

O/0757/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. UK00003765525 IN THE
NAME OF REALITY PLUS UK LIMITED FOR THE TRADE MARKS:**

REALITY PLUS

IN CLASSES 9, 28, 41 & 42

**AND AN OPPOSITION THERETO UNDER NO. 435350 BY ZERODENSITY
YAZILIM ANONIM SIRKETI**

AND

**IN THE MATTER OF INTERNATIONAL REGISTRATION DESIGNATING
THE UK UNDER NO. WO0000001642916 AND UK REGISTRATIONS UNDER
NOS. UK00801500535, UK00801524745, UK00801499212, UK00003618404 &
UK00003701390 IN THE NAME OF ZERODENSITY YAZILIM ANONIM SIRKETI**

**AND APPLICATIONS FOR INVALIDITY THERETO UNDER NOS. 505951, 505952,
505953, 506083, 506084 & 506085 BY REALITY PLUS UK LIMITED**

BACKGROUND AND PLEADINGS

1. This decision involves cross-proceedings between Reality Plus UK Limited (“Reality”) and Zerodensity Yazilim Anonim Sirketi (“Zero”). I will summarise the relevant proceedings below.

Zero’s opposition

2. On 14 March 2022, Reality applied to register the trade mark ‘REALITY PLUS’ in the UK under number 3765525 (“the opposed mark”).¹ Reality’s application was published for opposition purposes on 29 April 2022, and registration is sought for the goods and services listed in Annex 1 of this decision.²
3. The application was partially opposed by Zero on 29 July 2022. The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is reliant upon the following trade marks:³

Reality Editor

UK registration no. 801500535⁴

Filing date 23 May 2019; registration date 19 June 2020

Priority date: 30 April 2019 (Turkey)

(“Zero’s first mark”);

¹ It is noted that the mark was initially applied for by Reality Clash Limited but the ownership was subsequently transferred to Reality. This was confirmed to the Tribunal via a TM21A filed on 27 March 2023

² It is noted that an amendment to this specification was requested on 3 June 2024. This was only partially implemented and it was confirmed in correspondence to Reality that it was to be partially rejected on 28 June 2024. The Tribunal requested that Reality resubmit the amendment if it wished to do so but no further amendment was requested.

³ An additional International Registration designating the UK (“IR”) (under number WO0000001649303) was relied upon for the purposes of the opposition but the designation of the same in the UK was opposed by a third-party under proceedings 435854. Zero failed to defend these proceedings meaning that protection in the UK for this IR was refused. As such, it is not a valid earlier mark for the purposes of these proceedings.

⁴ Zero’s first, third and fourth marks are comparable marks based on earlier IR designating the EU. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing IRs designating the EU. These comparable marks enjoy the same filing and registration dates as their European counterparts.

RealityMonitor

International Registration designating the UK under no. WO0000001642916

International registration date: 24 November 2021

Date designation sought in UK: 24 November 2021

Date designation in UK conferred: 26 April 2022

("Zero's second mark");

Reality Control

UK registration no. 801524745

Filing date 15 October 2019; registration date 1 September 2020

Priority date: 14 June 2019 (Turkey)

("Zero's third mark");

Reality Keyer

UK registration no. 801499212

Filing date 23 May 2019; registration date 22 June 2020

Priority date: 20 March 2019 (Turkey)

("Zero's fourth mark");

Reality Engine

UK registration no. 3701390

Filing date 27 September 2021; registration date 25 February 2022

Priority dates: 1 April 2020 (Turkey) and 21 September 2020 (EU)

("Zero's fifth mark"); and

RealityHUB

UK registration no. 3618404

Filing date 3 April 2020;⁵ registration date 13 August 2021

⁵ By virtue of being a trade mark applied for in accordance with Article 59 of the Withdrawal Agreement between the UK and the European Union which allowed for owners of pending EUTMs as at 31 December 2020 ("IP Completion Day") to file a corresponding mark in the EU within nine months of IP Completion Day and, in doing so, they retain the priority date of the earlier EUTM. Therefore, Zero's sixth mark is deemed to have the same filing date as the corresponding EUTM which is that listed here.

Priority dates: 3 October 2019 (Turkey) and 3 April 2020 (EU)
("Zero's sixth mark").

4. The opposition is aimed only at those goods and services in classes 9, 41 and 42. In respect of the goods and services upon which Zero relies on, these are set out at Annex 2 of this decision.
5. Zero's claim is that the marks at issue are all visually and aurally similar and conceptually identical, and that the goods and services at issue are identical or highly similar. As such, Zero's position is that there exists a likelihood of confusion between the marks on the basis that it is inevitable that the relevant public will conceive that the goods and services offered by both parties come from the same origin. In addition, Zero's statement of grounds makes several references to the claim that its marks constitute a family of marks.
6. Reality filed a counterstatement wherein it denied the claims against it whilst also making allegations that Zero's own marks are invalid due to the existence of its own earlier mark.

Reality's invalidation applications

7. Zero is the proprietor of six earlier marks, the details of which are all set out at paragraph 3 above, with the goods and services for which those marks are registered being set out in Annex 2 of this decision.
8. On 29 March 2023, Zero's first through third marks were subject to invalidation proceedings brought by Reality. On 4 May 2023, Reality brought further invalidation proceedings against Zero's fourth through sixth marks. The invalidation proceedings are all brought under section 47 of the Act and are reliant upon sections 5(2)(b), 5(3) and 5(4)(a) of the Act. The section 5(2)(b) and 5(3) grounds are reliant upon the following mark:



UK registration no. 917755547

Filing date 31 January 2018; registration date 22 May 2018

Registered for the following goods and services:

Class 9: Video game software; Video games software; Video game computer programs; Computer video game software; Computer games; Computer game software; Computer game programmes; Downloadable computer games; Downloadable computer game programs; Computer games software; Computer games programs; Computer software; Interactive computer software; Interactive video game programs; Video game programs; Downloadable video game programs.

Class 28: Computer game apparatus; Computer games apparatus; Video game apparatus.

Class 41: Interactive entertainment; Interactive entertainment services; Entertainment services.

("Reality's mark").

9. Under the section 5(2)(b) ground, Reality relies on its class 9 goods and class 41 services only. It argues that its own mark is similar to all of Zero's marks and that the goods and services are identical, overlapping and/or similar. As such, Reality claims that there exists a likelihood of confusion in respect of all of Zero's marks.

10. Under the section 5(3) ground, Reality claims that it enjoys a reputation in all of its goods and services and that use of Zero's marks would create a link between them and Reality's mark in the mind of the public. Such a link would result in an unfair advantage in favour of Zero and a detriment to the distinctive character and/or reputation of Reality's mark.

11. Lastly, under the section 5(4)(a) ground, Reality claims to benefit from a protectable goodwill owing to the use of its sign 'REALITY CLASH' throughout the UK since January 2017 in respect of the following:

“Computer and video games and their production, design, development and publication, and in relation to NFTs, web3 applications, and a web3 platform which includes NFT minting and creation.”

12. Under this ground, Reality claims that use of Zero's marks would likely cause a substantial part of the public to believe that the goods and services at issue are those of Reality or that they are authorised by, or connected to, Reality. It is claimed that this constitutes a deception which would, in turn, cause damage to Reality's goodwill.

13. Zero filed counterstatements in respect of the invalidity actions, denying the claims made against it.

14. Upon the filing of Zero's counterstatements, the Tribunal consolidated these proceedings in accordance with the power granted to the Registrar under Rule 62(1)(g) of the Trade Marks Rules 2008. This was communicated to the parties via written correspondence on 9 August 2023.

15. Zero is represented by RightPro IP & Legal Consultancy Limited and Reality is represented by Lee & Thompson LLP. Only Zero filed evidence in these proceedings. Alongside its evidence, Zero also filed written submissions. It is noted that instead of filing evidence, Reality elected to file written submissions. No hearing was requested and neither party filed any submissions in lieu of the same. This decision is taken following a careful perusal of the papers.

16. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU

Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

EVIDENCE

17. Zero's evidence came in the form of two witness statements, both in the name of Tarik Aksoy. Mr Aksoy's stated role within Zero is that he is 'Finance and Operations', a position he states to have held since 16 May 2022. His first statement is dated 30 March 2023 and is accompanied by three exhibits, being those labelled 1 to 3. His first statement goes over the business activities of Zero. As for the second statement, this is labelled as a supplementary witness statement and is dated 10 October 2023. It is accompanied by four exhibits, being Exhibits A to D, and was adduced to provide further information regarding its business activities.

18. I will refer to points from the evidence (and the submissions, for that matter) where necessary.

PRELIMINARY ISSUES

Section 5(3) and 5(4)(a) grounds in the invalidation applications

19. As set out above, Reality sought to rely on section 5(3) and 5(4)(a) of the Act for each of the invalidations brought. Under such grounds, it is required that evidence of use be provided in order to support a claim that the marks/signs relied upon enjoy a reputation or goodwill. While Reality did file submissions, it did not file any evidence. On this point, I refer to the section 20(2) of the Trade Marks Rules 2008, which state that:

“(2) Where—

(a) the opposition is based on an earlier trade mark of a kind falling within section 6(1)(c); or

(b) the opposition or part of it is based on grounds other than those set out in section 5(1) or (2); or

(c) the truth of a matter set out in the statement of use is either denied or not admitted by the applicant,

the person opposing the registration (“the opposer”) shall file evidence supporting the opposition.

(3) Where the opposer files no evidence under paragraph (2), the opposer shall be deemed to have withdrawn the opposition to the registration to the extent that it is based on—

(a) the matters in paragraph (2)(a) or (b); or

(b) an earlier trade mark which has been registered and which is the subject of the statement of use referred to in paragraph (2)(c).”

20. Given that Reality failed to file evidence, I find that in accordance with the above Rule the invalidations reliant upon sections 5(3) and 5(4)(a) of the Act are deemed to have been withdrawn. Therefore, the invalidations can only proceed in respect of the section 5(2)(b) ground.

My approach

21. All of Zero’s relied upon marks in the opposition are subject to separate invalidation proceedings. If it transpires that Zero’s marks are declared invalid, then they will be deemed as if they had never been filed in the first place. The consequence of this is that Zero’s marks would no longer constitute earlier marks for the purposes of the opposition. This is not uncommon in proceedings before the Tribunal when it comes to consolidated cross-opposition and invalidation proceedings. Ordinarily,

the approach for such cases is to consider the invalidations first on the basis that if they all succeed in full, any opposition reliant upon those marks will fall away. Further, if they are only partially successful, then the scope of the opposition may be reduced. Alternatively, if they fail, then the opposition will proceed in full. As a result, the actual scope of the opposition will be determined by the invalidations.

22. In the present case, however, it is noted that Reality submits the following:

“9. The Trade Mark Applicant denies that there is likelihood of confusion between on the part of the public and submits that the Opposition section 5(2)(b) of the Act should be refused in its entirety.

Submissions relating to the invalidity proceedings filed by the Invalidity Applicant

10. In the alternative, should the UKIPO disagree with the Trade Mark Applicant's submissions in relation to the Opposition and considers the marks under comparison confusingly similar, the Invalidity Applicant submits the following.

[...]

14. The Trade Mark Applicant/ Invalidity Applicant submits that if the Opponent's/ Proprietor's arguments relating to similarity of marks and similarity of goods and services are accepted by the UKIPO and the UKIPO finds a likelihood of confusion between the marks under comparison within the opposition proceedings, then it follows that the UKIPO should consider the mark subject to Invalidity Applicant's Earlier Registration, namely REALITY CLASH to be similar to the Opponent's Trade Mark Registrations outlined at subparagraphs 1.a to 1.f, which would result in the same being invalidated.”

23. To me, these submissions appear to suggest that I consider the opposition first and if successful, I only then proceed to consider the invalidations. However, if the

opposition fails, Reality does not consider it necessary to assess the invalidations. In theory, this approach may make sense but, in practice, I do not consider it to be a practical approach. I say this because if, hypothetically, I was to conduct a full assessment of an opposition and determine that it succeeded in full, I would then need to consider the invalidation. If said invalidation was, for example, only partially successful and rendered some goods or services invalid and said goods or services formed the basis of the opposition, then I would be required to go back through the opposition once more to unpick the findings made the first time around. Additionally, it may require an entire reconsideration of the opposition. Put simply, this is not an appropriate approach to take as it would result in an overly complex and convoluted decision with potentially large sections of it being rendered entirely irrelevant. Such an approach would not, therefore, be in line with the overriding objective. Alternatively, I consider that if I were to proceed with the opposition first, it would act as a pre-emptive indicator that I was doing so because I did not consider there to be confusion before going through any of the substantive assessments.

24. Further, it is noted that the invalidations have not been formally withdrawn and, regardless of the comments of Reality, they still require determination within this substantive decision.

25. As a result of the above, my approach to this decision will be in line with the ordinary approach I have discussed at paragraph 21 above, namely, to begin with the invalidations before proceeding to consider the opposition, if necessary. I will, if appropriate, discuss this point further at the conclusion of the invalidations.

DECISION

THE APPLICATIONS FOR INVALIDITY

26. Sections 5(2)(b), 5(3) and 5(4)(a) of the Act have application in invalidation proceedings by virtue of section 47(2) of the Act, which states as follows:

“47. –

[...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) [...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

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

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) 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.

(2D)-(2DA) [Repealed]

(2E) 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.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Sections 5(2)(b): legislation and case law

27. Section 5(2)(b) of the Act reads as follows:

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

(a) [...]

(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 or association with the earlier trade mark.”

28. Section 5A of the Act states as follows:

“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.”

29. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

[...]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

30. Given its filing date, Reality’s mark qualifies as an earlier trade mark in accordance with the above provisions. As it did not complete its registration process more than five years prior to (1) the filing date or priority dates of Zero’s marks and (2) the filing date of the applications in issue, the use provisions set out in section 47(2B) of the Act do not apply. The consequence of this is that Reality may rely on all of the goods and services identified in its invalidation applications.

31. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

(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

32. Zero's goods and services are set out at Annex 2 of this decision whereas Reality's goods and services are set out at paragraph 8 above.

33. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

34. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

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

whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

35. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

36. The basis for Reality’s claim as to the goods and services at issue was set out in very general terms in its applications for invalidity. This is merely that the goods and services at issue are identical, overlapping and/or similar. While subsequent submissions have been filed, these do not offer any further substance to the goods and services comparison. As for Zero, I note that in its counterstatements it submits that Reality’s goods and services relate to video games and entertainment, which is distinct from its own goods and services. Further, Zero argues that Reality has failed to indicate how the goods and services are similar. Lastly, Zero does state that the goods and services could be considered dissimilar. It is noted that Zero did file submissions but these do not cover the goods and services comparison in respect of the invalidation applications.

37. In light of the above, it is clear that Reality has failed to provide any substantive submissions as to why it considers the goods and services at issue to be similar. This is an issue in the present case because Reality has attacked six different specifications which include, for the most part, goods and services of a complex technical nature. Without any guidance on how these goods and services can be said to be similar to Reality’s own range of video game and entertainment services, and given the comments of Mr Iain Purvis K.C., sitting as the Appointed Person, at paragraphs 28 and 31(v) in *SmartX TM* (BL O/0911/24), I consider that it would be

unfair for me to go through all of the varying terms at issue in order to assess each and every combination of goods and services. Instead, in the circumstances, I consider that a reasonable approach would be for me to identify what I reasonably consider to be the closest terms and carry out the comparison on that basis.⁶ In doing so, I will remain mindful of procedural unfairness.

38. As above, there are six different specifications to consider. It is noted that the class 9 goods in Zero's first, third and fourth marks are very highly similar. I will, therefore, consider the class 9 goods under those marks together, referencing any slight differences where necessary. Further, for reasons that will become obvious in my comparison below, I consider it necessary to point out that I will take the approach of grouping a wide range of Zero's terms together.⁷

Class 9 goods of Zero's first, third and fourth marks

CD and DVD players.

39. It is my understanding that a computer game can be played from a CD or a DVD. As such, I do not consider that the above term simply covers players for music or movies/TV shows. While the above term is in a different class when compared to Reality's "computer game apparatus", I do consider that there is a degree of similarity between them. I say this because, as far as I understand it, a computer game can be played from a CD or a DVD. As such, the above term is sufficiently broad enough to cover a device that allows the user to play a game via a CD or DVD. The differing classes of these goods means that I do not consider them to be identical. However, they do overlap in nature, method of use, purpose, trade channels (via general electronic stores, for example) and user. As such, they are highly similar.

⁶ On this point, I also refer to the case of *MontyPay* (BL O/0924/24)

⁷ Being an approach I am entitled to take, as per *Separode Trade Mark* (BL O/399/10)

Computers, desktop computers, tablet computers.

40. All of the above goods can be used to play computer games. Therefore, following the same logic discussed in the preceding paragraph, I find that these goods are similar to a high degree with Reality's "computer game apparatus".

Computer peripheral devices.

41. The above term can cover goods such as keyboards and mice, including those specifically for gaming. Such goods, as far as I am aware, can be interchangeably used with computer game consoles. Further, I consider that Reality's term "computer game apparatus" can suitably cover mice and keyboards, albeit specifically suited for gaming. Given that both terms can cover mice and keyboards, I find that there is an overlap in nature and method of use. Further, there is some degree of overlap in their end purpose as they will be used in order to allow the user to play a computer game. In terms of the trade channels and user, I consider that these will overlap too on the basis that the same undertakings will produce, for example, consoles and computer periphery devices (such as keyboards) and such goods will be sought by the same user. In addition, the goods are complementary in the sense that a periphery device such as a mouse or keyboard can be important to playing computer games, even on a computer game console. This relationship is such that consumers are likely to believe that the goods originate from a single undertaking.⁸ Taking all of this into account, I find that these goods are similar to a high degree.

Downloadable and recordable electronic publications;⁹ electronic publications and electronic publications recorded on computer media.¹⁰

42. Given that the above terms are not limited in any way, they can cover publications relating to video games. This can include downloadable tutorials or 'walk throughs'

⁸ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

⁹ In the first and fourth marks' specifications.

¹⁰ In the third mark's specification.

on how to complete certain levels of video games. As such, I will compare both terms to Reality's "video game software". In the context of the publications explained above, I consider it likely that an undertaking that produces video games will also produce and sell tutorials or guides to the same resulting in an overlap in trade channels. Further, the user of these goods will overlap. While the goods differ in nature, method of use and purpose, and are also not complementary or competitive with one another, the aforementioned overlaps are sufficient to warrant a finding that there exists a low degree of similarity between them.

Cell phones.

43. While the above term covers goods primarily used for communication, it is common in the trade for cell phones to also be used as a portable device to play video games. As such, I consider it appropriate to compare this term with "video game apparatus" in Reality's specification. Reality's term covers video game consoles but there is nothing preventing such goods from being portable consoles. It is in this context that I make the present comparison. Generally speaking, these goods are portable electronic devices so there can be said to be some overlap in nature and method of use, though not at the highest degree. As for purpose, both can be used to play games so there is an overlap here also, though I do appreciate that cell phones have many other purposes meaning that any overlap is not overly pronounced. As for trade channels, I do not consider that an undertaking that produces mobile phones also produce portable games consoles and I have nothing before me to suggest otherwise. As such, I do not consider that these goods overlap in trade channels. As for user, I am of the view that someone who owns a portable video game console will also own a cell phone, although I appreciate that they are likely to use the phone more in the context of communication as opposed to playing video games on it. Lastly, the goods are not complementary but there is a degree of competition as someone looking to play video games on the move may choose to do so on a cell phone over a portable console, or vice versa. Taking all of this into account, I appreciate that the overlaps are numerous but are not individually compelling. As such, I find that there is only a medium degree of similarity between these goods.

Electronic components used in the electronic parts of machines and apparatus.

44. The above goods can realistically be said to be those that are used within Reality's "computer game apparatus" goods. That being said, I remind myself of the case of *Les Éditions Albert René v OHIM*, Case T-336/03 wherein the GC set out that:

"61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different."

45. In the present case, I do not consider that the goods at issue overlap in nature, method of use or purpose. While I appreciate that some users may look to build their own gaming computers (thereby using the above goods) for the purpose of playing video games, I have nothing before me to suggest that those components would be available from the producer of Reality's computer game consoles. Without such supporting evidence, I am not willing to find that it is common in the trade for an undertaking to produce computer games consoles to also produce and sell component parts to the same. It may be that the manufacturer of consoles would produce their own parts for use in said consoles but, again, I have nothing to suggest that they sell them to consumers. In terms of complementarity, clearly the component parts will be important to the operation of the gaming console. However, I do not consider that this relationship is such that consumers would consider them to be separate goods to the point that they would believe them to originate from the same undertakings. In terms of user, I accept that someone building their own gaming computer would also likely own other types of consoles and may even consider the goods competitive to one another as an end user may wish to build their own computer for playing games as opposed to buying a console. While noted, I do not consider that the overlap in user and potential competitive relationship between these goods is sufficient to warrant any meaningful degree of similarity between them. They are, therefore, dissimilar.

Remaining class 9 goods.

46. The remaining goods in Zero's first, third and fourth marks' specifications are extensive. Having considered the remaining terms across these specifications, I note that, save for three points (that I will address below), they are identical. The points of difference are only slight and are as follows:

- a. Zero's third mark's specification includes reference to 'downloadable' encoded magnetic and optic cards. This word is not present in the equivalent term in the other marks.
- b. Zero's third and fourth marks refer to wristbands as being 'smart' whereas the equivalent term in the first mark does not.
- c. Zero's third and fourth marks include the term 'head-mounted cameras', which is not present in the first mark, though I note that the broader term of 'cameras' appears in all of these specifications.

47. This leaves the remaining terms in class 9 across these three marks as follows:¹¹

"Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, stills, binoculars, ovens and furnaces for laboratory experiments; apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD [...] recorders, MP3 players, wearable technological devices, namely smart watches, smart wristbands, head-mounted cameras, microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, covers for cell phones, telephone apparatus,

¹¹ With the points mentioned above underlined for ease of reference.

computer printers, scanners [data processing equipment], photocopiers; magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable encoded magnetic and optic cards, movies, tv series and video music clips recorded on magnetic, optical and electronic media; antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods; ticket dispensers, automatic teller machines (ATM); semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring the quantity of consumption, automatic time switches; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof; apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; radar apparatus, sonars, night vision apparatus and instruments; decorative magnets; metronomes.”

48. The above goods of Zero include, but are not limited to, goods such as electric bells, sunglasses, fire hoses, sonars, furnaces and barometers. In short, I see no reason why these goods (or any of those listed above, for that matter) would share any meaningful overlap in nature, method of use, purpose or trade channels with

Reality's goods or services. Further, the above goods are not complementary¹² or competitive with any of the goods or services in Reality's specification. I accept that some of the above goods may overlap with those of Reality in that the user of a computer printer would also play computer games, for example. However, an overlap in user alone is insufficient to give rise to any meaningful degree of similarity. Lastly, I will say that in light of the technical nature of many of the above terms, it was for Reality to provide specific submissions as to why it considered these goods were similar to its own goods and services. The above goods are, therefore, dissimilar.

49. As Zero's first and fourth marks' specifications include goods in class 9 only, this concludes my comparison in respect of those. However, for the remaining services in Zero's second mark as well as the goods or services in Zero's third, fifth and sixth marks, I will proceed to consider those individually.

Zero's second mark

Class 9

Computer software.

50. Reality's specification includes the term "computer software". These goods are, therefore, self-evidently identical.

Computer software which remotely keeps the record of sensor values (for instance, temperature, rpm (revolution per minute), voltage) of computer hardware.

51. As above, Reality's specification includes the term "computer software". This is sufficiently broad so can, therefore, encompass the above term in Zero's second mark. As such, these goods are identical under the principle outlined in *Meric*.

¹² I acknowledge that some goods, such as cameras or other recording apparatus may be used to film entertainment services. However, this does not mean that they are important to the provision of the services. Even if they were, any relationship between is not be such that would lead consumers to believe them to be the responsibility of the same undertakings.

Zero's third mark

Class 42

Computer services, namely, computer programming, computer virus protection services, computer system design, creating, maintaining and updating websites for others, computer software design, consultancy in the design and development of computer hardware.

52. I consider that the best comparator of the above services in Reality's specification is "computer software". Clearly, these goods and services differ in nature, method of use and purpose. Further, despite the fact that these goods and services relate to computing, I have nothing sufficiently solid before me to suggest that the provider of computer software would also offer the computer services listed above. For example, the provider of computer software may design its own software but this does not automatically mean that it provides design services to customers. I appreciate that some of the largest computing companies may offer both but I do not consider that this is common in the trade and, again, I have nothing before me to suggest otherwise. In terms of user, I appreciate that the user base of Reality's good is so broad that there is an inevitable overlap. The goods and services are not complementary because whilst software may be important to the various services covered by the above term, the relationship between them is not such that would lead the consumer to think that they are the responsibility of the same undertaking. Lastly, the goods and services are not competitive in nature. Overall, I do not consider that the overlap in user is sufficient to warrant a finding that these goods and services are similar. They are, therefore, dissimilar.

Updating and rental of computer software.

53. Despite the above services differing in nature, method of use and purpose with Reality's "computer software", I consider that they are still similar to a degree. I say this because the provider of the above services will be the same as the provider of

Reality's goods. Further, the goods and services will be sought by the same consumer. Lastly, there is a degree of complementarity in that the goods and services are important to one another and the relationship between them is such that consumers will believe them to be the responsibility of the same undertaking. Overall, I consider that these goods and services are similar to between a low and medium degree.

Rental of computer hardware.

54. Following a similar logic to that discussed in the preceding paragraph, I find that the above service is similar to between a low and medium degree with Reality's "computer game apparatus".

Scientific and industrial analysis and research services; engineering; engineering and architectural design services; testing services for the certification of quality and standards, providing search engines for the Internet, hosting websites, industrial design services, other than engineering, computer and architectural design; graphic arts designing, authenticating works of art.

55. Put simply, without any submissions to the contrary, I see no reason why the above services share meaningful overlaps in respect of their nature, methods of use, purpose or trade channels with any of Reality's goods or services. Further, the above are not complementary or in competition with any of Reality's goods or services. I appreciate that there may be some degree of overlap in user due to the broad user base of some of Reality's goods and services. However, this alone is insufficient to give rise to a finding that there is any degree of similarity between them. The above services are, therefore, dissimilar.

Zero's fifth mark

Class 38

Providing user access to the entertainment medium content via internet.

56. Reality's specification includes the term "entertainment services" at large. The above term, whilst relating to entertainment, is a transmission service so does not fall within the scope of Reality's term. As such, the nature and method of use for these services differ. That being said, there is a broad overlap in purpose in that both terms will ultimately aim to provide entertainment to the user. In respect of trade channels, I consider it reasonable to conclude that the undertaking that provides the entertainment will also provide access to the same via the internet. As for user, clearly, both services will be sought by the same consumer. Lastly, the services are complementary on the basis that the entertainment service of Reality is important to the above service and this relationship between said services will result in consumers believing that they originate from the same undertaking. Overall, I consider that these services are similar to a medium degree.

Television broadcasting services.

57. I appreciate that the above service may involve entertainment in that the subject of the broadcasting services could cover entertainment programs. That being said, the above service differs in nature and method of use with Reality's "entertainment services". In addition, even acknowledging that the subject of the broadcast may be an entertainment program, the actual aim of the service is to provide a broadcast, which is a technical transmission service that has no actual regard to the topic of what is being broadcast. As such, I do not consider that there is any meaningful overlap in purpose. As for trade channels, the above service will be provided by a specialist broadcast company and while some larger broadcasters may produce their own entertainment programs, I do not consider this sufficient to justify a finding that there is a meaningful overlap in trade channels, particularly without any direct submissions on the matter. Lastly, the user of the above service

will be a professional undertaking looking for a third party to broadcast their program whereas the user of Reality's service will be members of the general public at large looking to be entertained. The services are not complementary and neither are they in competition.

58. Lastly, I will say that, in respect of these types of services, to conclude with similarity between the above and "entertainment services" simply because there is potential that the broadcast may cover an entertainment program would, in my view, offer far too broad a scope of protection to entertainment services. This is on the basis that such a finding would render many broad services that could be said to cover entertainment topics similar to "entertainment services" purely on that basis. Such a finding is unfounded and bearing this in mind together with everything I have said above, I find that these services are dissimilar.

Television broadcasting consultation, video-conference services; services of providing online access to application software; short message [SMS] services; providing user access to computer programs in data networks; communication via virtual private networks [VPN]; electronic transfer of images and photographs by means of a global computer network; data transfer and receiving data/sound or images; transferring text/photograph/video by means of smartphones; transferring information by means of smartphones; transferring and receiving sound, video, motionless and moving images, texts, and data; providing user access to global computer networks; providing access to a video sharing portal.

59. Without any direct submissions in respect of any of the above services, I fail to see any obvious reason why there would exist sufficient overlaps in respect of nature, method of use, purpose or trade channels between the above and any of the goods or services of Reality. While some of the above services may relate to subject matter that offers entertainment, this is not sufficient given the specific purposes of all of the above, in that they are telecommunication services at their core. Further, while some of the above services will be sought by members of the general public at large, any overlap is fleeting due to the disparate contexts of the parties' goods and services (again, Reality's goods/services being entertainment related and the

above being telecommunication services). Overall, I find that the above services are dissimilar to any of the goods or services in Reality's specification.

Zero's sixth mark

Class 9

Downloadable software for facilitating manual or automated control of audio and video production equipment; downloadable software for enabling users to create graphic animations of all kinds with a view to editing, management of workflows for different stakeholders, integration of all video or other content, and preview of the result.

60. Given that Reality's specification includes the broad term "computer software", I find that all of the above goods are encompassed by Reality's term. These goods are, therefore, identical under the principle outlined in *Meric*.

Class 42

Installation, maintenance, updating, repair and remedial maintenance of software.

61. Even though the above term includes installation and maintenance, I consider that the reasoning provided in respect of the services discussed at paragraph 53 above is applicable here. As such, I find that the above services are similar to between a low and medium degree with Reality's term of "computer software".

Design [...] of software.

62. I consider that the best comparator of the above service is Reality's term of "computer software". Clearly, the nature, method of use and purposes of these goods and services differ. In respect of trade channels, I appreciate that an undertaking that produces software is likely to design said software itself. However, I have nothing before me to suggest that it is common in the trade for such an undertaking to offer those design services to customers. Further, I do not consider

it likely that someone looking for software would commonly seek to design their own by seeking the above services. I accept that some may, but this does not, in my view, constitute a sufficient overlap in this factor. For this same reason, I appreciate that there may be a degree of competition between these goods and services but, again, this is somewhat fleeting as I have nothing to suggest that consumers would commonly take this approach. Taking all of this into account, I find that the above services are dissimilar.

Technical support services provided online, via a telephone answering hot line service, and on-site, for computers and software, namely, troubleshooting in the nature of diagnosing computer hardware and software problems, monitoring technological functions of computer network systems, computer programming, technological advisory and consultancy services in connection with computer hardware and software for use in the field of graphics systems for dissemination, for digital media asset and resource management, and publishing on the internet and on websites, digital processing of documents, images and information with a view to storage thereof in databases for media asset and resource management, namely, conversion of data, images or documents from physical to electronic media and conversion of electronic information.

63. As far as I understand the above terms, they are relatively technical and complex in their nature. As such, I consider it reasonable to suggest that specific arguments or submissions were required to support a claim that they are similar to the relatively ordinary goods and services of Reality. Without such, I am not willing to find that there exists any meaningful overlap in the relevant factors between the above services and any of the goods or services of Reality. As such, I find that they are dissimilar.

Conclusion of the goods comparison

64. In order for there to be a likelihood of confusion under section 5(2) of the Act, there must be at least some degree of similarity between the goods and services at

issue.¹³ As a result, and in light of my findings above, the present applications may only proceed in respect of the following goods and services:

Zero's first mark

Class 9: CD and DVD players; computers, desktop computers, tablet computers; computer peripheral devices; downloadable and recordable electronic publications; cell phones.

Zero's second mark

Class 9: Computer software; computer software which remotely keeps the record of sensor values (for instance, temperature, rpm (revolution per minute), voltage) of computer hardware.

Zero's third mark

Class 9: CD and DVD players; computers, desktop computers, tablet computers; computer peripheral devices; electronic publications and electronic publications recorded on computer media; cell phones.

Class 42: Updating and rental of computer software; rental of computer hardware.

Zero's fourth mark

Class 9: CD and DVD players; computers, desktop computers, tablet computers; computer peripheral devices; downloadable and recordable electronic publications; cell phones.

¹³ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Zero's fifth mark

Class 38: Providing user access to the entertainment medium content via internet.

Zero's sixth mark

Class 9: Downloadable software for facilitating manual or automated control of audio and video production equipment; downloadable software for enabling users to create graphic animations of all kinds with a view to editing, management of workflows for different stakeholders, integration of all video or other content, and preview of the result.

Class 42: Installation, maintenance, updating, repair and remedial maintenance of software.

65. As only the section 5(2)(b) ground is live in these proceedings, this means that the invalidations fail against all of the remaining goods and services across Zero's marks.

The average consumer and the nature of the purchasing act

66. 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.

67. In *Iconix Luxembourg Holdings* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

68. The goods and services at issue will be selected by both the general public at large and business users. Regardless of the identity of the consumer, the goods will be available from a range of retailers, such as general retailers or more specific retailers. In either scenario, the goods will be placed on shelves where they will be self-selected by the consumer. I also consider that the goods will be available online where they will be selected after the consumer views an image of them on

a webpage. As for the services, these will be available from the producer directly, or specialist providers, who will list their services on pamphlets and placards, and also on lists via websites. As a result, I find that the selection process for both the goods and services will be primarily visual. Saying that, I do accept that the aural component will play a role by virtue of discussions with sales assistants or word of mouth recommendations.

69. The goods and services at issue will vary in frequency and in cost. For example, just considering the software goods alone, some terms are broad enough to cover cheaper, or even free, software that is selected with a relatively high degree of frequency but, on the other end of the scale, specialist software can be reasonably expensive and selected as a one-off purchase. In between these two ends of the scale are a range of goods and services that will be moderately expensive and selected with a reasonable degree of frequency. In light of this, I find that some goods may attract a relatively low degree of attention with some software goods being casual selections, whereas the range of other goods and services will attract a medium degree of attention. For the avoidance of doubt, I find that even where the goods are more expensive, the factors considered will still be relatively ordinary, meaning that the level of attention paid for those will remain medium. For example, expensive software goods will attract consideration as to compatibility, ease of use and features. Further, some services, such as the software repair services will attract consideration as to price, type of repair offered, speed of delivery and reviews from previous customers.

Distinctive character of Reality's mark

70. 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)."

71. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use, but I note that Reality has not filed any evidence in support of this. As such, I only have the inherent position to consider.

72. Reality's mark is a figurative mark which consists of the text element 'REALITYCLASH' sitting above a smaller blue embellishment. While seemingly conjoined, 'REALITYCLASH' will clearly be viewed as two words, especially given that 'REALITY' is presented in grey whereas 'CLASH' is presented in the same shade of blue as the aforementioned embellishment. The 'A's' in both 'REALITY' and 'CLASH' have had their horizontal lines removed. The blue embellishment is such that I do not consider that it will impact upon the distinctiveness of the mark to any material degree beyond that which is associated with the 'REALITYCLASH' element. I say this because it is a relatively banal element that is entirely

unremarkable from a trade mark perspective. As such, I consider that the inherent distinctive character of the mark lies in the 'REALITYCLASH'.

73. As above, 'REALITYCLASH' will be viewed as the two words, 'REALITY CLASH'.

This carries a unitary meaning, being a reference to a 'clash of realities'. In my view, this will allude to Reality's goods and services on the basis that they relate to computer games, entertainment and computer software at large.¹⁴ In the context of such goods and services, I find that consumers will identify 'REALITY CLASH' as a reference to the subject matter of the game or entertainment product in that it portrays different realities clashing. Further, the idea of 'REALITY' will, in my view, also carry an association with virtual or augmented reality games/entertainment. While I do not consider this meaning is to the point that the mark will be attributed an outright low degree of distinctive character, I am of the view that it sits on the lower end of the scale of distinctiveness. Therefore, I find that Reality's mark possesses a low to medium degree of distinctive character.

Comparison of the marks

74. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

75. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

¹⁴ The latter being sufficiently broad so as to cover any type of computer game software.

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.”

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

77. The respective trade marks are shown below:

Reality’s mark	Zero’s marks
	Reality Editor (“Zero’s first mark”)
	RealityMonitor (“Zero’s second mark”)
	Reality Control (“Zero’s third mark”)
	Reality Keyer (“Zero’s fourth mark”)
	Reality Engine (“Zero’s fifth mark”)
	RealityHUB (“Zero’s sixth mark”)

78. I have submissions from both parties regarding the similarity of the marks. While these are noted, I do not intend to reproduce them in full here but, for the avoidance of doubt, I can confirm that I have given them due consideration.

Overall Impression

79. As discussed above, Reality's mark is a figurative mark consisting of the conjoined word 'REALITYCLASH', with 'REALITY' in grey and 'CLASH' in blue. Both 'A's' have their horizontal lines removed. Also as discussed above, the consumer will readily identify this as being two words, being 'REALITY CLASH'. This element sits on top of a blue embellishment. Given that consumers tend to be drawn to elements of marks that can be read, I find that 'REALITYCLASH' dominates the overall impression of the mark. The stylisation in the mark (being the embellishment and the dissection of the 'A's') plays a lesser role.

80. Turning to Zero's marks, they are either word only marks or figurative marks consisting solely of words and, for reasons that will become obvious below, I will consider them in separate groupings.

Zero's first, second, third and fifth marks

81. Save for the second mark, these are all word only marks. The second mark is a figurative mark but consists solely of black standard text on a white background. All of these marks consist of two words (or one word conjoined that will clearly be viewed as two) being Reality Editor, RealityMonitor, Reality Control and Reality Engine. I am of the view that I can consider them together because in each of the marks, the words inform one another. I say this because the words Editor, Monitor, Control in the first three marks all qualify the meaning of the mark as a whole in that it is reality that is being edited, monitored and controlled. As for the fifth mark, the word 'Engine' will refer to the engine that ultimately controls the reality. As such, I find that each of these marks hang together, meaning that their overall impressions lie equally across each of the words (or in the conjoined word in the

second mark).¹⁵ For the avoidance of doubt, I make this finding whilst bearing in mind that although 'Reality' has a connection to the goods and services at issue, the hanging together of these words is such to justify this conclusion.

Zero's fourth mark

82. Unlike those discussed above, the two words in this mark (being 'Reality' and 'Keyer') do not hang together. I say this because I have no submissions as to what 'Keyer' means in the context of the preceding word 'Reality'. On this point, despite sharing three letters with the ordinary dictionary word 'Key', I do not consider that 'Keyer' will have any meaning to the majority of consumers and I have no evidence before me to suggest otherwise. Given that the goods at issue under this mark relate to software or are broad enough to relate to gaming, I find that 'Reality' plays a lesser role due to its potential connection with virtual or augmented reality. Therefore, I am of the view that 'Keyer' plays the greater role in the overall impression of the mark due to it having no obvious meaning.

Zero's sixth mark

83. This mark consists of the conjoined word 'RealityHUB'. This will be viewed as the conjoining of the words 'Reality' and 'HUB'. The words in the mark hang together as, when viewed as a whole, it will be understood as a reference to a hub (being a central location or focal point) for a number of different realities. As such, the overall impression of the mark lies equally across the mark as a whole.

Visual Comparison

84. Regardless of the different overall impressions of Zero's marks, I remind myself that all of the additional words act as points of visual difference. Further, even considering their difference in length ('HUB' being just three letters whereas 'Monitor' is seven letters, for example), I consider that their impacts on the visual

¹⁵ For the avoidance of doubt, the figurative elements of Zero's second mark play a negligible role in the overall impression of said mark due to the simple fact it is presented in a standard typeface in black on a white background.

comparison will be the same across each of Zero's marks. As such, I will consider all marks together.

85. The marks at issue all share 'Reality' as their first word. Given that the beginnings of marks tend to have more visual impact than their ends,¹⁶ the shared use of this word is a considerable point of similarity. Saying that, the marks differ in that 'Reality' in all marks is followed by an entirely different word. The marks also differ in that Reality's mark is presented in an alternative typeface, in different colours and includes an embellishment. In respect of the typeface and colour, I appreciate that Zero's marks are all presented in word only (save for its second mark, of course) and in black and white. This means that the first and third through sixth marks are capable of being presented in any standard typeface and that all of Zero's marks are capable of being presented in any standard colour. I appreciate that the typeface of the marks (save for the second) could be the same but note that the notional use does not extend to the dissected letters in Reality's mark and neither does it extend to the contrived colour split used. While these points play lesser roles in the overall impression of Reality's mark, I consider that they act as very slight points of difference between the marks (regardless of whether compared with the second mark or the other marks of Zero). Taking all of this into account, I find that all of the marks are visually similar to a medium degree owing to the shared use of their first words.

Aural Comparison

Reality's mark and Zero's first and second marks

86. Reality's mark consists of five syllables and Zero's marks consist of seven syllables. All of these marks will be pronounced in the ordinary way. The marks all share their first four syllables, with the fifth in Reality's mark and the fifth through seventh in Zero's marks being entirely different. Bearing in mind the identity of the

¹⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

beginnings of these marks but noting the differences in their other syllables, I find that they are aurally similar to a medium degree.

Reality's mark and Zero's third, fourth and fifth marks

87. Reality's mark will be pronounced as above. Zero's marks will also be pronounced in the ordinary way but are only six syllables in length. As was the case with the marks assessed above, these marks all share their first four syllables but the remaining syllables differ entirely. Given the fact that the points of difference stem from two syllables (as opposed to the three above), I consider that the degree of aural similarity to be slightly higher than that reached above. On balance, I consider that these marks are aurally similar to a slightly above medium degree.

Reality's mark and Zero's sixth mark

88. Again, Reality's mark will be pronounced as above. Zero's mark will be pronounced in the ordinary way and is also five syllables in length. The point of difference between these marks comes from just one syllable (being the last syllable of each mark). This will not be ignored but factoring in the identical first four syllables, I find that these marks are aurally similar to between a medium and high degree.

Conceptual Comparison

89. The concept of Reality's mark has been discussed above when considering the distinctive character of the same. For ease of reference, I remind myself that I found that, in the context of the goods and services at issue, 'Reality Clash' will be understood as a reference to the subject matter of the game or entertainment product in that it portrays different realities clashing. In addition, the connection to virtual or augmented reality games/entertainment will also be noted. As for Zero's marks, I have explained their concepts when discussing their overall impressions above. Those apply here.

90. In comparing the marks, the shared concept of 'reality' (being '*the state of things as they are or appear to be, rather than one might wish them to be*' or '*something that is real*'¹⁷) across all of them will be noticed. However, save for Zero's fourth mark, each mark has an additional element that will impact on the overall meaning of the mark as a whole to the point that will counteract the identical use of 'Reality' in each mark. In my view, those marks (being all of Zero's marks save for its fourth) will be conceptually similar to a medium degree with Reality's mark.

91. As for Zero's fourth mark, I do not consider that the addition of 'Keyer' has any meaning in the context of the mark as a whole. Instead, it will be viewed as an unknown word with no obvious meaning to the majority of consumers. The mark will, therefore, be understood as two words, one of which has a meaning whereas the other does not. In comparing this with Reality's mark, I find that the shared use of 'Reality' will be noticed and identified as a point of conceptual similarity but this will be offset somewhat by the presence of the word 'Keyer', which will carry no obvious meaning. Overall, the marks may not technically be capable of a conceptual comparison but I do note that the shared use of 'Reality' will be noticed from a conceptual standpoint.

Likelihood of confusion

92. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me

¹⁷ <https://www.collinsdictionary.com/dictionary/english/reality>

to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

93. I have found the goods and services at issue to be identical or similar to varying degrees, including low. The average consumer base is formed of members of the general public and business users who will select the goods and services via primarily visual means (though not discounting an aural component) whilst paying either a relatively low or a medium degree of attention, depending on what is being selected. I concluded that Reality's mark possesses between a low and medium degree of distinctive character. On this point, I remind myself that a weaker distinctive character does not preclude a likelihood of confusion.¹⁸ In respect of the similarity of the marks, I remind myself that I have found Reality's mark to be visually similar to a medium degree with all of Zero's marks. As for aural similarity, I found it to be similar to a medium degree with Zero's first and second marks, to a slightly above medium degree with Zero's third, fourth and fifth marks and similar to between a medium and high degree with Zero's sixth mark. Lastly, I found Reality's mark to be conceptually similar to a medium degree with all of Zero's marks, save for its fourth one, which I found to be incapable of a conceptual comparison overall, though noting the shared use of the similar concept of 'Reality'.

94. Taking all of the above factors into account, I consider that the differing second words across all of the marks would clearly be noticed as a point of significant difference between them all. As such, the shared use of the word 'Reality' across the marks at issue is not such that would lead to consumers inaccurately recalling or misremembering the marks for one another. The consumer would not seek to pin their recollection of the marks at issue on the shared use of the ordinary dictionary word 'Reality', especially when considering the lower degree of distinctive character of Reality's mark. Consequently, I do not consider that there

¹⁸ See *L'Oréal SA v OHIM*, Case C-235/05 P

exists a likelihood of direct confusion between any of the marks at issue, even when viewed on identical goods or in circumstances where the consumer plays a lesser degree of attention during the selection process.

95. I will now proceed to consider a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

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)".

96. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

97. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein 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 paragraph 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.

98. The common element across all of these marks is the word 'Reality'. In the context of computer game, software or entertainment services, this is not so strikingly distinctive that consumers would believe that only one undertaking would use it. On the contrary, it is an entirely unremarkable word from a trade mark perspective in the present context. In determining whether the marks would be viewed as sub-brands or brand extensions of one another, I must consider the additional words across each mark. I remind myself that the marks differ in their presence of 'Clash' in Reality's mark and the words 'Editor, Monitor, Control, Keyer, Engine and HUB' in Zero's marks. These are all the second words across the marks at issue. In short, regardless of the second word's impact on the respective mark,¹⁹ I see no reason why the consumer would believe that Reality would remove 'Clash' from its mark

¹⁹ Be that one that creates a unitary meaning, a phrase that hangs together or one that has no obvious meaning when considered as a whole.

and replace it with the words used across Zero's marks, or vice versa. Such an alteration would give the marks as wholes entirely distinct meanings and those changes are not, in my view, logical indicators of sub-brands or brand extensions. For the avoidance of doubt, I consider that this is the case regardless of whether consumers are confronted with Reality's mark or Zero's marks first. I note that no specific argument has been put forward by Reality as to a likelihood of indirect confusion and whilst the circumstances set out in *L.A. Sugar* (cited above), are not exhaustive, it is for Reality to put forward how it considers there to be a proper basis for indirect confusion, especially considering that there is no likelihood of direct confusion. Lastly, in considering the marks at issue, I accept that the shared use of 'Reality' may call the other party's marks to mind, but this is mere association and not likelihood of confusion.²⁰ Consequently, I do not consider that there exists a likelihood of indirect confusion. Again, this finding applies even when the consumer is confronted with the marks on identical goods or in circumstances where the consumer pays a lower degree of attention.

99. As the invalidation application has failed, Zero's marks all remain registered in full, meaning that they are capable of being relied upon under Zero's opposition, which I will now turn to consider.

THE OPPOSITION

100. As set out above, the sole ground of the opposition is section 5(2)(b). The statute and case law relevant to this ground is set out above and I see no reason to reproduce it in full here. On a similar point, I will also not reproduce the case law and principles of the various other assessments I was required to make above, namely being the comparison of the goods and services, the average consumer, the comparison of the marks, the distinctive character of the earlier marks and the likelihood of confusion.

²⁰ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

101. Given their filing dates, Zero's marks all constitute earlier trade marks in accordance with section 6(1) of the Act. None of the marks relied upon had completed their registration process more than five years prior to the filing date of the opposed mark. As such, they are not subject to the proof of use provisions set out in section 6A of the Act. The consequence of this is that Zero may rely on all of the goods and services highlighted in its notice of opposition.

Comparison of the goods and services

102. The goods and services subject to this opposition are those found in classes 9, 41 and 42 of the specification set out in Annex 1 of this decision. The goods and services relied upon can be found at Annex 2.

103. Zero has provided a substantive table of what it considers to be the degree of identity or similarity across the specifications at issue. This is noted but it simply sets out, side by side, what goods or services in its own specifications are similar to the goods and services in Reality's specification. It does not offer any explanation as to why the goods and services are considered similar. I will bear this in mind when making my comparison but given its lack of any particular reasoning, I do not consider it to be necessarily compelling. As such, I will conduct my own comparison based on my own reasonable understanding of the terms before me.

Class 9

Apparatus for recording, transmitting or reproduction of sound, music, images, data and videos.

104. Zero's first, third and fourth marks include the term "apparatus for the reproduction of sound or images". This is clearly identical to the above term insofar as it relates to the reproduction of sounds. However, as for the remaining aspects of the above term, it is my view that the best comparators are the terms "television apparatus" and "telecommunications apparatus" contained in Zero's first, third and

fourth marks' specifications. I say this because these terms are sufficiently broad so as to cover smart TVs or digital set top boxes for receiving satellite or cable signals to watch television live, on demand or to record it to watch/listen at a later date. As such, I find that Zero's terms are also for the recording, transmitting or reproduction of sound, music, images, data and videos. As a result, I find that these goods are identical under the principle outlined in *Meric*.

Sound, music, image, data and video recordings; recorded and downloadable media; downloadable sound, music, image, data and video files; downloadable electronic sound, music, image, data and video files; downloadable sound, image, music and video files.

105. The above terms are all different types of electronic media files. I note that Zero's first, third and fourth marks include the term "optical and electronic media". As such, I find that all of the above terms fall within Zero's term meaning that these goods are identical under the principle outlined in *Meric*.

Downloadable electronic publications; printed matter in electronic form.

106. The above goods are both types of electronic publications and given that Zero's first, third and fourth marks include the term "downloadable electronic publications and electronic publications recorded on computer media", I find that these goods are identical under the principle outlined in *Meric*.

Non-fungible tokens.

107. I do not consider that the above term is a type of software in the ordinary sense and I have nothing before me to suggest that it is. Despite sharing an overlap in user with the software goods covered in Zero's specifications, I do not consider that any of the other factors overlap. In addition, I accept that accessing a non-fungible token is done via software, meaning that the goods are important to one another. However, as far as I am aware, this relationship is not one that leads

consumers to believing that they originate from the same undertaking. They are not, therefore, complementary. As a result, I find that these goods are dissimilar.

108. Further to the above, I accept that the non-fungible token may also be a good that is accessed on computers or mobile phones (both being terms in Zero's specifications). However, despite overlapping in user, I do not consider that there is any material overlap in any of the other factors. For the same reasons as set out above, there is no complementarity here either. As such, I find that these goods are also dissimilar. For the avoidance of doubt, I see no obvious similarities between the above term and any of the other goods and services across Zero's specifications.

Computer programs; computer software; downloadable computer software; downloadable computer software for blockchain technology; interactive computer software; computer games software; computer games entertainment software; computer video game software; video game software; 3D computer graphics software; recorded computer game software; computer games programs; video games programs; downloadable game software; downloadable computer games; downloadable interactive entertainment software for playing computer games; video games software; downloadable video game software; application software for mobile devices, tablet computers, mobile computers, handheld computers and smartphones; application game software for mobile devices, tablet computers, mobile computers, handheld computers and smartphones; downloadable mobile application software; downloadable mobile applications for playing games; software for interactive televisions.

109. Even where some of the terms above covers software designed for mobile phones or televisions, they are still technically items of computer software. As Zero's second mark includes the term "computer software", I find that all of the above goods are identical to Zero's term under the principle outlined in *Meric*.

Downloadable computer graphics.

110. A downloadable computer graphic is, as far as I am aware, an item of electronic media. As such, I find that the above term is encompassed by the term “optical and electronic media” in Zero’s first, third and fourth marks. These goods are, therefore, identical under the principle outlined in *Meric*.

Cartridges for computer games; video games cartridges; discs, cassettes, cartridges, CDs and other magnetic, electronic or optical media; discs, cassettes, cartridges, CDs and other magnetic, electronic or optical media, all with games software or video games.

111. As far as I am aware, cartridges, discs, cassettes and CDs are all types of magnetic and optical carriers of data. As such, I consider that all of the above terms fall within Zero’s terms of “magnetic and optic data carriers and computer software and programmes recorded thereto” and “optical and electronic media” that appear in its first, third and fourth marks’ specifications. These goods are, therefore, identical under the principle outlined in *Meric*.

Televisions; television monitors; monitors; computer display monitors.

112. It is my understanding that the term of “apparatus for [...] transmission or reproduction of [...] images” in Zero’s first, third and fourth marks can suitably cover any device that transmits or reproduces images, which can be a television, monitor or computer display monitor. As such, I find that these goods are identical under the principle outlined in *Meric*.

Computer docking station; computer stylus; Joysticks for use with computers, other than for video games; Keyboards; Keypads; Microphones; Mouse pads; Mouse [computer peripheral].

113. These are all computer peripheral devices. Zero's first, third and fourth marks' specifications all include the term "computer peripheral devices". As such, I find that these goods are identical under the principle outlined in *Meric*.

Earphones; headphones; Headsets; Headsets for playing video games.

114. Zero's first, third and fourth marks' specifications all include the term "apparatus for the [...] reproduction of sound". This is sufficiently broad so as to cover all of the above goods meaning that they are identical under the principle outlined in *Meric*.

Cases for smartphones.

115. In the context of mobile phones, I consider that a 'case' is interchangeable with a 'cover'. Further, a smartphone is a type of cell phone. Zero's first, third and fourth marks include the term "covers for cell phones", which describes the same goods as Reality's term. As such, I find that these goods are identical.

Parts, fittings and accessories for the aforesaid goods.

116. Where I have found Reality's goods to be identical to any of Zero's goods, I find that the above term, insofar as it relates to said goods, is similar to a medium degree with the equivalent goods of Zero. I say this on the basis that they overlap in trade channels and user and are complementary to one another. Where the goods have been found to be dissimilar then it follows that insofar as the above term relates to those goods, it is also dissimilar.

Class 41

Entertainment services; online entertainment services; online interactive entertainment; online gaming services; online computer game services; online video game services; provision of online games; provision of online video games; provision of online interactive computer games; provision of online interactive video games; video entertainment services; video game entertainment services; provision of entertainment via a browser or the Internet, mobile telephones and or wireless devices; provision of games which can be accessed network wide by network users; provision of computer games to be accessed via the Internet, browser, consoles, computers, mobile telephones and or other wireless devices; electronic games services provided by means of the internet providing multi-player services; providing online entertainment in the nature of game tournaments; entertainment services relating to esports.

117. Zero's second mark includes the term "computer software", which is sufficiently broad so as to cover computer games. It is in this context that I will compare the above services. While they differ in nature and method of use, there is an overall overlap in purpose in that both the goods and services aim to entertain the end user. As for trade channels, it is my understanding that providers of computer games also provide entertainment services in that they offer a service where their games can be played competitively online, be that casually or for esports purposes. The user of computer software in this context will also use the various entertainment services. Again, bearing in mind the current context of this comparison, there is a degree of complementarity between the goods and services due to the fact that the software is important to the services and this relationship is such that consumers will believe that the provider of the game is the same as the provider of the services. Taking all of this into account, I find that these services are similar to a medium degree.

Provision of information relating to computer games; provision of information relating to computer games via the Internet, browser, mobile telephones and or other wireless devices; provision of non-downloadable electronic publications relating to computer games; production of publications relating to computer game programs and software.

118. The above services cover the provision of information, be that generally or specifically via publications. Zero's first, third and fourth marks include the term "downloadable and recordable electronic publications". These goods can cover the same topics as those expressly covered by the above terms. While the goods differ in nature and method of use when compared to the above services, they do overlap in purpose, trade channels and user. Further, the goods and services are not complementary but there is a degree of competition in that a user may choose to obtain information or publications either as a downloadable good or as a service. These goods and services are, therefore, similar to a medium degree.

Sporting and cultural activities.

119. While I note that some of the entertainment services above related to esports, I have nothing before me by way of submission to suggest how similar findings could be drawn between these services and the goods of Zero in the same way. Without such, I see no reason why the above service would share any obvious degree of overlap with any of the goods or services across Zero's marks' specifications. As such, I find them to be dissimilar.

Organisation of competitions relating to computer games.

120. Zero's second mark includes the term "computer software" which is sufficiently broad so as to cover computer games. Clearly, the nature, method of use and purposes of these goods and services differ. While I appreciate that the provider of computer game software is likely to organise competitions relating to its own game, I do not consider that they would offer organisation as a service to third parties. Further, the user will be different in that the consumer who plays the computer game will not seek the organisation of a competition regarding the same.

The good is clearly important to the competition but I do not consider that the relationship between the game and the organisational service is such that consumers would ordinarily believe that the goods and services originate from the same undertaking. As a result, I do not consider them to be complementary. Overall, I find these goods and services to be dissimilar.

Distribution of sound recordings; distribution of video and sound recordings.

121. I consider that the best comparator of the above terms is “transferring and receiving sound, video, motionless and moving images, texts, and data” in Zero’s fifth mark’s list of class 38 services. I say this because all of these terms cover the provision of sound or video, be that via distribution under class 41 or by way of telecommunication in class 38. The natures and method of use differ but there is some degree of overlap in purpose in the fact that they all distribute sound or video. In terms of trade channels, I consider it likely that an undertaking that provides the distribution of sound or video would also offer to transfer and receive the same. As for user, I appreciate that the nature of the services is different so I am unsure if there is any meaningful overlap here as there is nothing before me to suggest that a user would seek Zero’s telecommunication services and Reality’s distribution services. That being said, even if this was the case, there is likely to be a degree of competition between them as those users may look to obtain sound via different sources. Overall, I consider that these services are similar to a low degree.

Production of sound recordings; video recording services.

122. I consider that the best comparator for the above terms is “transferring and receiving sound, video, motionless and moving images, texts, and data” in class 38 of Zero’s fifth mark’s specification. That being said, unlike the terms considered in the preceding paragraph, I do not consider these to be similar. This is on the basis that their natures and methods of use clearly differ. Further, there is no overlap in purpose because while they relate to video and sound, the above services are for the production or recording of video or sound, whereas Zero’s service is for the transmission of the same. In terms of trade channels, I have

nothing before me to suggest any overlap here would be common in trade. The services are not complementary, nor in competition. Lastly, I accept that there may be some degree of overlap in user due to the services' relationship with video and sound but I do not consider this to be sufficient, by itself, to result in a material degree of similarity between these services. They are, therefore, dissimilar.

Production of video and computer game software.

123. As far as I am aware, the production of a video game covers the coding, testing and de-bugging of a computer game to ensure it is ready for wider distribution. As far as I am aware (and I have nothing to suggest otherwise), it does not include the design of the game, which likely comes at the start of the process rather than during its production. Therefore, the above term does not encompass the term of “design [...] of software” in Zero’s sixth mark. Despite Zero’s term covering computer game software, these services do not overlap in nature, method of use or purpose. In respect of the latter point, I accept that the end purpose of both services is to provide a computer game to the user but one aims to produce a game whereas the other is to design it. The trade channels may overlap as, as far as I am aware, the designer of a computer game may also produce it. As for user, someone looking to create and release a video game would require both its design and production meaning that there is overlap here also. Lastly, the services are not complementary and neither are they in competition. Overall, I find that these services are similar to a low degree.

Video game distribution; multimedia entertainment software publishing services; game publishing services.

124. The above services cover the end stage of video game creation where the undertaking distributes or publishes the game for consumers to access. In comparing it to the term “design [...] of software” in Zero’s sixth mark, I consider that the same overlaps in the preceding comparison apply, namely that these services share a similar end purpose, the same trade channels and users. As such, I find that they are similar to a low degree.

Information and advisory services relating to the aforesaid services.

125. Where I have found Reality's class 41 services to be similar to any of Zero's goods or services, I find that the above term, insofar as it relates to said services, is similar to at least a low degree with the equivalent goods or services of Zero. I say this on the basis that information and advice for the relevant services is commonly provided by the same trade channels and to the same users as those relevant to Zero's goods and services. However, where I found the services to be dissimilar then the same finding applies to the above term.

Class 42

Design and development of computer software and hardware; design and development of video game software; design and development of computer game software; design and development of computer games programs; design and development of video games programs; computer programming; design and development of computer software architecture; computer programming; computer programming and software design; computer design and development.

126. I consider that the above services are all identical with the term of "design [...] of software" in Zero's sixth mark's specification and the terms of "computer services, namely, computer programming, [...] computer system design, [and] computer software design" and "computer [...] design" in its third mark's specification. This is on the basis that Zero's terms readily include design and programming of computer game software. Further, both the design and programming, in my view, will include development aspects too. Therefore, in the present context, Zero's services all fall within all of the above terms meaning that they are identical under the principle outlined in *Meric*.

Software and platform as a service.

127. While the above term differs in nature and method of use with “computer software” in Zero’s second mark, I do consider that there is an overlap in purpose, trade channels and user. I say this because while accessed differently, both goods and services are very broad but will ultimately be used for the same reasons, namely to use software or a platform (which, in my view, is an overarching form of software). Further, they will be sought by the same user and likely from the same undertaking. Lastly, there is a degree of competition between the goods and services as someone looking to use software will choose it as a good or as a service. Overall, I consider that these goods and services are similar to a medium degree.

Graphic design; artwork design; graphic art design; graphic art services; commissioned artist's services; authenticating works of art.

128. Zero’s third mark includes the term “graphic arts designing, authenticating works of art”. In my view, while some of these terms may be worded slightly differently, they cover the same services. As such, I find that they are identical.

Updating computer games programs; updating video games programs.

129. The above services all fall within the term of “updating, repair and remedial maintenance of software” in Zero’s sixth mark. As such, these services are identical under the principle outlined in *Meric*.

Provision of technical support in the field of computer games software.

130. Zero’s sixth mark’s specification includes the term “technical support services provided online, via a telephone answering hot line service, and on-site, for computers and software, namely, troubleshooting in the nature of diagnosing computer hardware and software problems”. I see no reason why Zero’s term cannot duly cover technical support for computer games software and, as such, I find that the above service of Reality’s falls within Zero’s services. As such, these services are identical under the principle outlined in *Meric*.

Creating and maintaining websites.

131. The above term falls within the term of “creating, maintaining and updating websites for others” in Zero’s third mark’s specification. As such, these services are identical under the principle outlined in *Meric*.

Data storage via blockchain; data authentication via blockchain; certification of data via blockchain; encryption of digital image, music, video, animation, data, sound and media files.

132. The above services are highly technical in nature and without anything from Zero as to why these services are similar to any of its own goods or services, I am not willing to find that they are. In my view, there is no obvious reason why the above services would overlap in nature, method of use, purpose, trade channels or user with any of Zero’s goods or services. As such, I find that they are dissimilar.

Information and advisory services relating to the aforesaid services.

133. Where I have found Reality’s class 42 services to be identical to any of Zero’s goods or services, I find that the above term, insofar as it relates to said services, to be similar to a medium degree due to overlaps in trade channels and user and a degree of complementarity. Where the services were found to be similar then I consider that above term to be similar at least a low degree due to overlaps in trade channels and user. However, where I found the services to be dissimilar then the same finding applies to the above term.

Conclusion in respect of the goods and services comparison

134. I have set out above that, under the present ground, a likelihood of confusion can only exist where there is identity or at least some similarity between the parties’ goods and services. This means that as a result of my findings above, the present ground proceeds only against those goods and services that I have found to be

identical or similar. Given that only the section 5(2)(b) ground is live, the opposition fails against the following:

Class 9: Non-fungible tokens; parts, fittings and accessories for the aforesaid goods.

Class 41: Sporting and cultural activities; organisation of competitions relating to computer games; production of sound recordings; video recording services; information and advisory services relating to the aforesaid services.

Class 42: Data storage via blockchain; data authentication via blockchain; certification of data via blockchain; encryption of digital image, music, video, animation, data, sound and media files; information and advisory services relating to the aforesaid services.

The average consumer and the nature of the purchasing act

135. Whilst the goods and services at issue here are not identical to those assessed under the invalidation applications above, I consider that the identity of the consumer (being members of the general public and business users) will be the same. Further, I consider that the selection process will also be the same, in that the visual component will dominate, with the aural component playing a role. Lastly, the level of attention is likely to mirror that of the above goods and services in that the consumer will pay between a relatively low and a medium degree of attention.

Comparison of the marks

136. The respective trade marks are shown below:

Zero's marks	The opposed mark
Reality Editor ("Zero's first mark") RealityMonitor ("Zero's second mark") Reality Control ("Zero's third mark") Reality Keyer ("Zero's fourth mark") Reality Engine ("Zero's fifth mark") RealityHUB ("Zero's sixth mark")	REALITY PLUS

137. I have submissions from both parties regarding the similarity of the marks. While these are noted, I do not intend to reproduce them in full here but, for the avoidance of doubt, can confirm that I have given them due consideration.

Overall Impression

138. The opposed mark is a word only mark consisting of the words 'REALITY PLUS'. Despite 'REALITY' being allusive to video game/entertainment goods and services (for reason discussed throughout this decision), I find that it will still play the greater role in the overall impression of the mark, with 'PLUS' playing a lesser

role. I will expand upon my reasoning for this when considering the concept of this mark below.

139. As for Zero's marks, I assessed their overall impressions at paragraphs 81 to 83 above. I consider that those findings apply here. For ease of reference, the overall impressions lie equally across both words in the first, second, third, fifth and sixth marks, due to their hanging together. As for the fourth mark, the word 'Keyer' playing the greater role in its overall impression, with 'Reality' playing a lesser role.

Visual Comparison

140. Regardless of their overall impressions, I find that I can deal with a comparison between the opposed mark and Zero's marks together. The marks are similar insofar as they all include the word 'Reality' as their first word. As I have set out above, the beginnings of marks tend to have greater visual impacts than their ends. 'Reality' is the dominant word in the opposed mark but is either a word of equal or lesser dominance across Zero's marks. Even acknowledging the different weights attributed to the additional words, the points of difference will be clearly noticed by the consumer. As such, I find that all of the marks at issue are visually similar to a medium degree.²¹

Aural Comparison

141. While 'REALITY PLUS' is different from Reality's mark assessed under the invalidation actions above (being 'REALITY CLASH'), I consider that because they are made up of the same number of syllables, the findings I have made between 'REALITY CLASH' and Zero's marks above can be said to apply here for the same reasons given. Therefore, I find that the opposed mark is aurally similar to a medium degree with Zero's first and second marks, a slightly above medium

²¹ I appreciate that under the invalidation actions above, I found Reality's mark to be visually similar to a medium degree with Zero's mark despite Reality's mark having additional figurative elements. For the avoidance of doubt, I will say that I do not consider the lack of figurative elements in the marks at issue here means that I am bound to reach a finding of higher visually similarity under the opposition. This is especially the case when considering the fact that the opposed mark is different from Reality's mark relied upon above.

degree with Zero's third, fourth and fifth marks and to between a medium and high degree with Zero's sixth mark.

Conceptual Comparison

142. Zero's marks all carry the same concepts I have discussed above. For ease of reference, these are as follows:

- a. Zero's first, second and third marks will be understood as a reference to 'Reality' being edited, monitored, controlled;
- b. 'Reality' in Zero's fourth mark will be attributed its ordinary meaning, with 'Keyer' being an unknown word. Outside of a reference to 'Reality', this mark has no overall meaning;
- c. Zero's fifth mark will be understood as the engine that controls reality; and
- d. Zero's sixth mark will be understood as a central location or focal point for a number of different realities.

143. As for the opposed mark, this is made up of the words 'REALITY PLUS'. Unlike the marks assessed above, 'PLUS' does not qualify what is meant by the word 'REALITY'. I say this because 'PLUS' will be understood as a suggestive word that points to the character or quality of the goods and services at issue, i.e. that there is something 'additional' being offered to consumers. For example, this can include access to extras that come via a subscription, being those beyond the regular 'REALITY' offering. Such an addition is one that consumers will identify as being common across many trades and it is for this reason that it plays a lesser role in the overall impression of the opposed mark. 'REALITY' will be assigned its ordinary meaning which, as above, is *'the state of things as they are or appear to be, rather than one might wish them to be'* or *'something that is real'*. Given that the mark has no meaning in combination, I am of the view that its concept will derive from the individual meanings of the words themselves.

144. I will first deal with the comparison between the opposed mark and Zero's fourth mark. I do so because given the meaning associated with Zero's fourth mark as a

whole, I can make a similar finding to that I have above in that the marks are not technically capable of a conceptual comparison but I do note that the shared use of 'Reality' will be noticed from a conceptual standpoint.

145. In comparing the remaining marks, the shared concept of 'REALITY' will clearly be noticed. However, the differences created by the additional words in Zero's marks qualify the meaning of those marks. For example, the addition of 'Control' after reality qualifies the meaning of the mark as a whole in that it is 'reality' that is being controlled, as opposed to a plain and singular reference to the word 'reality'. That being said, when considering Zero's marks against the opposed mark, the shared use of 'REALITY' is still a point of conceptual similarity which, in my view, gives rise to a finding that the marks at issue are conceptually similar to a medium degree.

Distinctive character of Zero's marks

146. It is noted that Zero has filed evidence of use but, before considering whether this is sufficient to give rise to a finding that the distinctive character of Zero's marks has been enhanced due to the use of the same, I will consider the inherent position.

147. Where a meaning can be associated with Zero's marks as wholes, this will be that of something that edits reality (for the first mark), something that monitors reality (for the second mark), something that controls reality (for the third mark), an engine that controls reality (for the fifth mark) and a centralised location collecting a number of realities (for the sixth mark). Lastly, the fourth mark is 'Reality Keyer' and, as above, I do not consider that 'Keyer' has any known meaning. As such, Zero's fourth mark does not carry any known meaning outside of the fact it will be understood as the known word 'Reality' followed by an unknown word. Where the marks have meanings as wholes, I find that the distinctiveness will sit on the lower end of the scale. This is because the meanings discussed above have a connection to the goods and services at issue because the concept of 'reality' will be viewed as something to do with virtual or augmented reality. This applies regardless of the goods or services at issue because virtual or augmented reality are not solely

associated with games or entertainment. For example, augmented reality can be used on software for creating renders of new environments such as when a user is looking to install a new kitchen or bathroom. As such, I find that the inherent distinctiveness of these marks sits at between a low and medium degree. As for Zero's fourth mark, the connection to the word 'Reality' will be the same but the addition of an unknown word creates a high degree of inherent distinctiveness in the mark as a whole.

148. As above, Zero has filed evidence of use and I will now consider the issue of an enhanced distinctive character. I can deal with this briefly and I do so because the assessment I am required to consider here is the understanding of the UK-based consumer as at the relevant date for the opposition, being 14 March 2022. Firstly, the evidence covers awards,²² customer details²³ and a printout from Zero's website²⁴ that are all from after the relevant date. These are not, therefore, relevant to the present ground. In addition, the first witness statement of Mr Aksoy discusses use in other jurisdictions outside of the UK. This includes use in countries across Europe as well as use in USA, Canada and Australia. Of the actual UK use, I note that Mr Aksoy's first statement simply introduces two tables of various invoices from 2016 to 2021 of the Reality Editor and Reality Keyer marks. Only two invoices, both from 2020, relate to sales under the Reality Editor mark in the UK. Even taking these entries of the tables into account, they do not show what goods or services were sold. In addition to this, Zero filed a supplementary witness statement of Mr Aksoy which introduced actual copies of invoices and quotations across four exhibits.²⁵ These are noted and having considered approximately 161 pages of invoices and quotations, I note that only 17 invoices are provided that cover sales to customers in the UK prior to the relevant date. Even taking these into account, they cover marks other than those relied upon here. For example, some invoices simply relate to the branding 'Reality', solus, and others include 'Reality Sys', 'Reality Engineer', 'Reality Pro' and 'Reality Lens'. These are not the

²² Exhibit 1

²³ Exhibit 2

²⁴ Exhibit 3

²⁵ Exhibit A to D

marks at issue and, as such, they are not relevant to the present proceedings so I will give them no further consideration.²⁶

149. The evidence fails to demonstrate any actual level of use or marketing spend in the UK and neither is there any information about Zero's market share in the UK for its goods and services. As a result, and given the nature of the summary above, I find that there exists no degree of enhanced distinctive character. Therefore, the inherent positions apply.

Family of marks

150. As discussed at the outset of my decision, Zero argues that its marks constitute a family. In the present case, Zero relies on six earlier marks. However, in order for trade marks to constitute a family of marks, there needs to be evidence of said marks in the marketplace.²⁷ I have discussed the evidence of Zero above when considering an enhanced distinctive character. I repeat what I found there in that the evidence makes only vague reference to two earlier marks, being 'Reality Editor' and 'Reality Keyer', in the UK prior to the relevant date as well as to other marks that are not relied upon here. As those additional marks are not relied upon here, they are irrelevant to the present issue. Further, even if such evidence was to sufficiently demonstrate a presence of these marks in the market (my primary view is that it does not), the existence of two marks sharing a common element (being the first word 'Reality') is insufficient to constitute a 'family' of marks. As such, I do not consider the family of marks argument is of any assistance here and I will say no more about it.

Likelihood of confusion

151. I have found the goods and services at issue to be identical or similar to varying degrees, including low. The average consumer base is formed of members of the

²⁶ I am of the view that, given the volume of the invoices, it was the responsibility of Zero to direct me to evidence of use of the marks at issue in the UK prior to the relevant date.

²⁷ *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06

general public and business users who will select the goods and services via primarily visual means (though not discounting an aural component) whilst paying either a relatively low or a medium degree of attention, depending on what is being selected. In respect of the similarity of the marks, I remind myself that I have found the contested mark to be visually similar to a medium degree with all of Zero's marks. As for the aural comparison, I have found the contested mark to be similar to a medium with Zero's first and second marks, slightly above medium with Zero's third, fourth and fifth marks and medium to high with Zero's sixth mark. Lastly, conceptually, I have found all of Zero's marks (bar Zero's fourth mark) to be similar to a medium degree with the opposed mark. As for that fourth mark, it is not technically capable of a conceptual comparison with the opposed mark but the shared use of 'Reality' will be noticed from a conceptual standpoint.

152. Lastly, I concluded that Zero's first, second, third, fifth and sixth marks possess between a low and medium degree of distinctive character. Zero's fourth mark possesses a high degree of distinctiveness, albeit that distinctiveness lies in the unknown word 'Keyer'. On this point, I reiterate the point I have made above in that a weaker distinctive character does not preclude a likelihood of confusion.

153. Taking all of the above into account, I appreciate that the additional element of 'PLUS' in the opposed mark plays a lesser role in that mark. However, Zero's earlier marks all include additional words that impart at least an equal impact on those marks as wholes. Therefore, despite the weaker element of 'PLUS' being present in the opposed mark, I do not consider that the average consumer would misremember or inaccurately recall the marks for one another, even where the marks are viewed on identical goods or services or in circumstances where a lower degree of attention is paid. Consequently, I find that there exists no likelihood of direct confusion.

154. I turn now to consider the issue of indirect confusion and, in doing so, remind myself of the principles set out in *L.A. Sugar* (cited above) and the comments of Arnold LJ and Mr Mellor Q.C in *Liverpool Gin* and *Cheeky Italian* (again, both cited above).

155. I will first consider Zero's first, second, third, fifth and sixth marks. In considering all of these marks against the contested mark, I accept that consumers will pick up on the fact that the common element across them all is the word 'Reality'. While 'Reality' may be noted as the indicator of origin for the opposed mark (on the basis that 'PLUS' will be viewed as a reference to the offering of something additional), this is not the case for Zero's marks. I have found above that the additional words in Zero's marks all create a different meaning in those marks as wholes. For example, the first mark alludes to something that edits reality and the sixth alludes to a central location where realities are located. While such concepts are similar to the opposed mark, they are just different enough to mean that consumer will not believe that 'Reality' in Zero's marks is an indicator of origin. Instead, it is my view that the indicator of origin for each of Zero's marks will be the entirety of the marks themselves. Further, 'Reality' across Zero's marks is not compelling when considering the goods and services at issue and it is my view that its common use across these marks will be viewed more in line with coincidental use as opposed to a reference to a shared origin.

156. Considering Zero's fourth mark, being 'Reality Keyer', I appreciate that it enjoys a higher degree of distinctive character, but this stems from the unknown word 'Keyer' itself. This is not of any particular assistance to Zero because it is the distinctiveness of the common element that is key.²⁸ In short, following similar reasons to those given throughout my decision, I do not consider the common use of 'Reality' to be so strikingly distinctive that consumers would believe that only one undertaking would use it. Further, I do not consider that the changes between the marks at issue are those that indicate a sub-brand or brand extension. On this point, I do not see any reason why the consumer would believe it logical for an undertaking using the 'Reality Keyer' mark to remove the distinctive element of that mark (being 'Keyer') and replace it with the suggestive word 'PLUS'. The same applies the other way around, for that matter.

²⁸ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

157. Consequently, I do not consider that there is a likelihood of indirect confusion between any of the marks at issue and I say this even whilst bearing in mind that the marks may be viewed on goods or services that are identical. Further, this finding applies even where consumers pay a lower degree of attention.

CONCLUSION

158. Both the invalidation and opposition have failed. Therefore, subject to any successful appeal of my decision, Zero's marks may remain registered for all goods and services and the opposed mark may proceed to registration for all goods and services applied for.

COSTS

159. Both parties have successfully defended the proceedings brought against them. As such, I find that they have achieved an equal measure of success. In these circumstances, I do not consider it necessary to make an award of costs in favour of either party. The parties are, therefore, ordered to bear their own costs.

Dated this 20th day of August 2026

A COOPER

For the Registrar

ANNEX 1

Class 9

Apparatus for recording, transmitting or reproduction of sound, music, images, data and videos; sound, music, image, data and video recordings; recorded and downloadable media; downloadable sound, music, image, data and video files; downloadable electronic sound, music, image, data and video files; non-fungible tokens; computer programs; computer software; downloadable computer software; downloadable computer software for blockchain technology; interactive computer software; computer games software; computer games entertainment software; computer video game software; video game software; 3D computer graphics software; recorded computer game software; computer games programs; video games programs; downloadable game software; downloadable computer graphics; downloadable computer games; downloadable interactive entertainment software for playing computer games; video games software; downloadable video game software; downloadable sound, image, music and video files; downloadable electronic publications; printed matter in electronic form; cartridges for computer games; video games cartridges; application software for mobile devices, tablet computers, mobile computers, handheld computers and smartphones; application game software for mobile devices, tablet computers, mobile computers, handheld computers and smartphones; downloadable mobile application software; downloadable mobile applications for playing games; discs, cassettes, cartridges, CDs and other magnetic, electronic or optical media; discs, cassettes, cartridges, CDs and other magnetic, electronic or optical media, all with games software or video games; televisions; television monitors; software for interactive televisions; computer display monitors; computer docking station; computer stylus; earphones; headphones; Headsets; Headsets for playing video games; Joysticks for use with computers, other than for video games; Keyboards; Keypads; Microphones; Monitors; Mouse pads; Mouse [computer peripheral]; cases for smartphones; parts, fittings and accessories for the aforesaid goods.

Class 28

Games, toys and playthings; video game apparatus; electronic toys; electronic activity toys; handheld video games; joysticks for video games; handheld electronic video games; handheld units for playing video games; bags specially adapted for handheld video games; protective carrying cases specially adapted for handheld video games.

Class 41

Entertainment services; sporting and cultural activities; online entertainment services; online interactive entertainment; online gaming services; online computer game services; online video game services; provision of online games; provision of online video games; provision of online interactive computer games; provision of online interactive video games; video entertainment services; video game entertainment services; provision of entertainment via a browser or the Internet, mobile telephones and or wireless devices; provision of games which can be accessed network wide by network users; provision of computer games to be accessed via the Internet, browser, consoles, computers, mobile telephones and or other wireless devices; electronic games services provided by means of the internet providing multi-player services; provision of information relating to computer games; provision of information relating to computer games via the Internet, browser, mobile telephones and or other wireless devices; provision of non-downloadable electronic publications relating to computer games; production of video and computer game software; production of publications relating to computer game programs and software; organisation of competitions relating to computer games; production of sound recordings; video recording services; distribution of sound recordings; video game distribution; providing online entertainment in the nature of game tournaments; multimedia entertainment software publishing services; game publishing services; distribution of video and sound recordings; entertainment services relating to esports; information and advisory services relating to the aforesaid services.

Class 42

Design and development of computer software and hardware; design and development of video game software; design and development of computer game software; design and development of computer games programs; design and

development of video games programs; computer programming; software and platform as a service; design and development of computer software architecture; computer programming; computer programming and software design; graphic design; computer design and development; updating computer games programs; updating video games programs; creating and maintaining websites; provision of technical support in the field of computer games software; artwork design; graphic art design; graphic art services; commissioned artist's services; authenticating works of art; data storage via blockchain; data authentication via blockchain; certification of data via blockchain; encryption of digital image, music, video, animation, data, sound and media files; information and advisory services relating to the aforesaid services.

ANNEX 2

Zero's first mark

Class 9

Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, stills, binoculars, ovens and furnaces for laboratory experiments; apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, wearable technological devices (smart watches, wristbands, head-mounted devices) (terms considered too vague by the international bureau - rule 13 (2) (b) of the common regulations), microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, computer peripheral devices, cell phones, covers for cell phones, telephone apparatus, computer printers, scanners [data processing equipment], photocopiers; magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable and recordable electronic publications, encoded magnetic and optic cards, movies, tv series and video music clips recorded on magnetic, optical and electronic media; antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods; ticket dispensers, automatic teller machines (ATM); electronic components used in the electronic parts of machines and apparatus, semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring the quantity of consumption, automatic time switches; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof; apparatus and instruments for conducting, transforming,

accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; radar apparatus, sonars, night vision apparatus and instruments; decorative magnets; metronomes.

Zero's second mark

Class 9

Computer software; computer software which remotely keeps the record of sensor values (for instance, temperature, rpm (revolution per minute), voltage) of computer hardware.

Zero's third mark

Class 9

Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, stills, binoculars, ovens and furnaces for laboratory experiments; apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, wearable technological devices, namely smart watches, smart wristbands, head-mounted cameras, microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, computer peripheral devices, cell phones, covers for cell phones, telephone apparatus, computer printers, scanners [data processing

equipment], photocopiers; magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable electronic publications and electronic publications recorded on computer media, encoded magnetic and optic cards, movies, tv series and video music clips recorded on magnetic, optical and electronic media; antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods; ticket dispensers, automatic teller machines (ATM); electronic components used in the electronic parts of machines and apparatus, semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring the quantity of consumption, automatic time switches; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof; apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; radar apparatus, sonars, night vision apparatus and instruments; decorative magnets; metronomes.

Class 42

Scientific and industrial analysis and research services; engineering; engineering and architectural design services; testing services for the certification of quality and standards, computer services, namely, computer programming, computer virus protection services, computer system design, creating, maintaining and updating websites for others, computer software design, updating and rental of computer software, providing search engines for the Internet, hosting websites, consultancy in the design and development of computer hardware, rental of computer hardware,

industrial design services, other than engineering, computer and architectural design; graphic arts designing, authenticating works of art.

Zero's fourth mark

Class 9

Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, stills, binoculars, ovens and furnaces for laboratory experiments; apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, wearable technological devices, namely, smart watches, smart wristbands and head-mounted cameras; microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, computer peripheral devices, cell phones, covers for cell phones, telephone apparatus, computer printers, scanners [data processing equipment], photocopiers; magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable and recordable electronic publications, encoded magnetic and optic cards, movies, tv series and video music clips recorded on magnetic, optical and electronic media; antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods; ticket dispensers, automatic teller machines (ATM); electronic components used in the electronic parts of machines and apparatus, semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring the quantity of consumption, automatic time switches; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof; apparatus and instruments for conducting, transforming,

accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; radar apparatus, sonars, night vision apparatus and instruments; decorative magnets; metronomes.

Zero's fifth mark

Class 38

Television broadcasting services; television broadcasting consultation, video-conference services; services of providing online access to application software; short message [SMS] services; providing user access to computer programs in data networks; providing user access to the entertainment medium content via internet; communication via virtual private networks [VPN]; electronic transfer of images and photographs by means of a global computer network; data transfer and receiving data/sound or images; transferring text/photograph/video by means of smartphones; transferring information by means of smartphones; transferring and receiving sound, video, motionless and moving images, texts, and data; providing user access to global computer networks; providing access to a video sharing portal.

Zero's sixth mark

Class 9

Downloadable software for facilitating manual or automated control of audio and video production equipment; downloadable software for enabling users to create graphic animations of all kinds with a view to editing, management of workflows for different stakeholders, integration of all video or other content, and preview of the result.

Class 42

Design, installation, maintenance, updating, repair and remedial maintenance of software, technical support services provided online, via a telephone answering hot line service, and on-site, for computers and software, namely, troubleshooting in the nature of diagnosing computer hardware and software problems, monitoring technological functions of computer network systems, computer programming, technological advisory and consultancy services in connection with computer hardware and software for use in the field of graphics systems for dissemination, for digital media asset and resource management, and publishing on the internet and on websites, digital processing of documents, images and information with a view to storage thereof in databases for media asset and resource management, namely, conversion of data, images or documents from physical to electronic media and conversion of electronic information.