.

66. Considering the information provided, it is my view that Ms Northcott's description of the opponent's services as an "... online resource of information..." appears to be most accurate. If the opponent has an enhanced level of distinctive character in relation to its earlier mark (notwithstanding that the evidence filed from prior to the relevant date and relating to the UK specifically is fairly limited), this is, in my view, in relation to the provision of a website including a searchable database providing online

information, content and reviews relating to (at least) actors, films, and television series, as well as possibly in relation to film and television schedule information. These are services that fall properly within class 41 and are not relied upon in these proceedings. These are not, in my view, the provision of software as a service, or any of the hosting or other services relied upon in class 42 relied upon here. I note and I have carefully considered Mr Carter's submission provided at the hearing that software as a service is inherent in the operation of the website (and the app, for which I have found no confirmed use in the UK), and I accept that software is undoubtedly used in the running of a website such as the opponent's. However, I do not accept that it is these services that are being offered to consumers by the opponent, and it is even more apparent that it is not software as a service or any of the services in class 42 that it would be known for by the UK consumer.

67. For the reasons above, I do not find the opponent to have an enhanced level of distinctive character for its mark in relation to the goods and services relied on upon in this instance.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

68. Prior to reaching a decision under section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 32 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctiveness of the common elements is key.¹⁵ I must keep

¹⁵ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the

in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the services are obtained will have a bearing on how likely the consumer is to be confused.

69. There are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.¹⁶

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

71. In this case, I found the marks to be visually similar to a medium degree and aurally similar to just above a medium degree. I found the marks to be conceptually neutral. I found the goods to be identical. I found the earlier mark to be inherently distinctive to a medium degree, but that this position has not been shown in evidence to have been enhanced through use in respect of the goods and services relied upon during these proceedings. I found consumers may include members of the general public or professionals, paying a medium degree of attention or higher, depending on the consumer. I found the goods and services would primarily be purchased visually, but that I cannot completely disregard the aural comparison. Having considered all these factors, it is my view the use of the 'D' in place of an 'I' at the beginning of the marks makes too much of an impact overall for the marks to be mistaken or misremembered for one another. I therefore find no likelihood of direct confusion between the marks.

likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

¹⁶ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

72. I therefore go on to consider whether there is a likelihood of indirect confusion. In *L.A. Sugar* (cited above) Mr Iain Purvis Q.C. (as he then was), as the Appointed Person set out three examples of when indirect confusion may occur as below:

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

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

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

(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).”

73. I note that the examples above were intended to be illustrative and are not exhaustive. I also keep in mind *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, in which Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

74. I do not consider this case to fall neatly within any of the categories of *L.A. Sugar*. However, I remind myself that these are not exhaustive. At the hearing, Mr Carter for the opponent submitted that indirect confusion fell most closely to category (c) of *L.A.*

Sugar based on the fact that that consumers would see the mark as a sub brand. Mr Carter made two arguments on this basis, one in case there are those consumers who might be considered to know and understand what some or all of the letters in the marks stand for (although Mr Carter disputed that this would be the case), and one argument in respect of those consumers who do not know what the marks stand for and see them instead as a string of letters. As it is my view that the consumer will not find a conceptual meaning to be portrayed by the letters in either the earlier mark or the contested mark, I will consider Mr Carter’s second argument only at this point.

75. Mr Carter submits that it is easy to see how a one letter substitution in a mark could be suggestive of a sub brand, when used in relation to identical goods, or where consumers see one mark in use on a website and the other on an application for example. His argument did not go far beyond this. I disagree with the opponent’s position on this point. I can see no logical basis for the consumer to assume that the use of an initialism beginning with the letter “D” and ending in “MDb” is likely to indicate a sub brand or brand extension of IMBD. There does not appear to be a proper basis for making this assumption. It is in my view, far more likely that *if* the consumer notices that the last three letters of the two marks are shared in this case, that this would be put down to coincidence, not to an economic connection between the goods, even where similar or identical goods are concerned. I do not, therefore, find a likelihood of indirect confusion between the marks.

76. The opposition based on section 5(2)(b) of the Act therefore fails in its entirety.

Section 5(3)

77. The relevant statutory provisions are as follows:

Section 5(3) states:

“(3) A trade mark which-

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 the repute of the earlier trade mark”.

78. As the earlier mark relied upon is a comparable mark, paragraph 10 of Schedule 2A, is also relevant, which reads:

Reputation of a comparable trade mark (EU)

10(1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

- (a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and
- (b) the United Kingdom include the European Union.

79. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case C-252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12P, *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 Saloman*, paragraph 29 and *Intel*, paragraph 63.

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

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

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) 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.

(h) 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.

(i) 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. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

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

80. An opposition based on section 5(3) of the Act can only be successful via the establishment of several individual elements. To be successful on this ground, the opponent must prove it holds a reputation for the earlier mark relied upon, and in respect of the goods or services relied upon, amongst a significant portion of the public. It must also be established that the marks are similar. If it is found both that the marks are similar and that the earlier mark holds a qualifying reputation it must then be shown that this reputation, combined with the similarity between the marks, will result in the relevant public establishing a link between the marks. A link may be found on the basis that the later mark brings the earlier mark to mind. Importantly, if all three of these elements have been established, it must then be shown that the link made by the public will result in, or will be likely to result in, one of the pleaded types of damage.

81. I remind myself at this stage of proceedings that whilst the opponent relied on two earlier marks, only one of these has been maintained following my assessment of proof of use. I therefore consider only the opponent's earlier word mark under this ground.

Reputation

82. The opponent must show it held a reputation for its mark in the relevant territory at the relevant date, that being the date the IR designated the UK, namely 21 February 2023. I have previously considered the evidence in these proceedings, a summary of which is set out in my assessment of proof of use, and further consideration of which was conducted under my assessment of enhanced distinctive character. I do not intend to summarise the evidence again at this stage, but I highlight that this is not particularly extensive, although I note the references to vast numbers of monthly "worldwide" visitors to the opponent's website. However, it is my view that the same issues that arose when considering the evidence in relation to proof of use and an enhanced distinctive character of the mark, also arise when considering the opponent's evidence in the context of any possible reputation. Firstly, I note the opponent has not provided me with any evidence that its mobile application is, or was prior to the relevant date, available to download in the UK,¹⁷ and if it was, to what extent this was engaged with by UK consumers. The evidence falls short of showing use of the mark in relation to the goods relied upon in class 9, and as such also falls significantly short of showing it held a reputation for these goods at the relevant date. Further, in respect of the services relied upon in class 42, for the same reasons as highlighted under my assessment of enhanced distinctiveness previously in this decision, I do not consider that the services listed in class 42 are those offered to the consumer, and it is even more apparent that they will not be those in respect of which the opponent may hold a reputation in the UK.

83. As I have not found the opponent to hold a reputation in the relevant territory in respect of any of its goods and services relied upon in these proceedings, the opposition based on section 5(3) of the Act must fail.

¹⁷ Or the EU prior to the end of the transition period of 31 December 2020.

Final remarks

84. The opposition has failed in its entirety, and subject to any successful appeal, the IR will be granted protection in the UK in respect of all of the goods applied for.

COSTS

85. The holder has been successful and is entitled to a contribution towards its costs. In the circumstances I award the holder the sum of £1850 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

| | |
|--|--------------|
| Considering the TM7 and preparing and filing the TM8 and counterstatement: | £350 |
| Considering the evidence and preparing and filing evidence: | £700 |
| Preparing for and attending a hearing: | £800 |
| Total | £1850 |

86. I therefore order IMDb.com, Inc to pay ZUMEDIA INC. the sum of £1850. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 16th day of July 2025

Rosie Le Breton
For the Registrar

Annex A

Full specification for registration no. 918002197 (class 9 & 42 relied upon)

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; Pre-recorded downloadable audio recordings featuring entertainment programming; pre-recorded video recordings featuring entertainment programming; pre-recorded downloadable audio and visual recordings featuring entertainment programming; pre-recorded audio and visual recordings in optical disc, DVD and CD format featuring entertainment programming; audiovisual works, data files, and electronic works in the nature of downloadable audiovisual files, all of the aforementioned downloadable via the internet or other computer or communications network featuring entertainment programming; Computer application software for mobile devices for use in providing users with access to searchable databases; software for wireless content delivery; downloadable software featuring an entertainment database featuring information, news, reviews and user comments about television shows, motion picture films, celebrities, actors, and the entertainment industry for use on computers and mobile devices; software for accessing information on the Internet or other computer or communications network; software for formatting and converting content, text, visual works, audiovisual works, data, files and electronic works into a format compatible with portable electronic devices and computers; software enabling content, text, visual works, audiovisual works, data, files and electronic works to be downloaded to and accessed on a computer or other portable consumer electronic device; apparatus for changing record player needles; cabinets for loudspeakers; cleaning apparatus for sound recording discs; computer keyboards; eyeglass cases; eyeglass chains; eyeglass cords; eyeglass frames; stands for photographic apparatus; Computer

application software for organizing, transmitting, manipulating, processing, streaming, playing and reviewing text, audio, video, images, and other multimedia content on digital electronic devices; computer application software that enables users to generate customized recommendations of videos, television programs, and motion pictures based on user preferences; computer application software for use in sharing, researching, commenting on, and rating videos, television programs, motion pictures, celebrities, and other information about the entertainment industry; computer application software for use with mobile, portable and handheld devices that allow users to purchase movie tickets for movies, to view movie trailers, videos, movie reviews, to view and manipulate information about movies, show times, theater locations, and other entertainment events, and to share the foregoing information among other users; computer application software for accessing, searching, browsing, displaying, reporting, reading, recommending, sharing, posting in social media, organizing, tracking, and streaming entertainment events and information and news content related to the entertainment industry; Computer software for streaming, broadcasting, transmitting, distributing, reproducing, organizing and sharing music, audio, video, games, audiovisual, multimedia content and other data via a global communications network; computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, viewing, storing and organizing text, data, images, audio and video files, and multimedia content; computer software to enable users to view or listen to audio, video, text and multimedia content; computer software for creating and providing user access to searchable databases of information and data; search engine software; computer software for facilitating payments and online transactions; computer software for use in disseminating advertising for others; computer software for use in sharing information about products, services, and deals; computer software for electronic storage of data; computer software for image and speech recognition; computer software for home automation; computer software for purchasing, accessing and viewing movies, TV shows, videos, music, and multimedia content; internet browser software; downloadable music files; downloadable audiovisual and multimedia content featuring fiction and non-fiction stories on a variety of topics provided via a video-on-demand service; downloadable motion pictures and television shows featuring fiction and non-fiction stories on a variety of topics, and audio and video recordings featuring fiction and non-fiction stories on a variety of topics; downloadable audio files,

multimedia files, text files, written documents, audio material, video material featuring fiction and non-fiction content on a variety of topics; Downloadable mobile applications to enable users access to music, audio, video, games, audiovisual, multimedia content and other data; digital media streaming devices; set-top boxes; portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks and electronic and mechanical parts and fittings thereof; computers, tablet computers, audio and video players, electronic personal organizers, personal digital assistants, and global positioning system devices and electronic and mechanical parts and fittings thereof; computer peripheral devices; computer components; monitors, displays, wires, cables, modems, printers, disk drives, adapters, adapter cards, cable connectors, plug-in connectors, electrical power connectors, docking stations, and drivers; battery chargers; battery packs; memory cards and memory card readers; headphones and earphones; speakers, microphones, and headsets; cases, covers, and stands for portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks, and for computers; remote controls for portable and handheld electronic devices and computers; magnetically encoded gift cards; computer software for the collection, organizing, modifying, book marking, transmission, storage, and sharing of data and information; software for text, image and sound transmission and display; computer software for online shopping; computer hardware; computer chips; batteries; handheld devices for controlling televisions, speakers, amplifiers, stereo systems, and entertainment systems; computer software for information management; database synchronization software; computer programs for accessing, browsing, and searching online databases; software for the synchronization of data between a remote station or device and a fixed or remote station or device; software for telecommunication and communication via local or global communications networks; software for access to communications networks including the Internet; software for analyzing and recovering data; software for computer system backup; radios, radio transmitters, and receivers; media players, audio speakers; audio components and accessories; telephones; mobile phones; audio amplifiers and receivers; sound effect apparatus and instruments for use with musical instruments; electronic tone generators for use

with musical instruments; electronic components for use with musical instruments; audio speakers, telephone apparatus, telecommunication devices, and computers for use in motor vehicles; voice recording and voice recognition apparatus; network communication apparatus; electronic communication equipment and instruments; telecommunications apparatus and instruments; cameras; camcorders; cinematographic cameras; cases especially made for photographic apparatus and instruments; centering apparatus for photographic transparencies; close-up lenses; projection screens; projection apparatus; televisions; television receivers; television monitors; stereo systems, home theater systems, and home entertainment systems; application development software; computer software used in developing other software applications; computer operating system software; computer software for configuring, operating and controlling mobile devices, wearable devices, mobile phones, computers, and computer peripherals, and audio and video players; computer software for creating searchable databases of information and data for peer-to-peer social networking databases; computer game software; downloadable electronic books, magazines, periodicals, newsletters, newspapers, journals and other publications; information technology and audiovisual equipment; downloadable ring tones for mobile phones; animated cartoons; intercommunication apparatus; smartphones; portable telephones; telephone apparatus; telephone receivers; telephone transmitters; video telephones; phonograph records, sound recording discs; sound recording strips; sound recording carriers; video cassettes; video game cartridges; videotapes; computer memory devices; microprocessors; modems; 3D spectacles; straps, armbands, lanyards and clips for portable and handheld digital electronic devices for recording organizing, transmitting, manipulating, and reviewing text, data, audio, image and video files; bags and cases adapted or shaped to contain digital music and/or video players, hand held computers, personal digital assistants, electronic organizers and electronic notepads; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, the aforesaid goods.

Class 35: Providing an on-line commercial information directory; dissemination of advertising for others via an on-line electronic communications network; providing a searchable on-line advertising guide featuring the goods and services of others; database management services; on-line ordering services featuring movies, motion

pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos and DVDs, and other audiovisual works; Providing online business directory information, namely, providing information regarding the location/addresses of movie theaters; computerized on-line searching and ordering service featuring movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, and other audiovisual works in the form of videocassettes, compact disks, DVDs, digital downloads and direct digital transmission; association services, namely providing opportunities for exchange of information and conversation regarding a wide variety of topics by means of product reviews; auction services; auctioneering; automated and computerized retail and wholesale services in connection with the sale of apparatus for recording, transmission or reproduction of sound or images, recording discs, DVDs, data processing equipment, computers, audio recordings, video recordings, audio visual recordings, computer software, computer game software, computer operating system software, application software, application development software, internet browser software, search engine software, database synchronization software, computer programs, animated cartoons, downloadable music files, downloadable motion pictures and television shows, downloadable electronic books, magazines, periodicals, newsletters, newspapers, journals and other publications, downloadable ring tones for mobile phones, information technology and audiovisual equipment, digital media streaming devices, set-top boxes, tablet computers, audio and video players, electronic personal organizers, personal digital assistants, global positioning system devices, computer hardware, computer chips, computer peripheral devices, computer components, computer keyboards, monitors, displays, wires, cables, modems, printers, adapters, docking stations, batteries, battery chargers, battery packs, memory cards, memory card readers, headphones, earphones, speakers, microphones, headsets, remote controls, magnetically encoded gift cards, radios, radio transmitters, radio receivers, media players, audio speakers, audio components and accessories, telephones, mobile phones, audio amplifiers and receivers, voice recording and voice recognition apparatus, network communication apparatus, electronic communication equipment and instruments, telecommunications apparatus and instruments, cameras, camcorders, cinematographic cameras, projection screens, projection apparatus, televisions, television receivers, television monitors, stereo systems, home theater systems, home entertainment systems,

intercommunication apparatus, smartphones, telephone apparatus, video game cartridges, videotapes, 3D spectacles; automated and computerized trading services in connection with movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos and DVDs, and other audiovisual works; directory services to help locate people, places, organizations, phone numbers, network home pages, and electronic mail addresses; Providing an online searchable database featuring employment and career opportunities and business, employment and professional information; providing an online searchable database featuring movie, motion picture and television talent casting employment opportunities and talent casting employment information; providing online computer databases and online searchable databases in the fields of business and professional networking; providing online career networking services and information in the fields of employment, recruitment, job resources, and job listings; providing networking opportunities for individuals seeking employment; on-line professional networking opportunities; Online retail store services featuring streamed and downloadable pre-recorded audio, video and audiovisual content; compiling of information into computer databases; comparison shopping services namely, promoting the goods and services of others; computerized database and file management; creating indexes of information, sites and other resources available on global computer networks and other electronic and communications networks for others; order fulfillment services namely, services relating to order processing; promoting the goods and services of others by providing, searching, browsing and retrieving information, sites, and other resources available on global computer networks and other electronic and communications networks for others.

Class 38: Telecommunications; Electronic communication services, namely, transmission of information by electronic communications networks; electronic transmission of data, audio, video, and audio/video files; wireless broadband communications services; broadcasting services; video communication services, namely broadcasting, streaming, and transmitting videos, images, music audio, multimedia over the Internet or other communications network; data streaming; consultancy and advisory services relating to telecommunications services; computer services, namely, providing multiple-user access to computer networks for the electronic transmission of various data, communications, documents and personal

and professional information; providing access to an interactive computer database featuring automatically updating address book, personal planner, date reminder, travel planner, and alumni and professional group links, via a global computer network; providing a web site that gives computer users the ability to transmit, cache, receive, download, stream, broadcast, display, format, transfer and share content, text, visual works, audio works, audiovisual works, literary works, photos, videos, data, files, documents, images and other electronic works; providing an on-line link to current events and reference material relating to movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs and other audiovisual works; SMS messaging; transmission of podcasts; Video-on-demand transmission; Internet protocol television (IPTV) transmission services; electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; electronic transmission and streaming of digital media content for others via global and local computer networks; telecommunication services, namely, transmission and streaming of voice, data, images, films, television programs, audio and audiovisual programs and other digital media content and information by means of telecommunications networks, wireless communication networks, and the internet; streaming of audio, video and audiovisual material on the Internet, communications networks and wireless telecommunications networks; streaming of data; streaming of music, films, movies, TV shows and games on the Internet; audio and video broadcasting services; broadcasting of cinematographic films and audiovisual programs; subscription-based audio and video broadcasting services over the Internet; broadcasting services and provision of telecommunication access to films, television programs, audio and audiovisual programs and other digital media content and information, provided via a video-on-demand service; Internet broadcasting services; Internet radio broadcasting services; telecommunication services, namely, transmission of webcasts; transmission of digital files; transmission of digital content by computer networks, the Internet, DSL, cable networks, digital download, digital streaming, video-on-demand, near-video-on-demand, TV, free-to-air TV, pay-per-view TV, satellite, cable, telephone or mobile telephone; electronic transmission of digital photo files among Internet users; providing access to online directories, databases, websites, blogs, music, video programs, and reference materials; transmission of news; delivery of messages by electronic transmission; electronic transmission of mail and messages; podcasting services;

providing on-line chat rooms for social networking; providing an on-line forum for transmission of messages among computer users and the transmission of photos, videos, text, data, images and sound; telecommunications services, namely, providing online electronic bulletin boards for the transmission of messages among computer users concerning entertainment; providing telecommunication connectivity services for the transfer of images, messages, audio, visual, audiovisual and multimedia works among mobile phones, smartphones, portable electronic devices, portable digital devices, tablets, or computers; transmission of television and movie guides; communication between computers; provision of access time to multimedia materials on the Internet; provision of telecommunications connections to computer databases; transmission of data by audio-visual apparatus controlled by data processing apparatus or computers; telecommunications routing and junction services; rental of access time to global computer networks; transmission of greeting cards online; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; file sharing services, namely, providing a website featuring technology enabling users to upload and download electronic files.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; Entertainment services in the nature of a program, featuring reviews, news, and information in the field of motion picture films, television programs, celebrities, entertainment industry and entertainment-related topics, namely, an ongoing program accessible by television, cable, the Internet and wireless communications networks; providing an online non-downloadable program featuring reviews, news, and information in the field of motion picture films, television programs, celebrities, entertainment industry and entertainment-related topics; providing information via a global computer network in the field of entertainment and entertainment-related topics; providing information on motion picture films, television programs, celebrities, entertainment industry and entertainment-related topics via social networks; television schedule information services; providing an online computer database featuring reviews, news, information and content in the field motion picture films, television programs, celebrities, entertainment industry and entertainment-related topics; movie schedule information services; entertainment in the nature of conducting contests, competitions and online computer games in the field of entertainment; entertainment services, namely, publishing journals and blogs featuring information and opinions in

the field of entertainment; providing on-line newsletters featuring reviews, news and information in the field of motion picture films, television programs, celebrities, entertainment industry and entertainment-related topics; providing a website with information in the fields of motion pictures, television shows, celebrities, entertainment industry and entertainment-related topics; entertainment services in the nature of non-downloadable videos featuring information in the fields of motion pictures, television shows, celebrities, entertainment industry and entertainment-related topics; providing information in the field of movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos and dvds, other audiovisual works, celebrities and the entertainment industry; providing a website that displays movie rankings; providing a website featuring a ranking system measuring popularity of celebrities and identifying trends in public perception and awareness of movie personalities; providing a website featuring entertainment trivia; providing a web site featuring movie, motion picture and television casting and production information; arranging for ticket reservations for film screenings, festival events, shows and other entertainment events; online ticket agency services for film screenings, festival events, shows and other entertainment events; booking agency services for cinema tickets; booking of entertainment, booking seats for shows, booking agency services for cinemas, film festivals and events; consulting services for film producers in the field of representing and acquiring feature films, movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs and other audiovisual works; film consultancy; consulting services for theatrical films of all genres and lengths regarding distribution, packaging, international co-production partners, festival strategy; film exhibition services; hosting and organizing awards relating to films; production of podcasts and vodcasts; providing on-line computer games and on-line interactive stories; publication of film reviews, reviews of entertainment products including television programmes, radio programmes, podcasts, vodcasts and computer games; quizzes and gaming services; rental of electronic publications including books; interactive educational services in the nature of computer-based and computer-assisted instruction on games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion, and multimedia presentations accessible via the internet or other computer on communications networks; providing a website featuring non-downloadable audio, video and audiovisual content in the nature of recordings

featuring movies, TV shows, videos and music; entertainment services, namely, providing temporary use of non-downloadable online video; provision of non-downloadable videos featuring programs on a wide variety of entertainment topics via a video-on-demand service; provision of non-downloadable films, movies and television shows via a video-on-demand service; distribution and rental of entertainment content, namely computerized on-line searching and ordering service featuring movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, and other audiovisual works in the form of digital downloads and direct digital transmission viewable over computer networks and global communication networks; film and video rental services; rental of audio-visual works, specifically, motion pictures, television programming, videos, music videos, and music; film, movie, TV show and video production and distribution; creating and developing concepts for movies and television programs; audio and video recording services; providing a searchable database featuring audio, video and audiovisual content through the Internet, telecommunications networks and wireless telecommunications networks in the field of movies, TV shows, videos and music; providing online radio programming; digital audio, video and multimedia publishing services; entertainment services, namely, providing non-downloadable prerecorded music and audio programs featuring fiction and non-fiction stories on a variety of topics, and information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment services, namely, live visual and audio performances, musical, variety, news, dramatic and comedy shows; entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes; entertainment services, namely, providing a website featuring the ratings and reviews of television, movies, videos, music, screenplays, scripts, books and video game content; entertainment information; arranging of contests; sweepstake services; sweepstake services provided over a global computer network hosting online sweepstakes and contests for others; publishing of books, magazines, periodicals, literary works, visual works, audio works, and audiovisual works; presenting live musical concerts and performances; music production services; music publishing services; entertainment services, namely, profiling of musicians, artists and bands by providing non-downloadable video clips of musical performances over a global computer network; providing non-downloadable interactive resource for searching, selecting, managing, and viewing audiovisual

content in the nature of recordings featuring movies, TV shows, videos and music; providing online newsletters in the field of television, movies, and videos via e-mail; translation and interpretation services; providing online electronic publications, not downloadable; publication of texts, other than publicity texts; writing of texts, other than publicity texts; rental of audio equipment; movie theatre presentations; arranging and conducting of concerts; entertainment, amusements; game services provided on-line from a computer network; games equipment rental; providing karaoke services; rental of movie projectors and accessories; movie studios; music composition services; organization of shows [impresario services]; radio entertainment; rental of radio and television sets; production of radio and television programmes; rental of sound recordings; subtitling; television entertainment; theatre productions; organization of competitions [education or entertainment]; organization of exhibitions for cultural or educational purposes; recording studio services; videotape editing; videotaping; education information; religious education; teaching, educational services, instruction services; provision of email newsletters and digital magazines.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; Non-downloadable software for streaming audio and video content on mobile phones, tablets, personal computers, and televisions; cloud storage services, namely, providing electronic data storage accessible via the internet of electronic media, namely, audio and video content; providing use of on-line non-downloadable software for analyzing media data; hosting databases and on-line bulletin and message boards featuring general news and information regarding movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs, and other audiovisual works; computer programming; database aggregation, integration and management services; providing an interactive computer database featuring automatically updating address book, personal planner, date reminder, travel planner, and alumni and professional group links, via a global computer network; providing on-line interactive computer software for managing, viewing and editing information such as event scheduling, address books, and other personal contact information; Non-downloadable computer software for organizing, transmitting, manipulating, processing, streaming, playing and reviewing text, audio, video, images, and other

multimedia content on digital electronic device, computers, and televisions; providing use of non-downloadable computer software for generating customized recommendations of videos, television programs, and motion pictures based on user preferences; providing use of non-downloadable computer software for use in sharing, researching, commenting on, and rating videos, television programs, motion pictures, celebrities, and other information about the entertainment industry; providing use of non-downloadable computer software for use with mobile, portable and handheld devices that allow users to purchase movie tickets for movies, to view movie trailers, videos, movie reviews, to view and manipulate information about movies, show times, theater locations, and other entertainment events, and to share the foregoing information among other users; providing use of non-downloadable computer software for accessing, searching, browsing, displaying, reporting, reading, recommending, sharing, posting in social media, organizing, tracking, and streaming entertainment events and information and news content related to the entertainment industry; providing search engines for obtaining data about the entertainment industry via electronic communications networks; Computer services, namely, creating an on-line community for registered users to participate in discussions, share information and resources, and engage in social, business and community networking; providing a website featuring temporary use of non-downloadable software enabling users to search, locate and communicate with others via electronic communications networks to network and track online references to job opportunities and business topics; computer services in the nature of customized web pages featuring user-defined information, personal profiles, audio and images; application service provider (ASP) featuring software for use in database management; Application service provider (ASP) featuring application programming interface (API) software including such software for the streaming, storage, and sharing of video games, content, data and information; application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web sites, in the fields of personal productivity, wireless communication, mobile; cloud computing featuring software for use in database management; computer hardware, software, application, and network consulting services; computer services, namely, an online interactive electronic bulletin board in the field of entertainment and the entertainment industry; computer services, namely hosting an online database featuring a wide range of general interest information via the internet; computer services, namely, cloud hosting provider

services; computer services, namely, hosting on-line web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; computer services, namely, creating computer network-based indexes of information, websites and resources; computer software development in the field of mobile applications; creating electronically stored web pages for on-line services and the Internet; design and development of computer game software, telephones, mobile phones, videophones, cameras, monitors for television receiver, television receivers [TV sets] and television transmitters, remote controllers for television receiver [TV set], electronic notepads, magnetic data carriers, radio receivers, radio transmitters, video cameras and set-top boxes; design and development of camera systems; design and development of data storage systems; designing, managing and monitoring online forums for discussion; developing and maintaining character recognition, electronic mail and messaging software; developing and maintaining computer application software and embedded computer application software for handheld electronic devices in the nature of mobile phones, smart phones and tablet devices; developing computer programs for accessing, browsing and searching online databases; electronic data storage; electronic storage of audio files; electronic storage of images; electronic storage of videos; hosting a website for the electronic storage of data, audio files, images, and videos; hosting of digital content on global computer networks, wireless networks, and electronic communications networks; hosting of third party content, photos, videos, text, data, images, web sites and other electronic works; hosting an online service for analyzing personal preferences and generating recommendations; hosting a website that gives users the ability to review various print, photographic, graphic image, and audio and video content and utilize a custom template to provide input, likes, dislikes, edits, changes, modifications, opinions, suggestions, and comments and engage in social, business and community networking; technical support, namely, troubleshooting of computer hardware and software problems and mobile computer and mobile communications device hardware and software problems; providing temporary use of on-line non-downloadable software and applications for accessing streaming audio and video files, games, social networks, text files and multimedia files; providing temporary use of non-downloadable computer software for wireless content delivery; providing temporary use of non-downloadable computer software for streaming, broadcasting, transmitting, distributing, reproducing, organizing and sharing music, audio, video, games and other

data; providing temporary use of non-downloadable computer software for purchasing, accessing and viewing movies, TV shows, videos, music, and multimedia content; hosting of digital content on the Internet; providing temporary use of non-downloadable computer software for accessing online information; legal services.